COBDEN CLUB ESSAYS.

LOCAL GOVERNMENT AND TAXATION.

EDITED BY

J. W. PROBYN.

CASSELL PETTER & GALPIN:
LONDON, PARIS & NEW YORK.
1875.

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PREFACE.

THE COBDEN CLUB believes that it is doing good service in giving to the public a series of Essays on the Local Government and Taxation of different countries. Additional light, it is hoped, will be thrown upon these important questions, by exhibiting the origin and character of various systems of Local Government actually at work, as well as by comparing their merits and defects.

The Contributors to this Volume are, in nearly every case, citizens of the respective countries whose local institutions form the subject of their several Essays. They are, moreover, men who have devoted their time and abilities to the careful study of the political and social problems of our day. The Essay on Germany is not, indeed, from the pen of a German; but it has been written by one whose long residence in Germany has made him thoroughly acquainted with the language and customs of that great country. So, too, the author of the Essay on Russia, although not a Russian, has resided much in that empire, and has acquired no slight personal knowledge of its people, institutions, and language. The brief notice of Local Govern-

ment in our Australian Colonies has been furnished from data given by colonial agents and other qualified persons; while the paper on Victoria has been written by two of its best known public men.

This Volume has one defect, which the Cobden Club is the first to recognise, namely, the absence of any notice of the Local Institutions of some most important countries, such as the constitutional monarchies of Italy, the Austro-Hungarian State, and the Scandinavian kingdoms; as well as the Republics of the United States and Switzerland, which are worthy of the most careful study. But it was found impossible to comprise within a single Volume all the countries whose Local Governments deserve investigation. The Cobden Club regrets the omissions it has thus been compelled to make, but hopes that the opportunity may occur of supplying on a future occasion some of those examples of Local Self-Government which are not contained in the present Volume.

J. W. PROBYN.

February, 1875.

N.B.—The first Essay, on "Local Government in England," by Mr. Brodrick, was in print before the commencement of the Session of 1875, and before the original draft of the Bill for creating a new municipality of London had been altered in several important respects.—J. W. P.

ESSAYS ON LOCAL GOVERNMENT AND TAXATION.

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LOCAL GOVERNMENT IN ENGLAND.

BY THE HONOURABLE GEORGE C. BRODRICK.

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LOCAL GOVERNMENT IN ENGLAND.

THE origin of Local Government in England, like that of our civil liberty, must be sought in the primitive but well-ordered communities of our Saxon forefathers. It is well observed by Guizot, that in the earlier stages of civilisation, no government but local government can have any practical existence, and that local rights are the most important of all rights for men whose life never goes beyond the boundaries of their fields. The German nations, as described by Cæsar and Tacitus, were nothing but associations of self-governed villages, or larger districts, occupied by separate families or clans, among whom there was not even the shadow of a common national allegiance, except for purposes of war. Such was the organisation of the Saxons, Jutes, and Angles, when they first settled in England, and though petty monarchies were founded in process of time, and ultimately absorbed into one kingdom of England, such continued for centuries to be the essential organisation of the English people. Townships and burghs and even counties were not so much fractions or subdivisions of the whole English commonwealth, as the integral units out of which the English commonwealth was moulded into national life. The history of Local Government in England is, thus, almost co-extensive with constitutional history during the period before the Norman Conquest, and fills a very large space in constitutional history, until the legislative power of Parliament became firmly established under Edward I. and his two successors.

I.

1. The broad features of those local institutions, which formed the basis of English society between the reign of Alfred and that of William the Conqueror, have at length been identified with sufficient certainty. The patient researches of English and German students have swept away, so to speak, the overlying crust of Norman workmanship, and revealed to view the original structure in its massive and symmetrical proportions. If it be well-nigh impossible, for want of contemporary descriptions, to realise the inner domestic life of an English homestead in the tenth or eleventh century, we may yet form a distinct conception of the public duties and privileges, which attached to a thane or country gentleman of that age, when towns were in their infancy, and landless men, even though otherwise freemen, were compelled to place themselves under the protection of a lord.

Let us, then, imagine the case of a landowner below the rank of king's thane, because not holding directly from the Crown, but possessed, at least, of the twelve hundred acres which secured him a *status* in the class of the landed aristocracy, and entitled his family to a weregild, or compensation, of six hundred shillings, in the event of his being slain. Such a thane probably lived in a dwelling not unlike the abode of Cedric the Saxon, delineated in "Ivanhoe," but smaller and ruder in its construction, surrounded by dependants, of whom some were humbler freemen duly "commended" to him, and some mere thralls or slaves. Over these last his power was absolute; they were part of his farm or household stock, and if they were slain, the compensation was paid to him. With the neighbouring freeholders, gentle and simple, his relations were altogether different, though regulated in some degree by their rank and place of residence. Those of them who

inhabited the same township with him would be entitled to meet him on equal terms in the open village meeting, then called a "town-moot," and now a "vestry," where they would join with him in electing the town-reeve, or village-mayor; although, if he should happen to be the proprietor of the entire township, he might appoint a steward, with the general authority of a town-reeve. At the town-moot held under the presidency of the town-reeve, he would take part in making by-laws for the little village republic, in adjudicating on petty disputes, in choosing four men to represent the township with the town-reeve in the higher courts of the hundred and the county, in making assessments of judicial fines, and instituting local enquiries by direction of these courts, in causing nuisances to be abated, in providing for repairs of bridges, and in preparing tything-lists for "the view of frankpledge," a somewhat obscure method of enrolling freemen, in bodies of ten, as perpetual bail for each other's good behaviour. Perhaps the church of the parish, usually but not always conterminous with the township, had been built and endowed by himself or his ancestors, and, in this case, he would nominate the incumbent, but he would share with his fellow-parishioners the right of choosing a church-reeve or churchwarden. Perhaps, in addition to his own private estate, he may have been part owner of meadow and arable lands belonging to all the members of his township, under that antique form of agrarian partnership known as the Mark system; and, in this case, he would share with his fellow-townsmen the right of settling in "mark-moot" the rules by which their common husbandry and pasturage should be governed, unless, indeed, his township should already have been merged, for these purposes, in a manor, its common mark converted into the lord's waste, and its mark-moot superseded by a manorial court.

A far wider jurisdiction, however, was entrusted to the hundred court, whither (if delegated by his township) he would repair once a month, under pain of a

fine, to aid in transacting the judicial, fiscal, and administrative business of the hundred, a territorial division supposed to correspond with the *pagus* of Tacitus and the *gau* of modern Germany. In this court he would sit in judgment on criminals, and try civil suits, partly in the capacity of a magistrate, and partly in that of a juryman, together with the parish priests, town-reeves, and "best men" of other townships, under the presidency of an officer, sometimes called the hundred-man, and sometimes the *gerefa* or reeve of the hundred. He would also be occupied in witnessing transfers of land, in managing the system of frankpledge through officers called tithing men, who then supplied the place of a police force, in distributing the few local burdens then existing among the constituent townships of the hundred, and in accounting for the profits of the hundred, chiefly arising from mulcts and fines, to some person deputed by the sheriff of the county. For it is needless to say that it was the county-court, and not the hundred-court, or town-moot, which combined and controlled all the powers of self-government in those early times, amercing both hundreds and townships for allowing the escape of prisoners, for not maintaining bridges, and for any other neglect of their corporate duties. There he would find himself associated twice a year with the bishop, the ealdorman, and the sheriff, the representatives of hundreds, the representatives of townships, all public officers of the county, and his fellow thanes, in hearing appeals from the hundred-courts, or causes arising between one hundred and another. As a member of this county parliament, significantly called the folk-moot as well as the shire-moot, he would not only become conversant with the ealdorman's military administration of the county, with the sheriff's administration of crown lands and collection of royal dues, and with the bishop's administration of church affairs, but he would also have a voice in the maintenance of water-courses, roads, and bridges over the whole county, in the registration of all acts affecting property within the county, and even, on

rare occasions, in the deliberations of the county on Imperial policy.

In short, though none but king's thanes were qualified to attend the Witenagemote, or great council of the nation, by virtue of tenure, yet the English country gentleman of lower degree was probably a more influential and not less active personage before the Norman Conquest than he is at the present day. That was not an age in which it was necessary to remind any landlord, great or small, that property has its duties as well as its privileges, for the retention of privileges, if not of rights, was felt to depend on the vigilant performance of duties, and Government was no unseen Providence guaranteeing men against the consequences of their own neglect. If justice was brought home to his door, it was by his being prepared to join in a hue-and-cry, to watch the conduct of his fellows in the same tything, and to attend regularly in local courts to investigate crimes, and settle disputed claims. If he wished to have a passable road between his own village and the next, he must induce the county to order it, and he must help to keep it in repair by his own labour and that of his servants. If his stream were fouled by his neighbours, or encroachments were made on his land, he must seek redress by making a complaint in person before the popular tribunals of the hundred or township. On the other hand, he was spared the vexatious liability to local rates which the exigencies of modern civilisation have substituted for the simpler rule—*sic utere tuo ut alienum non lædas.* As for state concerns, he knew little of them, except when he might be summoned to fulfil the primary obligation of the *trinoda necessitas*, or threefold liability, and to bear arms for the defence of the realm. He seldom felt the pressure of general taxation; his daily life was scarcely affected by general legislation; he knew of no Home Office or Local Government Board capable of interfering with his liberty of action, and there were few visible symbols or public acts to remind him of

the royal authority. To him it made no perceptible difference whether Edmund or Canute wore the Crown of England, and he may well have been content to leave such matters with the Witenagemote, in which he was not represented, so long as peace and order prevailed within the township, hundred, and county by which his cares and ambition were alike bounded.

If this be true of the larger class who resided in the country, far more is it true of the smaller class who resided within boroughs. In all states of society towns have exhibited a greater capacity for local self-government than country districts, since the community of interest among townspeople is more strongly marked, their intelligence more highly cultivated, and their opportunities of assembling together more frequent. The Saxon boroughs, therefore, whether they occupied the sites of old fortified camps, grew up spontaneously at the mouths of rivers, or clustered round great country-houses and monasteries, have been accurately described as more strictly organised townships, although, in the constitution of the county, they seem to have been reckoned not as townships but as hundreds. Probably the larger boroughs, at least, combined the elements of both organisations, the reeve of the borough possessing the joint attributes of a town-reeve and a hundred-man, while the borough-court, held only thrice a year, was at once a town-moot and a hundred-court. Possibly one or two cities, besides London itself, may even have attained a rank co-ordinate with counties, but this cannot be affirmed of other boroughs. They sent no representatives to the county-court, yet they were included within the county administration, and were subject to the sheriff's jurisdiction. This circumstance, which might be supposed to derogate somewhat from their municipal independence, really contributed to establish it on a firmer basis. At a period before the Norman Conquest, and apparently before their privileges were secured by charter, the leading towns of England had succeeded in compounding with the Crown for the uncertain dues formerly collected from them by the sheriff, and this

fixed composition or tax was ultimately converted, by the concession of a "firma burghi" into a corporate fee-farm rent. In the meantime the infinitely various customs of their burghers had so nearly acquired the force of law as to be formally recorded in Domesday Book, their merchant guilds were assuming the right of making by-laws for the regulation of trade, and their common-lands, which many of them still retain, supplied at once a means of subsistence and a bond of association for the poorer freemen. Upon the whole, English boroughs in the age preceding the Conquest had made great advances in the art of self-government, notwithstanding that many of them were nominally subject to great nobles, like the villeins of a manor, and thus occupied a humble position in the hierarchy of land tenure. Their local institutions could not be more thoroughly popular in principle than those of the surrounding country districts, but they were practically better secured against lawless encroachments, and less easy to mould into harmony with a centralising policy.

2. It was for this reason, as well as because the *bourgeoisie* were valuable allies of the Crown against the barons, that Local Government in towns was gradually strengthened, while Local Government in counties was gradually weakened, under the Norman and the earlier Plantagenet kings. The power which the Witenagemot had already asserted over the county-courts, and the power which English kings had always possessed in times of invasion, were at once concentrated in William the Conqueror, with or without the advice of his Council. Many of the powers which had been vested in the elective officers of townships, hundreds, and counties, insensibly passed into the hands of great feudal lords, who exercised them for the most part through deputies. It is true that few organic changes were made in the framework of Local Government, and that it was no part of the Conqueror's design to destroy the ancient liberties of the people. On the contrary, both he and the wisest of his successors professed to be the guardians of these liberties against the arbitrary

usurpations of their nobles; and their repeated promises to maintain the laws of Edward the Confessor were, in reality, promises to maintain the system of Local Government which existed in that king's reign. Such a system, however, could not but languish side by side with the organised anarchy of feudalism, and was further disintegrated by the very reforms which at last broke down the abuses of feudalism, and developed a true national unity.

The old town-moots, so far as appears, were never explicitly abolished, but as one township after another became the manor of a feudal lord, its sense of political unity became lost in a sense of agricultural unity, and its town-moot was transmuted into a court baron, wherein the freeholders had still judicial authority, but in the new character of manorial tenants. The hundred-courts were not only not abolished, but were directed to be held regularly, and non-attendance upon them was enforced by fines. Moreover, the sheriffs' tourn and leet, as it was called, a court which so long exercised the same kind of criminal jurisdiction as that now vested in magistrates, was but the hundred-court under another and less popular name. Yet these courts rapidly lost their importance: partly because they were superseded by the county-courts, now held monthly, and partly because so many franchises, or rights of private jurisdiction, had been attached by grant to lordships, as greatly to reduce and obstruct the business of the smaller popular courts. The county-courts themselves survived for many centuries, and even acquired extended powers under a series of statutes; but they were no longer the great representative assemblies of pre-Norman days, when the bishop and the ealdorman attended them as assessors of the sheriff, and all the affairs of the county were brought directly under their control. It is well known that William the Conqueror prohibited the bishops from sitting in secular courts, and removed all temporal matters from the cognisance of ecclesiastics. The effect of this measure, in an age when ecclesiastics were the chief interpreters of law, was to shake public confidence

in the county-courts; the ealdormen soon ceased to frequent them, and they fell under the paramount sway of Norman sheriffs, or vice-comites, whose office was, in some counties, hereditary. The institution of circuits for merely fiscal purposes by Henry I., and their complete organisation for judicial as well as fiscal purposes by Henry II., tended still more to undermine the influence of county-courts. These courts, it is true, were solemnly convened to meet the King's justices in eyre: and the Assizes were originally little more than extraordinary sessions of the old county tribunals, held before special commissioners instead of before the sheriff, where pleas of the Crown and important suits were determined by the oath of select witnesses—a mode of procedure rapidly developed into the system of trial by jury. The ordinary constitution of the county-courts was not altered; they continued, as before, to regulate county administration; their machinery was freely used by the Conqueror and his successors to obtain local information, or to raise money; acts of Parliament were published there in later times, and they were still regarded, by virtue of a traditional sentiment, as the "forum plebeiæ justitiæ et theatrum comitivæ potestatis." But they had practically been ousted of their higher judicial power, both civil and criminal; large tracts of country had been entirely withdrawn from their jurisdiction by the oppressive forest-laws; the *vis major* of feudal obligations must often have interfered with their requisitions of local dues and personal services; they were of less and less value as deliberative assemblies after the creation of a national Parliament; and their general executive functions were beginning to be sub-divided among special officers, whose successive appointments mark the first stage of transition from the ancient to the modern form of Local Government.

The earliest of these appointments was that of "coroner," which is supposed to date from the instructions issued for a visitation, or "iter" of the King's justices in 1194. It is there ordained that each county shall elect three knights and one clerk to guard pleas of

the Crown; and the next article of the same document, forbidding sheriffs to be justices in their own counties, may serve to explain the purpose of this ordinance. Doubtless it had been found by experience that sheriffs abused their judicial authority by the exaction of exorbitant profits for themselves; but it is also clear that, in spite of every precaution, there was a growing tendency in counties towards personal government by sheriffs, inconsistent both with the rights of the sovereign and with the liberties of the people. From this point of view, it is worthy of notice that, whereas the Articles presented by the barons at Runnymede demanded that no sheriff should meddle with pleas of the Crown "without coroners," the 24th Article of Magna Charta itself declared that coroners, as well as sheriffs, constables, and bailiffs, should be excluded from holding such pleas. It does not appear, indeed, that coroners ever filled a very important place in Local Government; and their duties, as defined by statute in the reign of Edward I., differ but little from those which they discharge at the present day. Still, the fact of their office being made elective, coupled with the fact of the shrievalty itself being elective during part of the thirteenth and fourteenth centuries, is a proof that in counties, no less than in boroughs, popular local institutions were regarded as the proper counterpoise to the spirit of feudal oligarchy.

The offices of High Constable, and Petty or Parish Constable, may be dated, with some degree of certainty, from the Assize of Arms issued by Henry III. in 1252. No mode of election is there prescribed, but it is simply enjoined that a high constable shall be "constituted" for every hundred, and a petty constable for every parish, who shall muster the inhabitants to arms against disturbers of the peace, and deliver them over to the sheriff. This provision, which shows how little the law of frankpledge was observed, was extended in 1285, by the famous Statute of Winchester whereby it was enacted that two high constables should be chosen in every hundred and franchise, and should report to the King's

justices. In the reign of Edward III., parish constables were directed to be chosen at the court leets of their respective townships, and succeeded the old tithing-men or head-boroughs in the duty of levying the "townley," or consolidated parish-rate, hence called the "constable's tax."

A far more important change was made in the local administration of country districts when a regular commission of the peace was organised in every county. As the King assumed more and more responsibility for the peace of the whole realm, and especially after the Statute of Winchester, local officers had occasionally been nominated, under the title of "conservators," to assist the sheriffs, coroners, and constables in putting down riots and disorders. In the first year of Edward III.'s reign, a further step was taken by the enactment that good and lawful men should be assigned to keep the peace in every county; and by a series of later statutes one duty after another was cast upon them, until they absorbed most of the authority, both judicial and administrative, formerly vested in the county-courts and the sheriff's "tourn." These Justices of the peace, as they were soon called, were to be landowners in their respective counties, but some learned in the law were to be associated with them; and they were armed from the first with very arbitrary powers for the prevention of crime, by arresting thieves and vagrants even on suspicion, and taking security for good behaviour. After some years they were commissioned to hear and determine felonies, but only at their general Sessions, and not without the safeguard of trial by jury. It followed naturally that, when the oppressive Statutes of Labour were passed, the justices were charged with the invidious task of enforcing them. A protest against the indefinite extent of their jurisdiction was made by the Commons in the reign of Richard II., but the new machinery was too useful to be discarded; and before the end of Henry VIII.'s reign their functions must have been almost as multifarious as they are in our own times. It they who, by an Act of 1530, were empowered,

with the assent of representatives from each township, to lay a direct tax on all the inhabitants of the county for the repair of bridges, instead of leaving the burden to be apportioned by hundreds and parishes. It was they who, in the following year, were required to make a similar rate for the building of gaols; and in both instances they were authorised to appoint collectors of their own. They had long been under a statutable obligation to hold sessions four times a year, or oftener if need were, at which Quarter Sessions two justices should form a *quorum;* and by another Act of Henry VIII., passed in 1542, they were directed to establish petty sessional districts, each to contain at least two justices, for the better repression of vagrancy and other breaches of the law. Before long, justices in petty sessions were invested with the novel power of exercising summary jurisdiction—that is, of trying minor charges without the assistance of a jury. Finally, when the dissolution of monasteries and decay of feudal society had produced a pauperism too wide-spread to be cured by the most rigorous measures against mendicancy, it was the justices who, under the first Poor Law of 1601, were invested with the power of selecting two, three, or four householders to act as overseers with the churchwardens in each parish; of levying a contributory rate on neighbouring parishes, and even on neighbouring hundreds; and of erecting houses of correction for undeserving beggars. In the meantime, the care of all the county records had been entrusted to another high official, entitled the *Custos Rotulorum*, selected from the body of justices. This dignitary, himself appointed by the Chancellor, had the right of appointing the clerk of the peace; and probably occupied a position superior to that of a modern Chairman of Quarter Sessions. After the Reformation, too, when no County Palatine existed independent of the Crown, except that of Durham, the ancient military prerogatives of the ealdorman as commander of the county militia were revived in the person of Lord-Lieutenants, who, being justices of the peace, often held, in addition, the office of *Custos Rotulorum.*

The process whereby magistrates have become the chief rulers of country districts was thus nearly complete in the lifetime of Shakespeare; and, however astonishing may have been the subsequent development of Local Taxation, there has been no comprehensive reconstruction or reform of Local Government in English counties since that age.

Let us now glance briefly at the parallel history of Local Government in towns between the Conquest and the end of the sixteenth century. This history is, happily, less open to controversy, for it may be traced by the light of charters and other documents still extant. The great era of borough charters is the later half of the twelfth and early part of the thirteenth century. During this period most of the English cities and county towns obtained a renewal and extension of their old municipal franchises and trade privileges. London, as is well known, was chartered, though not incorporated, by the Conqueror himself, who guaranteed its portreeve and bishop the rights which they had enjoyed in King Edward's days. Henry I. granted its citizens the liberty of electing their own sheriff and justiciar, and relieved them from external jurisdiction, as well as from Danegeld and a number of other vexatious imposts. These concessions were confirmed, with various modifications, by succeeding kings, and the Mayoralty of London is traced back to the beginning of Richard I.'s reign; but it was from John that London first received the royal permission to choose a Lord Mayor annually, and accordingly the Lord Mayor of London appears among the signatories of Magna Charta, by which the customs of the City were expressly secured. Other towns gained their civic independence more slowly, and seldom without the payment of large fines to the King, or bishop, or secular lord, in whose demesne they were situated. Out of more than forty whose customs were considered deserving of mention in Domesday Book, very few besides London had acquired the right of electing their own officers before the reign of Richard I. or John, whose borough charters are numerous, and

more liberal than any that had been granted by his predecessors. If we take as a specimen that of Lincoln, we find that at least two generations before representatives of towns were summoned to Parliament, the representative principle was recognised and carried out in their municipal government. Not only were the citizens of Lincoln enabled to plead an immunity from all foreign jurisdiction, except that of the king's justices, and, moreover, from all the more oppressive liabilities of feudal dependence, but they were expressly empowered to elect two discreet men to act jointly as town-reeves, with four others to keep pleas of the Crown, and to see that the town-reeves performed their duties impartially towards poor and rich. Equally marked peculiarities are to be found in other charters, but in almost all the ratification of ancient customs is most ample, and a highly democratic basis of internal self-government is either laid down or assumed.

No doubt, the inhabitants of chartered boroughs, though generally exempted from tolls, were still liable to be tallaged or taxed at will until the year 1297; their right to Parliamentary representation was sometimes defeated by the caprice of a county sheriff, and they ranked far below county-freeholders in political and social estimation. But, for all this, an English burgher in the Middle Ages, once within the walls or municipal boundaries of his own borough, found himself in an atmosphere of liberty and equality, such as might have prevailed in the Athens of Pericles or the Florence of Dante, but had ceased to prevail in English counties since the Norman Conquest. However turbulent may have been the mobs of these petty town-republics, however imperfect their police system, and however primitive their arrangements for drainage and water supply, it is certain that municipal public spirit was more active, and that each citizen realised more fully what he owed to his neighbours than would be possible under the present routine of municipal administration. The earliest borough members, if not the knights of the shire, represented communities with a vigorous ir

viduality of their own, proud of their local usages and traditions, habituated to self-government by daily practice under perilous conditions, and by no means inclined to devolve their share of sovereignty upon the Imperial Legislature, whether assembled at Westminster, at Winchester, or at Oxford. By degrees, however, an oligarchical element was introduced into the organisation of boroughs, chiefly by means of the associations called merchant-guilds. In some cases, the original merchant-guild was coextensive or almost coextensive with the whole body of burgesses; in other cases, several merchant-guilds ultimately coalesced into one. Sometimes, the guild itself was incorporated by charter, or the borough was placed under the direct government of the guild; sometimes, one or more guilds spontaneously grew up side by side with the municipal corporation, and at last supplanted it. The process whereby, under various forms, the principle of the guild obtained so general an ascendancy in borough-government, and the open meetings of burgesses convened for all purposes of local government became merged in guild-hall meetings properly convened for the regulation of trade alone, has never been fully elucidated. Suffice it to say that it was consummated for the most part during the fourteenth and fifteenth centuries; the wealthiest burgesses, usually members of the guild, being formed into a Town Council, and usurping the power legally vested in all the inhabitants, or, at least, in all the resident householders of the borough. So important a revolution in municipal administration was not always effected without violent contests, several instances of which are recorded in the annals of London; but, on the whole, the popular tenacity of local rights appears to have been weakened as the central executive and legislature became more powerful. Before the end of the fourteenth century, the ancient hustings-court of London itself had delegated its legislative authority, first to the trading companies, and afterwards to a select body of aldermen and common council men; while in other boroughs, the form of popular election was tacitly abandoned, and self-elective boards

were allowed to monopolise all the powers and emoluments of the commonalty. Instead of checking this abuse, as their predecessors had done three centuries before, the Tudor sovereigns directly encouraged and propagated it by means of new charters, either conferring or reviving the right of Parliamentary representation. By most of these charters the Mayor and Town Council, nominated by the Crown in the first instance, but afterwards to be self-elected, were expressly constituted the borough corporation, in lieu of the burgesses; and not only was the entire local government placed in their hands, but, in some cases, they were given the exclusive privilege of returning the borough members.

3. Such was the general state of Local Government in England during the Middle Ages. We are apt to conceive of English institutions as organised with an almost scientific regularity under the so-called feudal system, and to imagine that, however private wars and other disorders may have interfered with their practical working, their legal forms were far simpler and more uniform than in the present day. A closer survey of the facts, however, leads to a wholly opposite conclusion. The most striking and characteristic feature of mediæval society, in England no less than in other countries, is its marvellous complexity and want of uniformity. Differences of blood, differences of local history, differences of geographical conditions, differences of industrial occupation, and differences of feudal dependence, contributed not only to divide the south from the north, border counties from midland counties, and the sea-coast from the rest of England, but also to stamp every county, almost every borough, and many a country village, with a distinct individuality of its own. Beneath and beside the divisions of classes, on which so much stress is laid by legal students, were the deeper forces of local fraternity and loyalty which gave the wars of the Roses their peculiar character, and made themselves felt in every insurrection or political crisis. There can be little doubt that in this diversity of municipal constitutions, franchises, customs,

and sentiments, consisted one of the most potent securities for liberty. London would have proved more tractable and submissive in the days before Magna Charta, if it had been under one symmetrical form of local government, instead of being overspread with a network of public and private jurisdictions, and subdivided vertically, as well as horizontally, by means of its "sokes," its wards, and its companies. Counties would have been more easily manipulated by their sheriffs, or brought under absolute subjection to the Royal Curia by the inquisitorial visitations of the king's justices, if the ancient Saxon courts, the more recent undergrowth of seignorial and manorial rights, and even such anomalies as the extra-legal *enclaves* created by special franchises, had not, by their very conflict and intersection, constituted an impenetrable obstacle against the encroachments of arbitrary power.

For it must never be forgotten that, if feudal government was less popular in its spirit than Anglo-Saxon government, it was not less truly local. The great Norman chieftains, whose castles towered over the lowly dwellings of burghers and country freeholders, who could imprison men in their own dungeons, and against whom few would have dared to enforce a judgment of the county court, were, nevertheless, stout champions of local independence, and, as such, often succeeded in rallying around them an enthusiasm of local patriotism not unlike that inspired by the cause of State right in America. Neither the feudal levies, nor the paid train-bands led into France by Edward III. and Henry V., were mere casual assortments of recruits held together by regimental discipline under royal officers; they consisted of contingents raised by purely local enlistment, if not by virtue of military tenures, from separate lordships and townships, in which neighbours were associated as comrades in arms, and commanded by gentlemen whom they had been accustomed to obey. The same necessity of consulting local sentiment, and governing through local agency, made itself felt in every branch of civil administration. Long before the method of trial by

jury was applied to civil suits and criminal prosecutions, it had been the practice to ascertain local customs, grievances, and fiscal liabilities, by local inquests or "recognitions," upon sworn evidence from inhabitants of the district. Without such previous investigations, it would have been unsafe and sometimes impossible to enforce general laws, emanating from a central executive, which had no sufficient cognizance of local wants or conditions until Parliamentary representation was established. Even Parliamentary representation itself was, originally, little more than an expedient for obtaining the consent of local authorities to grants made or enactments passed by the national authority; and, it would be hardly too much to say that, for some generations, the English Legislature was rather Federal than Imperial in its essential character. In later times, when the monarchy had surrounded itself with a venal court-party, the country-party in the House of Commons, trained in the school of local self-government, upheld the interests of the nation at large. We learn from the emphatic declarations of Philip de Comines that Louis XI., though he succeeded in debauching the ministers of Edward IV., could not debauch the members sent up to Parliament from the country; the same testimony is recorded by Pepys in the evil days of Charles II. Nor would it be difficult to show that, before a genuine public opinion had been formed by the Press, the vices of corruption and jobbery were less characteristic of Local than of Imperial Government in this country.

4. The period between the Reformation and the Reform Act of 1832 is by no means eventful in the history of Local Government. Its leading features are the foundation and abnormal growth of the Poor Laws; the progressive extension of magistrates' jurisdiction in counties; and the decay of municipal institutions in boroughs. By the Poor Law of Elizabeth, every parish was charged with the support of its own poor, and the distribution of poor relief was entrusted to parochial overseers, under the superintendence of justices of the peace. Already,

by an Act of Henry VI., each "village" had been subjected to separate assessment for its contribution towards the wages of knights of the shire; and, by an Act of Philip and Mary, it was provided that two surveyors of highways should be appointed for each parish, and the parishioners were required to keep their roads in repair, either by lending horses and carts, or by the personal labour afterwards known as statute-duty. It is, however, from the Poor Law of Elizabeth that we may date the erection of the parish into the one elementary unit of Local Government within counties, as well as the definitive constitution of a non-elective board, consisting of magistrates, for the direction of county affairs. The Act of 1662, which imported into the Poor Law the doctrine of pauper settlement, confirmed both of these principles. By enabling paupers to be sent back from places to which they might have migrated, it rooted the rural population in the soil of their native parishes; while it not only gave a right of appeal to Quarter-Sessions against any such order of removal, but went on to place the appointment of high constables at the disposal of the Quarter-Sessions, and that of petty constables at the disposal of two justices, where the requisite court-leets should have ceased to be regularly held. The almost simultaneous abolition of military tenures, with their oppressive incidents, destroyed the last semblance of feudal jurisdiction; the county courts, though still held for the hearing of small causes in Edward VI.'s reign, at last became obsolete, and all the more important powers of Local Government in counties became centred in the Commissions of the Peace. When James II. meditated the utter subversion of English liberties, his first care was to revise these Commissions through pliable Lord Lieutenants, and his next to pack the county representation through pliable Sheriffs. Happily, neither Lord Lieutenants nor Sheriffs could be found base enough to abet his designs, but they could never have been entertained at all, had not a profound change passed over the democratic county institutions of olden times.

So various and so onerous did the duties of magis-

trates become in the course of the next century, that according to Blackstone, whose Commentaries appeared in 1765, few then cared to undertake, and fewer understood, that office. By Acts of William III. and Anne, they were empowered, more fully than before, to levy rates for bridges and gaols; by an Act of George II., they were authorised to make one general county rate for all statutable purposes; by Acts of George III., passed in 1773, they were given a special control over parish highways and turnpike roads; and by a series of Acts, ending with one of George IV., passed in 1828, they were enabled, but not compelled, to build and maintain lunatic asylums out of the county rate. In the meantime, the churchwardens and overseers of parishes had been empowered, so far back as 1723, to erect poor-houses, and it was provided that a single poor-house might be erected by three small parishes acting in concert. This principle was carried much further by the permissive Gilbert Act, passed in 1782, under which two-thirds of the ratepayers in any parish might appoint a guardian of the poor, with all the powers of overseers, except that of making and collecting rates; and unions of parishes might be formed with the sanction and assistance of local justices. Another Act, passed in 1818, called the Sturges Bourne Act, purported to remedy the chief abuses of irresponsible select vestries, which in many parishes had assumed the entire control of parochial taxation and management, but really placed the system of select vestries on a firmer basis, and introduced the pregnant innovation of plural voting. The effect of these measures, coupled with the gradual decline of the old English yeomanry, the substitution of tenancy at will for leases, the indiscriminate allowance of out-door relief, the enclosure of commons, and several other causes, was to impair fatally the spirit and capacity of self-government in rural districts. Such a revolution may have been to some extent inevitable, and partially compensated by greater national unity. Still, the fact remains that by the reign of William IV. the descendants of freeholders, who once sat as judges and legis-

lators in the courts of their own county hundred and township, had sunk into day-labourers but one degree removed from serfdom, dependent on individual landlords for the humblest dwelling, and on landlords assembled at Quarter or Petty Sessions for the security of every civil right.

The political degeneracy of boroughs was even more disastrous, because more directly the result of selfish interests predominating over the public weal. The unscrupulous policy of Tudor sovereigns, in narrowing the municipal constitutions by charters ostensibly designed to confer the parliamentary franchise, was persistently carried out by the Stuarts. It now became a common practice for the Crown to appoint high stewards of boroughs, for the express purpose of bringing Court influence to bear on their internal government and parliamentary representation. The attempt was so far successful that many of the boroughs lost the very tradition of popular government, and were induced to return members whose servility contrasted unfavourably with the manlier attitude of country gentlemen elected by the counties. This reactionary process was, of course, arrested by the Civil War, in which the middle classes, both in counties and boroughs, generally espoused the cause of the Commons; but it was resumed with still greater energy after the Restoration. Not content with the insidious method adopted by their predecessors to secure the subservience of boroughs, they directly attacked the most powerful and liberal corporations by causing informations of *quo warranto* to be filed against them, and claiming on frivolous pretexts the forfeiture of their charters. Sentence of forfeiture was actually passed by obsequious judges against several municipalities, including the Corporation of London itself; many others anticipated a like sentence by voluntary surrenders; and though new charters were issued, they were framed on an exclusive model, the legality of which had been established by two judicial decisions of Elizabeth's and James I.'s reign. It is true that even the civic oligarchies thus created rebelled against the

daring attempt afterwards made by James II. to "regulate" them under these charters, by instructing a Committee of the Privy Council to cancel the names of municipal officers duly appointed and insert others at their discretion. But this outburst of independence was shortlived, and the evil of self-elective Town Councils perpetuated itself in spite of the proclamation by which James himself, in his extremity, assumed to reverse the proceedings of his Courts. The Revolution brought no revival of municipal liberty, and Sir Erskine May states that in George III.'s charters the burgesses are as completely ignored as in those of James II.

The close local juntas, called Town Councils, which had now got sole possession of the sovereign power in most corporations, were too well pleased with it to solicit or tolerate, if they could help it, any return to a more popular system of government. These town councillors, usually elected for life, and conducting their proceedings with closed doors, soon came to regard municipal office, not as a trust, but as a lucrative inheritance, to be employed, not in promoting the good or in guarding the rights of their fellow citizens, but rather as a convenient engine for maintaining trade privileges and ministering to parliamentary corruption. The only control practically exercised over them was exercised by the great noblemen who could bribe them with Government appointments, for the freemen were generally too small and always too venal a body to resist the overwhelming influences at their command. It would indeed be difficult to believe the extent to which not only the misuse of patronage, but also the misappropriation of public funds, was carried in boroughs which boasted of franchises older than Parliament itself, were they not formally and minutely set forth in the elaborate Report of the Commission on Municipal Corporations. That such a mockery of self-government should have prevailed so widely for more than a century must ever be a reproach to constitutional monarchy in England, and a warning against a presumptuous reliance on the inherent political virtues of the English people. It could not

have prevailed, however, unless it had been mitigated in some degree by the undesigned growth of another form of Local Government, whereby the nominal administrators of boroughs were relieved from many of their functions. So far back as 1684, an enterprising speculator named Hemming had obtained letters patent conferring on him the exclusive privilege of lighting the metropolis by placing lamps on moonless nights before every tenth door. Upon a similar principle, local Acts were constantly passed by the Legislature entrusting independent boards or commissions with the management of lighting, drainage, water-supply, and other matters, which should properly have fallen within the province of town councils, but which town councils had either neglected or were incompetent to undertake. In most boroughs, however, criminal jurisdiction over minor offences committed within the boundaries still remained vested in the mayor and aldermen or resident justices, with or without the assistance of a recorder, and subject to special provisions in local Acts, letters patent, or charters. When the Reformed Parliament of 1832 opened a new order of things in Local no less than in National Government, the variety of organisation in English boroughs was therefore very great, though not so great as it has since become. The one feature common to all was the grievous decline in that public spirit which constituted the very soul of municipal life in olden times. Even the City of London had not escaped the political blight of the eighteenth century, but the Common Council of London is cited by the Commissioners as a notable example of comparative purity, due to its exceptional immunity from the general rule of self-election.

5. It is a curious and instructive fact that while the primitive ideal of self-government had thus become obscured both in English counties and in English boroughs, it not only survived, but acquired a fresh vitality, in the colonies of New England. The contrast between the local institutions of these communities before their separation from the mother-country, and

the local institutions of Great Britain at the same epoch, furnishes a tolerably exact measure of the degree in which the latter had been diverted from their natural course of development. The New England "towns" were nothing but a reproduction of Anglo-Saxon "townships," with a larger average area, and with a better-defined corporate identity. Their resident inhabitants, or "freemen," like the free suitors of the old town-moot, constituted the electoral body, which admitted new members, chose all local town-officers, such as "constables," "tithing-men," and surveyors of highways, regulated all local taxation, and sent deputies to the "General Courts," which corresponded in most respects with county courts in the plenitude of their independence before the Conquest. Like the townships of Old England, the New England towns were held responsible for their own roads, bridges, and police; but, in accordance with more recent principles of English policy, they were also held responsible for their own poor-relief and education. The example of England doubtless suggested the delegation of jurisdiction to magistrates, instead of to popular assemblies; but a novel precedent of evil augury was set by making these magistracies elective. Old usages and even old names were carefully preserved; there were grand juries and petty juries, militia regiments and district trainbands—nay, even stocks and whipping-posts—just as there were in England under the rule of Cromwell, whose political education and personal views differed little from those of the Pilgrim Fathers. The system thus evolved from the results of English experience, modified by the exigencies of a new settlement, retains its characteristic outlines to this hour in the States of New England; and the study of it may serve to show how little the working of political machinery depends on its outward form, and how much on its inward spirit.

II.

From this point of view, as well as from the purely juridical point of view, the Reform Act of 1832 must be considered the most important event in the history of our Local Government. The Norman Conquest itself, though it ushered in three centuries of feudalism, did not leave so deep a mark on the internal economy of English counties and boroughs as has been left by forty years of progressive but unscientific legislation under a democratic impulse. During this period, all the local institutions of England have been subjected to a more or less complete process of reconstruction, conducted with an absolute disregard of symmetry, on principles equally remote from the caste-like organisation of feudal tenures, and from the republican autonomy of Anglo-Saxon village communities. In studying the English system of Local Government in its latest development, it is neither necessary nor desirable to bewilder our memories with all the imperfect and tentative measures by which it has been wrought out. What is essential to bear in mind is that few local institutions of the present day are of indigenous growth; and that even those which are framed out of ancient materials have seldom been recast in the original mould, but rather superimposed upon it, so to speak, by mechanical action. This holds good of county administration, but it still more emphatically holds good of municipal administration, which is no longer capable of being treated under one general view, but must be considered separately, as it regards the metropolis, the corporate boroughs, and the non-corporate urban communities.

1. Of all the numerous territorial divisions upon which the fabric of Local Government now reposes, the largest and the most fundamental is the area of the county. In point of antiquity, it is true, parishes, so far as they coincide with townships, must rank before counties; but counties have maintained both their independence and their integrity, with little variation, from the earliest times, while parishes have been merged, for many ad-

ministrative purposes, in unions and other artificial combinations. It is well known that counties differ very much both in population and in size; but it is probably realised by few that while Rutland, the smallest, contains but 94,889 acres and 22,073 inhabitants, Yorkshire contains no less than 3,882,851 acres with 2,436,355 inhabitants, and Lancashire 1,207,926 acres with 2,819,495 inhabitants. The average size of counties is 717,677 acres of land; and the average population, according to the last Census, is 436,774; but whereas the former is stationary, the latter is ever on the increase. The greatest subdivision of the county is that to be found in Yorkshire under the name of Ridings, in Lincolnshire under the name of Parts, in Sussex under the name of Rapes, and in Kent under the name of Lathes. This subdivision, intermediate between the county and the hundred, is not without importance, when it imports a separate commission of the peace; but it represents no separate type of Local Government, and may therefore be dismissed from our present consideration. The hundred itself, however interesting it may be historically, and however we may regret that it was ignored in mapping out the Poor Law unions and other administrative districts, is no longer the second unit of county organisation. Hundreds, or "wapentakes," as they are called in the North, are still liable to be rated for damages in case of riot; but this liability is happily little more than nominal, and the restraint of civil and criminal jurisdiction which they long retained have at last been abolished by statute. The same may be said of the wards, liberties, and sokes which formerly obstructed and complicated the system of Local Government in counties, and some relics of which yet survive in the New Forest and the Stannaries. It would be equally unprofitable to dwell on such arbitrary circumscriptions as the registration districts and sub-districts, the various inspection districts, the militia districts, or the police districts. These districts have no unity or individuality of their own; they mere topographical fractions, marked off and varied

from time to time as occasion may require, and in no respect to be regarded as constituent parts of the county.

The Poor Law Union rests on an entirely different footing. It may be said to derive its origin from the Gilbert Act already mentioned, the principles of which were embodied and vastly extended by the Poor Law Amendment Act of 1834, until the whole of England and Wales has been overspread by a network of 647 unions, three of which are, technically, incorporated hundreds, and twenty-five single parishes, under separate Boards. The rest are grouped, for the most part, round market towns, and consist on an average of twenty-three civil parishes, or townships. Not only are these unions the basis of modern poor law administration, but they have been made by a recent enactment, the basis of sanitary administration in rural localities, and have gradually come to be treated as the main secondary areas of Local Government. They are not, however, as the hundreds were, living and solid links between the county and the parish, nor are they even integral sections or departments of counties. On the contrary, their boundaries must be largely rectified, to bring within the compass of single counties no less than 250 unions, which are now situated partly in one county and partly in another. They do not coincide with the old petty sessional districts, of which there are 700, exclusive of boroughs, with a separate commission of the peace; neither have they afforded convenient lines of demarcation for the new highway districts. Moreover, constant readjustments will be necessary, to prevent growing boroughs from overlapping agricultural unions, and, though difficulties of this kind are incident to every method of associating urban with rural districts, they have certainly been aggravated in this case by an undue neglect of local ties and landmarks. Fortunately, the principle on which unions have been constituted is elastic enough to admit of indefinite adaptation to any future reforms in Local Government; in the meantime these motley aggregations of parishes, linked together by their central workhouses, must be recognised as having become administrative communities of the highest importance.

But the parish itself is still, as it has ever been, the primary and simplest area of Local Government and taxation in rural districts. In most cases, parishes correspond exactly with townships, or "villages"—a popular term, which soon found its way into the Statute Book. In some cases, however, the parish contains several townships, and an Act of Charles II. provided that in the northern counties, where parishes were exceptionally large, overseers of the poor should be appointed in every township or village. Hence the number of civil parishes, now amounting to 15,416, considerably exceeds that of ecclesiastical parishes. No doubt this anomaly weakens the claim of parishes, in the ecclesiastical sense, to be treated as the ultimate and immutable foundation of local institutions. Moreover, the independence of civil parishes has been rudely infringed of late years by the creation of unions with superior powers of poor law management, by the subsequent introduction of union chargeability, by the substitution of county police for parish constables, by the gradual subjection of parish roads to highway boards, and by other steps in the direction of centralisation. It would now be too much to say, with Sir Erskine May, that "every parish is the image and reflection of the State," with its miniature aristocracy of the Church and the land, and its miniature democracy of ratepayers assembled, as a parochial commonalty, in vestry meetings. Nevertheless, the parish still retains a substantial remnant of its old corporate life, clinging, as it were, round the parish church or burial ground. Parochial overseers continue, as ever, to be the authorities mainly responsible for the due collection of rates and the accuracy of registers on which electoral qualifications depend for their validity, while the habit of common parochial action is kept up by annual vestry meetings, and the choice of various representative officers—not to speak of less formal, but not less popular, conventions of parishioners at the village club, or on the village green. How far the parish is fitted to be a self-governing community, or even a separate constituency, is a question which must be reserved for a later stage of our enquiry. Meanwhile,

it is material to observe that it occupies, with the county and the union, an actual, and not merely historical, place in the existing system of Local Government in country districts.

The relative dimensions of these three areas are such as practically to determine, in some degree, the nature of their management. The average size of a county, as we learn from the evidence of Dr. William Farr, before the Boundaries Committee, would be represented by a square about thirty-three miles to a side, or a circle of eighteen miles' radius. The superintendence of areas so extensive must often involve long and expensive railway journeys, as well as familiarity with a great mass of details, and will naturally devolve either upon highly-paid officials, or upon gentlemen of ample means and leisure. The average size of the union would be represented by a square of nearly ten miles to a side, or by a circle of about five miles and a half radius. Such an area, usually comprising a small town in its immediate neighbourhood, may easily be traversed on horseback or in a carriage, without the aid of railways, and most of its administrative business can be so arranged as to suit the convenience of farmers and tradespeople resorting weekly to the same market. The average size of a parish would be represented by a square of two miles to a side, or by a circle of little more than one mile radius, so that every part of it can be visited on foot, and the parish officer, knowing every family within it, can discharge most of his duties with no great sacrifice of time or labour.

2. We have now to consider in what persons or bodies the effective powers of Local Government over rural districts are actually lodged, remembering that, according to the census of 1871, rural districts contain above 38 per cent. of the whole population. The chaotic distribution of these powers among a variety of authorities appointed by various methods, upon various tenures, and for various terms, has become an almost proverbial reproach of English administration. Certainly, if compactness and symmetry be the highest merits of organisation, nothing more defective could well have been

devised. But it must be confessed that, judged by its results, the system thus established, as it were, at haphazard, does not compare altogether unfavourably either with that scientifically prepared by feudal lawyers, or with that founded on the ruins of feudalism in so many Continental States.

The chief officers of counties are the Lord Lieutenant, the Custos Rotulorum, the High Sheriff, the magistrates in the commission of the peace, and the clerk of the peace. The Lord Lieutenant is nominated by commission for life as the military vicegerent of the sovereign in the county, and usually holds the distinct office of custos rotulorum, or keeper of the county records, in which capacity he appoints the clerk of the peace. The high sheriff, nominated for one year by the Crown, is the principal civil representative of the sovereign in the county, the custody of which is specially committed to him by letters patent. He is responsible for the due election of coroners and knights of the shire, as well as for the due execution of all writs issued by the superior courts, and is bound, as of old, to guard the proprietary rights of the Crown within his county.

It has already been explained that by successive Acts of Parliament the management of county affairs has been mainly vested in the county magistrates, all of whom are nominated by the Lord Chancellor on the recommendation of the Lord Lieutenant, and are liable to be dismissed by the Lord Chancellor at his own discretion. Being for the most part landowners of ample means, they receive no salary, and a considerable proportion of them enjoy the dignity of their position without rendering any public services whatever. The more important functions of county magistrates are performed by them collectively at Quarter Sessions, under the presidency of an unpaid Chairman elected by themselves. Of their minor functions, some can be performed by a single magistrate, others by two magistrates sitting together at petty sessions. But the magistrates assembled at Quarter Sessions exercise a general control, by way of appeal or revision, over the action of individual

magistrates, or of magistrates at petty sessions, and the standing committees of Quarter Sessions, through which they conduct most of their business, are practically so many little departments of State for the Local Government of counties.

The criminal jurisdiction of the court of Quarter Sessions extends to all offences, except a few of the most aggravated, which, by an Act of 1842, are withdrawn from its cognisance, and reserved for the assizes. In practice, a prisoner charged with a crime is brought up in the first instance either before a single magistrate sitting in his own house, or before two magistrates at petty sessions. If the charge be of the lighter class it may be dealt with in a summary way; if it be of the graver class, and if a *prima facie* case can be shown against the prisoner, he is committed for trial at the Quarter Sessions, where he is regularly indicted and tried by a jury before the Chairman. It may, therefore, be stated broadly that county magistrates in Quarter Sessions have inherited the criminal jurisdiction, together with much of the administrative authority which formerly belonged to the suitors of the old county-courts, while the county magistrates, sitting without a jury in their several courts of petty sessions, have, to a great extent, taken the place of the popular hundred-courts and courts-leet. On the other hand, the civil jurisdiction of the old county-courts, having been obsolete for many generations, was revived by an Act of 1846, not in the court of Quarter Sessions, but in the new county-courts, which are constituted on a wholly different principle. These courts are really nothing more than provincial branches of the Imperial judicature, since their judges need have no qualification of county residence, and they are directed to be held in circuits which have no relation to county boundaries. They form, therefore, no part of county government, which in this respect, as well as in others, is far less complete and self-contained than it was in Saxon times.

Another important duty of the magistrates at Quarter Sessions is the supervision of the county gaols, the

county police, and the county lunatic asylums, all of which, however, are subject to annual inspection, by order of the Home Secretary. County gaols, as we have seen, were definitively placed under the charge of the magistracy in the reign of William III. They are usually managed by a committee of visiting justices, and the maintenance of them is defrayed out of the county rates, supplemented by an allowance from the national Treasury, in respect of certain prisoners. All the regulations in force within county gaols must be sanctioned by the Home Secretary, to whom also reports on their condition are annually transmitted. The county police force was finally established by a statute of 1856, for which the way had been paved by various permissive or local Acts. For instance, the Lighting and Watching Act of 1830 enabled parishes to appoint paid watchmen and levy a watch-rate, while an Act of 1831 enabled two justices, on an emergency, to appoint special constables, and make them allowances out of the county-rate. But the County Police Force, under the command of a Chief Constable appointed by the county magistrates, and of district superintendents chosen by him, has now entirely superseded, in rural districts the old elective high constables of hundreds, and petty constables of parishes. It is no longer optional with the magistrates of each county whether they shall adopt the new system, inasmuch as the Queen in Council is empowered to enforce its adoption; but it is they who levy the county police-rate, to supplement which the national Treasury contributes an equivalent sum, according to a provisional arrangement made in the session of 1874. The expense of maintaining county asylums for pauper lunatics was divided at the same time, on a very similar principle, between the national Treasury and the ratepayers of the county, who are thus relieved of local charges to the estimated amount of £1,250,000. The management of these asylums is legally vested in the whole body of county magistrates, but in most counties the practical regulation of them, as of the county gaols and constabulary, is habitually entrusted to a separate committee of Quarter Sessions.

Another committee regulates county finance and taxation, of which annual returns must be transmitted to the Local Government Board (hereafter to be described), and must be laid by its President before Parliament. Thus it will be seen that, while many of the most representative powers of county government, and even the power of imposing taxes, have been absorbed by a non-elective body of county magistrates, they have also been more or less effectually brought under the control of the Central Administration.

There are various other powers of Local Government belonging to county magistrates, some of which are exercised independently of the Imperial Executive, and some in subordination to it; some by magistrates acting with undivided authority, and some by magistrates acting conjointly with elected deputies of the ratepayers. Perhaps the most despotic of these powers, because exercised by magistrates exclusively and irresponsibly, is the power of granting and renewing licenses to houses for the sale of intoxicating liquor. Under the old licensing system, dating from the reign of Edward VI., but mainly regulated by a statute of George IV., public-house licenses for rural districts were granted or refused on annual applications before two magistrates at special Petty Sessions, from whose decisions an appeal lay to the Court of Quarter Sessions. By the recent Act of 1872, the right of refusing licenses without appeal was reserved to the Petty Sessions, but it was provided that every fresh license must come for confirmation before a special committee of the Quarter Sessions, instead of before the whole court. The degree of practical influence for good or evil involved in the discharge of this single magisterial duty can hardly be overstated. It is a striking proof of the change which has passed over the spirit of Local Government in modern days, that so little discontent should have been excited in rural districts by the spectacle of non-representative lawgivers determining not only how many public-houses are sufficient for the wants of each locality, but whether each public-house shall possess a local monopoly, or be subjected to depre-

ciation by the competition of new licensees. Under the Licensing Act of 1874, it is true, magistrates are ostensibly relieved of the discretional responsibility as to hours of opening and closing which oppressed them for two years; but they are burdened with the still more onerous responsibility of declaring what is or is not a "populous place," in which publicans and their customers may enjoy greater liberty than is permitted in mere villages Another instance of unlimited magisterial authority may be found in the statutable powers under which the movements of cattle may be prohibited during the prevalence of cattle-plague. However salutary these powers may have proved in their operation, they are assuredly such as our forefathers would never have confided to nominees of the Crown without the assistance of elective officers. It would not be difficult to cite other cases in which the State imposes no check, beyond the liability to dismissal, on the paternal despotism of county magistrates. As fast as new social wants have arisen, new powers have been accumulated upon them, for want of any other convenient depository, until the magisterial Bench may be said, generally, to act both as the driving-wheel and as the regulator for the entire machinery of Local Government within each county, except in respect of Highway, Poor Law, and Sanitary administration, where it shares its authority with representatives of the people.

It was only by slow degrees that counties acquired full jurisdiction over the highways within them, from the humblest parish roads up to the great turnpike roads which, before the spread of railways, formed the main arteries of internal communication. Bridges, it will be remembered, have been under county management from time immemorial; and the obligation to repair them, originally part of the *trinoda necessitas*, still attaches to counties. On the other hand, at Common Law the obligation to repair all public roads, bridle-paths, and foot-paths attaches, with certain exceptions, to parishes. By an Act passed in 1773, the power of enforcing this obligation had been lodged in the hands of justices at

Petty Sessions. By another Act, passed in 1835, further provision was made for the annual election of surveyors of highways by parish vestries; but the formation of Highway districts, by order of Petty Sessions, with the consent of the parishes concerned, was materially facilitated. By an Act passed in 1862, this policy was carried much further, and the magistrates of each county were enabled to divide it, according to their own judgment, into Highway districts. These districts, however, were to be governed not by magistrates only, but by mixed boards consisting partly of resident justices as *ex-officio* members, and partly of waywardens returned by the constituent parishes. This Act, under which 724 Highway districts have already been formed, was not made compulsory, and can only be applied to parishes which previously maintained their own highways under the care of surveyors, and which are not governed by a local Board of Health. There are a few counties and parts of counties in which it has not been hitherto adopted, whereas in South Wales it had been anticipated by an earlier statute, under which a special committee of magistrates is associated, for the management of highways, with representatives of the ratepayers. The result is said to be that in South-Welsh counties the selected magistrates take a more leading part in the oversight of highways than is taken by English magistrates, as *ex-officio* members of highway boards, in most counties where the Act is in force. Since the gradual expiration of turnpike trusts is constantly extending the jurisdiction of these boards, and sanitary legislation can hardly be carried out thoroughly without their concurrence, it is not improbable that a large proportion of county business may hereafter be attracted within the sphere of their activity.

The Board of Guardians, however, must for the present rank next to Quarter Sessions as a centre of Local Government in rural districts, while it is still more worthy of study as the great meeting-point of magisterial and representative authority. The amendment of the Poor Law, as is well known, was among the

first and most arduous of the legislative tasks achieved by the Reformed Parliament of 1832. The startling rise of poor rates until they reached a total of between £8,000,000 and £9,000,000, the gross abuses of outdoor relief in aid of wages, the notorious prevalence of jobbery in the management of poorhouses, and the entire want of uniformity in Poor Law administration arising from the want of guidance from a central office, forced the Legislature into an effort of reconstruction which, modified by many subsequent Acts, has developed a new type of local organisation. This organisation is regulated, to an extent and in a sense unknown in ancient times, by the Local Government Board, as successor of the Poor Law Board. As the Poor Law Board constituted unions at its own discretion, so the Local Government Board may dissolve unions, add to unions, or reduce the size of unions, by a mere departmental order. The Board may also remove any paid officers at pleasure, or appoint officers if the guardians fail to do so; it may lay down binding rules for outdoor and indoor relief, for the education of pauper children, for the preparation of accounts, and for the general execution of the Poor Laws. Subject to this paramount control, each board of guardians, consisting of *ex-officio* and elective members, is the one deliberative assembly and administrative authority within its own union. The *ex-officio* members are the county magistrates residing in the union, who must not exceed in number one-third of the whole board; the elective members, whose number and qualification is fixed by the Central Board, are chosen annually by the ratepayers and owners of property in the constituent parishes. Owners of property must send in their claims before the election, whereas the ratepayer's franchise depends on his name having been on the rate-book for a year. The number of votes assigned to each owner or ratepayer is proportioned to his rateable property, according to a scale of plural or multiple voting, up to a maximum of six votes; and an appeal against excessive rating may be made in the first resort, to magis-

trates in petty sessions, and in the last resort to the Quarter Sessions. By the Poor Law Amendment Act of 1834, parishes were laid under contribution for the erection and maintenance of union workhouses, but remained separately chargeable for the indoor as well as for the outdoor relief of their own poor. By the Union Chargeability Act of 1865, the main cost of the poor relief was thrown on the common fund of the union, so as to weaken the selfish motives of landowners for omitting to provide sufficient cottage accommodation on their own estates.

In most unions the Board of Guardians meet fortnightly or weekly, under the presidency of a chairman, who is often a county magistrate, deriving additional weight from territorial influence; sometimes a clergyman elected by his parishioners; and sometimes a farmer or tradesman. Its business consists mainly in the general supervision of the workhouse, and in the regulation of outdoor relief, which is given directly through its relieving officers. It is in respect of this last function that not only the practice, but the policy, of various boards of guardians differs most widely. In some, the percentage of ablebodied paupers is infinitesimal, owing to a judicious discrimination of cases; in others, perhaps adjoining the former, or where the local circumstances are precisely similar, a direct premium is set upon improvidence and a heavy discount upon thrift among agricultural labourers, by a reckless distribution of outdoor relief. Nor is this mischievous expenditure always disinterested; for it may happen that a guardian of the shopkeeping class is himself a creditor of the applicant for outdoor relief, and prefers keeping even a struggling family on his books to losing all its custom by consigning it to a workhouse. This is not the place to estimate the general result of Poor Law administration by semi-elective boards of guardians. It is enough to point out that, considering the number of persons affected by it, and the depth to which its influence has struck downwards into the social life of the English peasantry, the boards of guardians, as dis-

pensers of public charity, practically wield a larger power over the character and condition of the people than belongs to any other public body, or was possessed by the county courts themselves when Poor Laws were unknown.

It is these same boards that have been constituted the sanitary authorities in rural districts by the Public Health Act of 1872. In ancient times, as we have already seen, there was no preventive system for the protection of public health, though each parish vestry, through its surveyor of highways, was supposed to put down nuisances; and special penalties were imposed, by an Act of Richard II., on persons guilty of polluting rivers. The Commissioners of Sewers, who superseded old elective officers called dyke-reeves, for some centuries exercised an incidental sanitary jurisdiction, with power of levying sewer rates; but this jurisdiction was confined to surface drainage in certain marshy localities. The existing sanitary code really begins with the Public Health Act of 1848. By that Act, the inhabitants of rural parishes, as well as of towns, were enabled, but not compelled, to place themselves under local boards of health, to be elected on the same principle as Poor Law guardians, for the superintendence of sewerage, drainage, and sanitary arrangements in private houses, as well as of water and gas-supply, over areas to be established for the purpose by a new General Board of Health. The new sanitary circles thus established, with a reckless disregard of existing boundaries, include many country villages; and it is material to remark that agricultural land, canals, and railways within their compass are expressly exempted from three-fourths of the sanitary or "general district" rate leviable by the local boards. Practically, however, notwithstanding the special proviso making the Public Health Act of 1848 applicable, *ipso facto*, to places with a death-rate above 23 per 1,000, neither that Act nor the supplementary Local Government Act of 1858 was applied in any considerable degree to rural districts. Before 1872, the health of rural districts was for the most part under the

guardianship of parish vestries, elevated into "sewer authorities" by the Sewage Utilisation Act of 1865, and the Sanitary Act of 1868, which must be read together with a series of Nuisance Removal Acts, whereby the boards of guardians were made nominally responsible for the removal of nuisances in rural districts. The joint result of all this intricate and incoherent legislation was such as might have been foreseen. The Sanitary Commission found that "boards of guardians seldom seem aware that the removal of nuisances in country places is entrusted to them; and vestries are generally unconscious of the important sanitary duties resting on them; nor does the Central Power seem sufficient to rouse these various bodies to the proper execution of their duties." The Report of this Commission was immediately followed by the Local Government Board Act, which created a new Department of State under that name, vesting in it all the powers and functions of the Poor Law Board, together with all those of the Home Secretary in regard of public health, improvement of towns, and some other matters, as well as those of the Privy Council in regard of vaccination and the prevention of disease. The next fruit of the Sanitary Commission Report was the Public Health Act of 1872, which now remains to be explained more fully, so far as it concerns rural districts, since it is the law which regulates not merely their sanitary affairs, but also a great part of their ordinary internal economy.

The whole country has at last been exhaustively parcelled out into urban sanitary districts and rural sanitary districts, the latter of which can only be defined, by reference to the former, as districts which are neither boroughs, nor "Improvement Act districts," nor "Local Government districts," and probably contain nine-tenths of the villages in England and Wales. Where a Poor Law Union happens to comprise no place wholly or partially constituting an urban sanitary district, the union itself is a complete rural sanitary district; and its board of guardians is the one sanitary authority within

it, combining the functions of a "sewer authority" and a "nuisance authority." Where a Poor Law Union partly composed of country villages also comprises places belonging to some urban sanitary district, the non-urban residue of the union constitutes a rural sanitary district; and though its sanitary authority is the board of guardians, the urban members of the board, as they may be called, may take no part in managing it. The consequence is, that in the great majority of unions the board of guardians has no longer an indivisible corporate existence; for, whereas the whole board acts together as a Poor Law authority, only a select portion of it can act as a rural sanitary authority. It is, however, expressly declared, by an Amendment Act of 1874, that, notwithstanding this restriction, the board of guardians acts in one and the same capacity, whether the orders which it makes relate to sanitary administration or to Poor Law administration. Each sanitary authority, urban or rural, is bound to appoint a medical officer of health, who is often the so-called "parish doctor;" and rural sanitary authorities are also bound to appoint inspectors of nuisances, clerks, and treasurers, but their powers do not extend far beyond the removal of nuisances, and fall very far short of those committed to urban sanitary authorities in respect of such matters as framing bye-laws for the erection of houses. On the other hand, the Act contains several provisions designed to mitigate the difficulties inseparable from the exercise of sanitary jurisdiction by a body elected for other purposes over a conglomeration of scattered parishes, intersected by urban districts under a different sanitary rule. The rural sanitary authorities may delegate their commission for the current year either to a select committee of their own members or to parochial committees; and the Local Government Board may, by provisional order, either merge any one sanitary district in any other sanitary district, or convert a rural sanitary district into an urban sanitary district. It would further appear that, under another section of the Act, rural sanitary authorities are given a perfectly unlimited power of aggregating them-

selves, with the consent of the Local Government Board; and that it would even be legally possible for that Board, at the instance of a single union, to combine all the rural parishes in the county under one sanitary authority. The Local Government Board was, moreover, empowered to appoint a staff of inspectors, who would have the right of attending all meetings held by rural sanitary authorities, and of instituting the most searching inquiries into the sanitary condition of all "places required to be inspected." In case any rural sanitary authority should make default in doing its duty, the police were enabled to commence proceedings against it; and the Amendment Act of 1874 imposes a penalty of five shillings a day on any rural sanitary authority failing to abate any nuisance of which proper complaint shall have been made. It is almost needless to say that very few boards of guardians as yet discharge efficiently all the sanitary obligations thus cast upon them. But it is certain that a powerful impulse has been given to sanitary reform in the most backward rural districts, and it is evident that a system at once so flexible and so highly centralised may insensibly modify the local institutions and habits of rural districts to an extent altogether beyond the range of sanitary reform.

Another recent statute, of still wider significance, has created another new form of Local Government in rural districts, of which the force radiates, not from the union, but from the parish. The importance of the parish, as an ecclesiastical unit, had been indirectly enhanced by the marvellous progress of popular education during the present century, even before the Education Act of 1870. By the joint action of voluntary societies and the State a parish school had been attached to almost every village church, forming a fresh nucleus of parochial life, and giving an honourable *status* to a fresh parochial officer, in the person of the schoolmaster, who, being usually certificated and partly remunerated by the State, was at least equal in dignity to an overseer, a churchwarden, a waywarden, or a guardian, if he did not sometimes rival the incumbent himself. The

Education Act of 1870 stereotypes the educational independence of rural parishes by making each a distinct school district, responsible for the school accommodation of all its children within the school age. It virtually rests with the parishioners to supply the necessary minimum of accommodation by private subscription, or to establish an elective School Board with rating powers, and the Education Department can enforce the adoption of the latter alternative upon a defaulting parish. In most instances rural parishes have satisfied the requirements of the statute without having recourse to a School Board, and where such boards have been elected, they have usually consisted, as they could not but consist, of much the same elements as the old committees of management. But the sense of parochial unity has been greatly strengthened by the efforts made to escape the necessity of a School Board in the one case, no less than by the formation and action of the School Board in the other case. If the Poor Law Amendment Act, the Sanitary Act, and the Highway Act have *pro tanto* reduced the parish to a mere factor of the union or highway district, the Education Act has contributed to reinstate it—not, indeed, in the position which it occupied when it was the cradle and the nursery of English Local Government, but in the position which it occupied relatively to other decaying centres of Local Government in the evil days before the Reform Act of 1832.

3. We must now revert to urban communities, and glance rapidly at the great legislative changes wrought in their municipal administration since that momentous epoch. The Reform Act itself had paved the way for a thorough reconstitution of borough corporations, by disfranchising the smallest and most corrupt of them, by extending the boundaries of many others, by enfranchising great towns which had remained outside the pale of representation, and by conferring the suffrage, theretofore monopolised by freemen and other privileged classes, on the unprivileged mass of ten-pound householders. The Municipal Corporations Act of 1835, proceeding on the same broad lines of policy, imposed upon

all boroughs one constitutional form of government, identical in all its essential features with that which a few model boroughs already possessed. The governing body established by the Act for all boroughs enumerated in the schedule, and all which should afterwards be incorporated under its provisions, consists of a mayor, aldermen, and councillors, who together constitute the Town Council. The councillors are elected directly by the burgesses—that is, by the occupiers whose names are on the burgess-roll, or on a separate list to be kept for persons resident within a certain radius, being qualified by two years' residence and payment of rates. The prescriptive rights of freemen have been carefully preserved, but it was provided by the Act that no such rights should be acquired in future by gift or purchase. The councillors must be qualified as burgesses, and must also be occupiers of rateable property to an amount varying with the size of the borough. They hold office for three years, so that one-third of the number retire annually on November 1st, but they are re-eligible, and frequently offer themselves for re-election. The aldermen are elected by the councillors from among themselves for a term of six years, one-half of their number retiring every third year, and since they can vote for their successors, it is found in practice that a party which has once been strong enough to return a large majority of aldermen, is not easily dislodged from its supremacy on the Town Council. The mayor is also elected by and from the Town Council; his term of office is annual, and it commences with the 9th of November. The town clerk, borough treasurer, and other officers are appointed by the Town Council, which is empowered to make by-laws for the government of the borough, to manage the lighting of streets, and to maintain order through a watch committee with a force of borough constables under its command. These elementary powers of Local Government, which had previously been intrusted in many boroughs to separate commissions, were thus replaced in the hands of the recognised borough authorities, subject, however, to

special Acts, which in some boroughs still perpetuate a mischievous division of administrative responsibility.

By the Municipal Corporations Act of 1835, no magisterial jurisdiction was vested in the Town Council, as such, though an exception was made in favour of the mayor and ex-mayor, who are *ex officio* justices of the peace. All the judicial attributes claimed by various municipal officers in various boroughs, under various charters or customs, were entirely swept away, and the Crown now appoints all borough magistrates, except in the Cinque Ports, and one or two other privileged towns. In most boroughs which have a separate commission of the peace the magistracy is unpaid, but in some large towns the town council has exercised its right under the act of moving the Crown to appoint a stipendiary magistrate, whose salary is paid by the borough. The council of any borough may also petition the Crown to grant it a separate court of Quarter Sessions, which is thereupon invested with all the criminal and much of the civil jurisdiction belonging to courts of Quarter Sessions for counties. This jurisdiction, however, is no longer exercised by the borough magistrates collectively, as it was in boroughs which had a separate commission of the peace before the Act of 1835. On the contrary, it is now delegated to a paid judge, called a recorder, and, with slight exceptions, the powers retained by the borough magistrates are precisely those which belong to county magistrates at petty sessions. Thus, it is the borough magistrates who, under the Act of 1872, grant public-house licenses, but licenses so granted by two borough magistrates are not valid until they have been confirmed by the whole body. The great advantage enjoyed by those boroughs which have not only a separate commission of the peace, but a court of Quarter Sessions, is the right of maintaining a borough gaol, with an immunity from the interference of county magistrates, and from the county gaol rate. In boroughs which have a separate commission of the peace, but no court of Quarter Sessions, the county magistrates frequently possess concurrent jurisdiction with the borough magis-

trates, and in boroughs which have neither, their jurisdiction is as exclusive as it is over rural districts. Nor is it unusual for the police force, in the smaller boroughs, to be amalgamated, as the law already permits, and as it will probably soon require, with the police force of counties.

All the legitimate expenses of municipal government in boroughs are defrayed either from the income of corporate property, or by means of a borough rate. In some boroughs, the corporate property is sufficient to cover the whole charge, and it is expressly enacted that, if there be any surplus, it must be devoted, not as of old, to private benefactions and jobbery, but to the benefit of the inhabitants, and the improvement of the town. In most boroughs, however, a borough rate is regularly levied, in the same manner as a county rate, and the occupiers of agricultural land have no such partial exemption from it as they enjoy in the case of a "general district rate" imposed by a sanitary authority. The objects to which it is applied in a typical borough are specified in a "demand note" issued in April, 1874, by the overseers of Birmingham, where the borough rate is collected with the poor rate, and happens to be very nearly equal with the cost of poor relief. The borough rate of Birmingham is explicitly stated in this "demand note" to include "the school board rate and the maintenance of the police force, borough gaol, lunatic asylum, baths and washhouses, public libraries, parks, and cemetery," besides liabilities for "general expenses." These "general expenses" comprehend, as a matter of course, the expense of paving, lighting, sewerage, and town improvements of all kinds, whether sanitary or merely conducive to public convenience. Birmingham, it is true, is partly governed under local Acts, and perhaps there are not many boroughs in which so many public institutions are directly supported out of the borough rates. Still, this example may serve to illustrate the multiplicity of items which make up the local budget of a large borough, over and above the simpler necessities of Local Government which are common to large boroughs and small villages.

In considering the mode in which the business of municipal government is conducted by Town Councils, it must be kept in mind that England and Wales contains, at present, 227 boroughs, some of which, and especially the smallest, exhibit special complications in their constitution. We have already noticed the ordinary functions of a Town Council under the Municipal Corporations Act of 1835, but other functions, either permissive or compulsory, have been assigned to it by subsequent legislation. Such are the powers whereby it can regulate markets and fairs, weights and measures, the construction of buildings, the safeguards against overcrowding, the establishment and maintenance of free libraries, borough parks, and cemeteries. These and similar powers of administration are practically confided, in well-governed boroughs, to separate committees of the Town Council, analogous to committees of Quarter Sessions. The same machinery is naturally employed for the management of municipal gasworks, waterworks, docks, or harbours, in boroughs which, under general or special Acts, have authorised their Town Councils to acquire and superintend any of these concerns on their behalf. It is somewhat remarkable that no special powers for sanitary purposes were conferred on Town Councils by the Municipal Corporations Act. But this omission has been more than repaired by the Public Health Act of 1848, the Local Government Act of 1858, and the Public Health Act of 1872, the first two of which permissively constitute, while the last imperatively constitutes, these bodies the sanitary authorities within such boroughs as do not form part of a larger district under an Improvement Commission or a Local Board. In this capacity, they have almost supreme power over main sewerage, the drainage of private dwellings, water and gas supply, slaughterhouses, baths and washhouses, common lodging-houses, offensive trades, burial-grounds, and other sanitary matters. In boroughs which had adopted the Local Government Acts before 1872, all expenses incurred by the Town Council for these sanitary purposes

are payable out of a general district rate. In boroughs which had not adopted those Acts before 1872 the sanitary expenses of the Town Council, then formally designated as the sanitary authority, are payable out of the borough funds or borough rate. The chief difference is that, whereas in the former case agricultural land is rated, as already explained, at one-fourth of its real value, in the latter case it bears its full share of sanitary burdens.

Speaking generally, then, we find two distinct executive boards within each large borough—the borough magistracy, exercising the judicial and quasi-judicial powers of county magistrates, with the aid of a recorder, and the Town Council, exercising larger administrative powers than county magistrates possess, or than are required for rural districts, either as the governing body of the municipality, or as the sanitary authority of an urban sanitary district. Sometimes the boundaries of the borough coincide, or nearly coincide, with those of a poor law union, or of a parish so large as to be organised on the same plan as a poor law union. Under these circumstances, there will be a board of guardians, side by side with the magistracy and the Town Council, which may frequently require their co-operation for the efficient discharge of its duties, and must always be in financial contact with them, in so far as the borough rate and poor rate are collected together by the same parochial officers. At the same time, it would be erroneous to regard urban boards of guardians as having any organic connection with the local government of boroughs, inasmuch as they represent unions in which urban and rural communities are usually intermingled, and administer poor relief on uniform principles, equally applicable to both.

If we now compare boroughs with counties, it is manifest that boroughs enjoy a much larger share of self-government, legally derived from their ancient corporate franchises, but justified by the exigencies of a crowded population, for which the Legislature has provided by a multitude of incongruous enactments. It is no

less certain, that if we could examine the local institutions of these 227 municipalities, one by one, we should discern a much greater diversity in their spirit and operation than exists between the local institutions of Yorkshire and Rutland, or any other two of the fifty-two counties in England and Wales. Not only does the administration of a borough with some hundred thousand inhabitants differ, of necessity, both in scale and in nature, from the administration of a borough with five or ten thousand inhabitants, but, in spite of the levelling policy embodied in the Municipal Corporations Act, differences of local history, of local situation, and of other local circumstances, make themselves sensibly felt in the Local Government of boroughs equally large and populous. No anatomical resemblance of outward structure can assimilate the inner municipal life of quaint old cathedral cities with that of new and fashionable watering-places, that of sea-ports with that of inland towns, that of manufacturing or mining settlements with that of market towns in the midst of agricultural neighbourhoods. The distinctive characteristics of each may be scarcely visible to an official eye, but they are always deeply stamped on its social features, often reflected in peculiarities of its municipal constitution, and sometimes rudely exposed to view in election enquiries.

4. There are two other classes of urban communities, which are expressly distinguished from boroughs in the Public Health Act of 1872, as possessing a lower degree of corporate organisation. Of these nascent or half-developed municipalities, the most rudimentary are towns under so-called "Improvement Commissions," established by special Acts of Parliament, which are interpreted and extended by the General Consolidation Act of 1847. Such commissions, as we have already seen, exist in some incorporated boroughs, and continue to exercise the functions originally allotted to them, side by side with the Town Councils. It was stated by Dr. Farr, in his evidence before the Boundaries Committee, that out of eighty-eight towns under improvement or other commissions, thirty-seven were also

municipal boroughs, the remaining fifty-one being towns which had not yet attained the dignity of municipal incorporation, and in which the commission was, therefore, almost the only visible symbol of local authority. Towns of this class, however small, differ from mere rural parishes, not only in having a governing body capable of making effective arrangements for paving, lighting, drainage, and water supply, but in being constituted "urban sanitary districts" by the Public Health Act of 1872, instead of being merged in the surrounding unions. But they have no independent magistracy or police, nor would they be exempt from the highway jurisdiction of the county, unless by virtue of express provisions in their local Acts. Hence it sometimes happens that places already under Improvement Commissions apply for the sanction of the Local Government Board, in order to create themselves Local Government districts.

These districts form the second and more important class of urban communities below the rank of boroughs, and have rapidly multiplied in the northern counties. No less than 721 town populations (including 146 boroughs) were stated to have been placed under local boards up to the year 1873; and the last report of the Local Government Board shows that twenty-six were added in the course of that year. Very ample sanitary powers, together with the exclusive management of highways, were conferred on these boards, originally called boards of health, by the Public Health Act of 1848. The Central Department was to fix a certain number of substantial householders to compose each local board; but the members were to be elected by the ratepayers, on the principle of multiple voting, for a term of three years, one-third retiring annually. By the Local Government Act of 1858, and supplementary enactments, these boards were further armed with nearly all the general powers of Local Government, except those of judicature and police; and in those boroughs which have both local boards and Town Councils, the preponderance both of pres-

tige and of real authority sometimes rests with the former. In 1858, it is true, the compulsory application of the Public Health Act was abolished, but in 1866 a far more arbitrary discretion was lodged in the hands of the Home Secretary, who might coerce defaulting local boards of health by appointing some person to perform their duties for them in the last resort, and obtain an order from the Court of Queen's Bench to enforce the payment of costs and expenses. This, with all other branches of the Home Secretary's jurisdiction over sanitary matters, is now transferred to the Local Government Board, which has, in theory, an almost unlimited control of local government districts, and whose inspectors may attend any meetings of local boards, though not of Town Councils or improvement commissioners. In case a local board should persistently remain in default, the Local Government Board may either enforce its order by *mandamus*, or cause the necessary works to be executed at the expense of the ratepayers. In fact, however, the Local Government Board has seldom attempted to exert its right of intervention except by way of remonstrance and warning. After local government districts have once been formed, they rate themselves and govern themselves with almost as much freedom and variety as boroughs, to which they have been assimilated more closely than ever, for all sanitary and quasi-sanitary purposes, by the Public Health Act of 1872.

5. The position of the metropolis among urban communities is, in many respects, entirely unique. It is well known that the City of London was specifically exempted from the operation of the Municipal Corporations Act, partly, no doubt, in deference to its overwhelming capacity of resistance, but partly out of respect for its great historical traditions and comparative purity of administration. The consequence is that a district containing but 640 acres, situated in the heart of the metropolis, continues to be governed by a corporation framed on the genuine mediæval pattern, and retaining an independent civil jurisdiction which is a

veritable remnant of the private "sokes," or franchises, long since extirpated in other parts of the kingdom. It contained in 1871 a "sleeping population" of 74,494, and is divided into 26 wards, and 108 parishes, eleven of which lie without the walls, but within the liberties. The chief municipal officers of the City are the Lord Mayor, 26 Aldermen, 206 Common Councilmen, exclusive of the Aldermen, two sheriffs (who jointly hold the shrievalty of Middlesex), a Recorder, a Common Serjeant, a Chamberlain, and a Town Clerk. The Lord Mayor, who must be an alderman, and must have served in the office of Sheriff, is elected for one year, on the 29th of September, by the Livery—that is, by the members of the seventy-six Livery Companies, amounting in all to about 7,000, who exercise their right by presenting two names to the Court of Aldermen. Of the persons thus designated, the Court of Aldermen nominates one, generally the one whose name stands first, and this nomination is further confirmed by the Crown, for which purpose the Lord Mayor proceeds to Westminster Hall on the 9th of November, and receives the royal approval from the Lord Chancellor. The aldermen are elected for life, one in each ward, according to the custom of the City of London, by a body of freemen, amounting in all to about 20,000. Every alderman is a justice of the peace for the City of London, and presides in the assembly of his own ward, called the wardmote, by which the Common Councilmen are elected annually on St. Thomas's Day. The Lord Mayor presides over meetings of the Common Council, and the aldermen form part of that assembly. The sheriffs are chosen annually by the Livery, and there is a Sheriff's Court, which has cognizance of personal actions under the provisions of the London Small Debts Act. But the most important civil tribunal in the City of London is the Lord Mayor's Court, of which the Judge is the Recorder, who is elected for life by the aldermen, and whose place is usually filled, in his absence, by the Common Serjeant. This Court is so far co-ordinate in rank with the Queen's Courts at West-

minster that writs of error from it are carried directly to the Exchequer Chamber; and though, under a recent Act, there is an appeal from its legal jurisdiction to one of the Superior Courts, it is said that the appeal from its equitable jurisdiction lies directly to the House of Lords. The Lord Mayor also sits as Chief Magistrate in the Mansion House police-court, as one of the Aldermen sits in the Guildhall Police-court, and the Lord Mayor sits with the Aldermen and the Recorder at the London Sessions, which are held eight times a year, and at which Her Majesty's judges occasionally preside. The police force of the City and liberties is distinct from the Metropolitan Constabulary, being commanded by a Commissioner, who is appointed by the Common Council, subject to the approval of the Crown. The City has, moreover, a separate Commission of Sewers, the members of which are appointed by the Corporation, and which regulates drainage, and matters affecting public health, with the assistance of a medical officer, besides superintending the repairs of streets. Nor is the administrative authority of the Corporation limited by the City boundaries, for the Lord Mayor is *ex officio* chairman of the Thames Conservators, six of whom, besides himself, are elected by the Common Council, in whom, by an Act of 1866, was vested a very extensive jurisdiction over the river and port of London.

The gross revenue of the Corporation from all sources is stated in the last Report of the Local Government Board as having amounted in the year 1871 to £1,299,767, "of which £755,414 appears to have been raised by taxation, as rates, rents, tolls, duties, or fees." About £50,000 of this sum was derived from police or ward rates, nearly £200,000 from tolls or markets, and above £300,000 from coal duties. As the City of London is specially exempted from making returns of municipal income and expenditure to Parliament, these statistics mainly rest on the authority of abstracts issued by the Corporation, and the Local Government Board has no official cognizance of

its financial administration. We learn, however, from a balance-sheet issued for 1872, that in that year the "expenses of civil government" amounted to nearly £40,000, besides above £17,000 awarded in "donations, pensions, and rewards;" that £15,000 was spent in nearly equal portions on education and the administration of justice; £20,000 on the erection of a new library and museum; above £170,000 in the construction of a new Foreign Market; above £100,000 in the construction, improvement, and maintenance of other markets, and a very large sum on management and collection.

The vast area outside the City boundaries, but within the Metropolitan District of the Registrar-General, contained in 1873 an estimated population of 3,810,744. It extends into four counties, encloses nine Parliamentary boroughs, and comprises ninety-five registration parishes, three of which number collectively more than 600,000 inhabitants. Under an Act passed in 1855, the local government of this immense "province covered with houses" is mainly divided between thirty-eight select vestries, or district boards, and the Metropolitan Board of Works. The smaller London parishes (exclusive of the City) are grouped together under district boards, to which the vestry of each parish returns members in proportion to population. The larger parishes are distributed, after the manner of boroughs, into several wards, to each of which members are allotted, according to its size. The electoral body consists of the ratepayers, and the members of vestries or district boards are elected, like town councillors, for three years, one third retiring annually. The vestries and district boards have the general charge of branch drainage, as distinct from main drainage, of buildings, streets, lighting, water-supply, and sanitary arrangements, with power to levy parochial rates for these purposes. It was shown by a Return printed in 1872 that, during the period from 1856 to 1870, the vestries and district boards had executed works of sewerage, paving, and other improvements, to the amount of £7,212,319. The main drainage of the whole Metropolis, including the

City, was entrusted by the same Act to a new body, entitled the Metropolitan Board of Works, and this body is responsible for the execution of improvements for the common benefit of all London, with power to levy a "Metropolitan Consolidated Rate;" besides which it receives above two-thirds of the metropolitan coal duties, and the whole of the wine duties. It is composed of forty-six members, three of whom are elected by the Common Council of the City, and the rest by the vestries and district boards, for the same term, and upon the same conditions of retirement, as the vestrymen. Its meetings are public, and are held on Friday in each week, except during vacations. A great part of its business, however, is transacted through committees, the various titles of which sufficiently indicate the multiplicity of duties, over and above the great work of main drainage and the Thames Embankment, which successive Acts of Parliament have cast upon the Metropolitan Board. Thus, besides the Works and General Purposes Committee and the Appeal Committee (which are committees of the whole Board), the Finance Committee, and the Parliamentary Committee, there is a Fire Brigade Committee, to carry out the duty of protecting the whole Metropolis against fire, which the Board was required to undertake in 1865; a Building Act Committee, to enforce the Acts of 1855, 1860, 1861, and 1869, against overcrowding and dangerous structures; a Parks, Commons, and Open Spaces Committee, for the preservation or management of public recreation grounds in or round London, under eleven different Acts; a Cattle Diseases Act Committee, to guard against the importation of infected animals from abroad, under an Act of 1869; and a Special Committee engaged in prosecuting experiments in the ventilation of sewers. Even this list does not exhaust the responsibilities of the Metropolitan Board, which, like the Privy Council, has been charged with a multitude of miscellaneous powers for which no other convenient trustee could be found—having, for instance, the control of metropolitan tramways, and being made arbiter as to such matters as the proportion of parochial contri-

butions towards ordinary roadways in more than one parish, and the adjustment of parochial divisions. The annual expenditure of the Board on these various accounts has averaged about £350,000, during the last seven years, and its net actual debt at the end of 1873 was nearly £9,000,000, or, allowing for prospective recoupments, £7,728,374.

The Metropolitan Police District, which comprehends the whole Metropolis, exclusive of the City, was formed by an Act of 1829, a year before the Lighting and Watching Act was passed for the country at large. The effect of this Act is to place the Metropolitan Police under the command of a commissioner nominated by the Home Secretary, and responsible to him alone. The Home Secretary also nominates the stipendiary police-magistrates for London and Middlesex, who exercise a petty-sessional jurisdiction in the thirteen police-courts of the Metropolis, exclusive of the City. It is needless to point out that, in these respects, London enjoys a less degree of independence than provincial boroughs, whose Councils regulate the borough police, and whose magistrates, instead of being appointed by the Home Secretary, as head of the Imperial Executive, are appointed by the Lord Chancellor, as head of the law.

For the purposes of Poor Law administration, London consists of thirty divisions, fourteen of which are old parishes, and sixteen unions of parishes. Any of these divisions, however, may be associated, by the authority of the Local Government Board, under an Act of 1867, for contribution to certain special objects. The "Metropolitan Asylum Board," which provides for the accommodation of imbeciles and of small-pox or fever patients, actually represents all the divisions, while there are several common infirmaries and district workhouse schools for smaller groups or divisions. A somewhat exceptional discretion in respect of ordinary out-door relief is allowed to metropolitan guardians, as to other guardians of very large urban unions, by the Local Government Board, but, on the other hand, an exceptionally powerful hold upon their action is retained by

that Board in respect of medical relief, both out-door and in-door. A Common Poor Fund was formed in 1867, to which all the divisions contribute rateably, upon which the whole cost of drugs is charged, and out of which each division is entitled to receive a grant of fivepence a day for the maintenance of each indoor pauper, if its guardians have, in the judgment of the Board, fulfilled all their legal obligations. The leverage afforded by this provision has enabled the Local Government Board to insist upon many improvements in workhouse infirmaries which they might otherwise have been powerless to enforce, and the same principle extends to the establishment of dispensaries and the payment of school fees for pauper children. It appears from the last report of the Local Government Board, that during the year ending at Michaelmas, 1872, no less than £661,889 was paid, under various heads, out of the Common Poor Fund, which, so far, represents an equalisation of poor rates over the whole metropolitan district. There is another marked peculiarity in the Poor Law system of the Metropolis which brings it still more directly under imperial influence. In non-metropolitan unions the attendance of resident magistrates, as ex-officio guardians, is generally sufficient to balance in some degree the prejudices of parochial representatives, but in London unions, many of which, and especially the poorest, have few active magistrates residing within them, the Government is empowered to nominate guardians not exceeding in number one-fourth of each Board. A similar element has been introduced into the constitution of the Metropolitan Asylum District Board, of whose sixty members three-fourths are elected by the several Boards of Guardians united for this purpose, and one-fourth are appointed by the Local Government Board.

By the Education Act of 1870, the whole Metropolis, including the City, was constituted a school district by itself, and the Metropolitan School Board now occupies a conspicuous place among the local institutions of London. It consists of forty-nine members, elected by constituencies which coincide, in respect of

area, with those of the Parliamentary boroughs in the Metropolis, by the method of cumulative voting, which, strange to say, must be conducted secretly outside the City, but openly within the City. Moreover, in the City the electoral body is the same as for the election of Common Councilmen; whereas, in the rest of London it includes all the ratepayers. The publicity which has been given, from the first, to all the proceedings of the London School Board, the magnitude of its task, and the extent to which it has exercised its rating powers for the erection of new schools, combine to make its operation one of the most instructive experiments in urban self-government that has yet been tried, since the Municipal Corporations Act was passed. Hitherto, it has not failed to attract the services of able and public-spirited men in sufficient numbers to leaven the mass of its members, and to obtain an ascendancy in shaping its educational policy. It could scarcely have succeeded, however, in bringing accurate local knowledge and minute superintendence to bear on every parish, had it not been aided by district committees, informally constituted, each of which has a member of the Board for its chairman, and acts under the directions of that body. How far the excitement of novelty, the struggle for the mastery between two religious parties, the intrinsic value and permanent interest of popular education, or the cumulative method of voting, may have contributed to produce these satisfactory results, is a question which time alone can determine.

III.

1. In reviewing the present system of Local Government in England, the bare outlines of which have been sketched, the feature which first arrests our attention is its striking, and almost obtrusive, lack of unity. The perception of this salient fact would not be weakened, but strengthened, by a minuter examination of details. For instance, not merely is there one sanitary code for urban and another for rural districts, one for the Metro-

polis, and another for provincial boroughs, one for boroughs, and another for non-corporate towns, and so forth; but, for sanitary purposes, the boroughs of Oxford, Cambridge, Blandford, Calne, Wenlock, and Newport in the Isle of Wight, are not deemed boroughs; and some very large towns, such as Birkenhead and Cheltenham, are neither municipal boroughs nor Local Board districts, but governed by Improvement Commissioners, whose powers, under their several local Acts, may range from despotism to impotence, and are probably quite unknown to nine-tenths of the inhabitants. Even the Public Health Act of 1872, which purports to consolidate previous enactments, has really done no more than incorporate them by reference; and the official digests of statutes relating to Sanitary Authorities, urban and rural, which have been compiled since that Act, are copious enough to fill two moderate-sized volumes. A certain degree of diversity, it is true, must be ascribed to natural and inevitable causes, which no legislation could have eliminated, and which it is no part of sound policy to ignore. The Dock Board, which regulates the navigation of the Mersey, at Liverpool, could have no place at Manchester. Villages separated by a mountain chain from the rest of their own county, must sometimes, perhaps, be linked with neighbouring villages in another county; and venerable cities, with customs older than the common law itself, should not be compelled, on light grounds, to surrender them. Still, after making every allowance for such considerations, we cannot but acknowledge that a reckless neglect, both of scientific principles, and of practical convenience, on the part of successive Parliaments, could alone have brought about that portentous confusion of all the elements in Local Government which Mr. Goschen justly described as a chaos of authorities, a chaos of rates, and a chaos, worse than all, of areas. He might have added that a chaos of local elections and local franchises aggravates the chaos of authorities, rates, and areas, since the method and time of recording votes for various local officers, as well as the qualifications of the various local electorates,

differ so widely as to defy analysis and generalisation. True it is that less collision and friction results from this lack of unity than it would surely produce in a nation with less capacity for self-government. Common sense tells us, however, that it must involve, as it does palpably involve, an enormous waste of power and materials. It has been calculated that more than 7,000 persons, mostly fathers of families, are engaged in various official positions, without salary, administering the local affairs of the Metropolis. Now, it is certain that half this number of persons might do the same work more efficiently, if it were properly distributed among them, in respect of place and time, and that half the salaries of clerks, and other paid officers who assist them, might be saved by a similar re-adjustment.

2. Another reflection, forced upon us by a study, however imperfect, of Local Government in England, is, that much vaster and more various interests are practically subjected to it than is commonly realised, or than were subjected to it in the last generation. Let us take as an example the municipal government of Liverpool, which has been well likened to that of a maritime state, and let us, for the sake of convenience, adopt a financial standard of measurement. A concise account of Liverpool finance has been lately embodied in a paper by Mr. William Rathbone, M.P., on "The Growth of Local Taxation in Liverpool." From this it appears that, in the year 1871, £284,728 was raised in rates by the Corporation of Liverpool, for lighting and fire-police, scavenging, paving, sewerage, watering, public parks, and general purposes. This sum, however, by no means covered the whole expenditure out of the borough-fund, since Liverpool is fortunate enough to possess a corporate estate, worth more than £600,000 a year if let at rack rent, and actually yielding more than £100,000 a year, besides large profits derived from market fines, legal fees, and other sources, so that no rate is needed to maintain the ordinary police. Moreover, the poor rates, other parochial rates, and a museum rate, were levied separately by the parish authorities, and amounted in the aggregate

to £196,360 for the year 1871. Altogether, Mr. Rathbone states the whole receipts from rates at £481,089, besides the rent paid for water supply, which he reckons at £75,000, and the income of the Corporation from all other sources, which he reckons at £260,000. It follows that Liverpool had in 1871 a local revenue of more than £800,000, over and above the proceeds of loans, and other receipts on capital account. Of the municipal debts thus contracted by municipal boroughs full returns are laid annually before the Local Government Board. Those just issued, for the year 1873, show that loans to an aggregate amount of £761,586 were effected, on the security of rates or property, by 223 municipal boroughs of England and Wales, exclusive of London. The whole outstanding debt of these boroughs, up to Michaelmas, 1873, is stated in the same report at £6,613,095, their rateable value at £23,522,518, their total receipts for the year, including loans, at £3,436,834, and their total expenditure, including interest on loans, at £3,742,563. Of course, these "Municipal Borough Accounts," as submitted to Parliament, by no means represent the entire cost or range of Local Government within the places to which they refer, since they make no mention of poor rates or sanitary rates, except in one or two cases. Still less do they afford any basis for an estimate of the whole sum raised by Local Taxation, and expended for purposes of Local Government in England and Wales. This information, however, is supplied in the last report of the Local Government Board, whence it appears that, during the year 1872-3, the sum of £18,571,538 was levied by rates falling on rateable property, the sum of £4,056,752 was levied by tolls and dues falling on traffic, and the sum of £328,741 was levied by duties falling on consumable articles—in other words, by the coal and wine duties payable in the port of London. The aggregate yield of Local Taxation in 1872-3 was, therefore, £22,957,031, exclusive of £8,106,457, placed under the head of Rates, as derived from loans contracted on the security of rates and "other sources," and of £1,765,088, placed under the

head of Tolls and Dues, as derived similarly from loans and other sources. Including these items, the total revenue for purposes of Local Government reached £32,829,076, exceeding the total expenditure by about £164,000. The whole amount of loans outstanding at the close of the respective accounts for the same year was no less than £72,000,000, exceeding the whole amount for the previous year by £2,500,000. These figures, which dwarf the proportions of many national budgets and debts, may be left to speak for themselves, and do not require to be supplemented by instances of the manifold ways in which local taxation and expenditure, especially in great towns, come home to every ratepayer. It may be said, in a word, that Imperial finance, even when it deals with larger totals, does not deal with more important items than Local finance, and that Imperial Government, though it affects the destinies of nations more sensibly, is less closely bound up with daily life than Local Government.

3. If we here pause to ask ourselves how far Local Government in England can be said to work well, as a whole, and which are the strongest or weakest parts of the machinery, we are at once confronted with an almost insuperable difficulty. In all government efficiency depends more upon individual action than upon constitutional rules; but in Local Government of the English type almost everything depends on the character and abilities of the men who may be induced by various motives to engage in it. The well-known case of the Atcham Union, in Shropshire, where pauperism was reduced to well nigh incredible minimum by the devoted personal exertions of a single landlord, shows how admirable an instrument of Local Government even a rural board of guardians may become under the leadership of an enlightened chairman. Nor would it be impossible to pick out small parishes, both in towns and in country districts, whose local administration, owing to similar causes, would compare favourably with that of some great municipalities. Speaking generally, however, we cannot but recognise the superiority of large to small boroughs

in all the cardinal virtues of Local Government; nor shall we fail to observe that a local governing body usually discharges its functions the better, the higher those functions are in their own nature. The way in which business is done in several of the more important Town Councils, by men thoroughly conversant with every detail of local affairs, stimulated to industry and fortified against jobbery by the vigilance of their colleagues, raised above personal jealousies by a sense of corporate dignity, and made to feel the full weight of individual responsibility by a careful division of labour, is certainly not surpassed by the conduct of business in the House of Commons, or in most of the public offices. It is in such boroughs, moreover, that ratepayers are most readily induced to sanction expenditure on non-utilitarian objects, like free libraries and public museums, in which England is as yet so far behind the United States. A recent publication shows that Manchester has already established six free libraries, and Birmingham five, closely followed by Leeds, Sheffield, Bradford, and Leicester; while, for want of a sound municipal spirit, the only London district that has adopted the Public Libraries Act is Westminster, and St. Pancras has lately recorded a vote against doing so.

But the School Boards of London, and a few provincial capitals, may probably be cited as the best specimens of Local Government to be seen in England, inasmuch as they have succeeded in attracting the most educated members of the community for the performance of the highest local duty, thereby fulfilling two main conditions of efficiency. For somewhat different reasons, the Metropolitan Asylum District Board is second to no other local governing body in London in reputation for administrative capacity. Here the fifteen members nominated and carefully selected by the Government not only take a leading part in the work, by virtue of their education and standing, but set a standard of honesty and ability to which the representative members, themselves picked men, cannot but approximate. On the other hand, the cardinal vices of Local Govern-

ment are too often illustrated in the municipal economy of decayed or decaying boroughs, in the sanitary economy of localities where an educated class is wanting, and in the management of pauperism under boards of guardians mainly consisting of farmers and tradespeople. In such cases, even if there is no very gross venality, there is almost sure to be an inclination to short-sighted extravagance, alternating with short-sighted parsimony, and a more or less extensive prevalence of corruption in that subtler form known in America as "log-rolling." The contractor or builder has not merely private ambition to gratify, but private interests to serve, by getting into the Town Council when a scheme of drainage or street improvement happens to be on foot. The petty cottage proprietor and the petty shopkeeper are tempted, as guardians of the poor, to keep their debtors or customers afloat by reckless out-door relief; and are, perhaps, tacitly in league with the farmer, who dreads above all things a migration of able-bodied labourers. The self-complacent member of an obscure School Board, like the churchwarden of past generations, likes to lay out large sums on bricks and mortar, with a chance of beholding his own name engraved on a tablet, and sees his advantage in giving handsome orders to architects and decorators; but, as a representative of ratepayers, he grudges the schoolmaster his well-earned salary, and will cut down the most legitimate items of annual expenditure to put a good face on the balance-sheet. This strange combination of penny-wisdom in the disposition of income, with pound-folly in the disposition of capital, is indeed a besetting weakness of English Local Government in its lower gradations. Whatever else may be said in favour of it, we cannot say that it is cheaply worked; and notwithstanding that economy is both the boast and the reproach of local elective boards, it may well be doubted whether, in this respect, they have not much to learn from the non-elective magistrates who manage county finance.

4. At the same time, it is impossible to survey county administration in its entirety, without being struck with

the extraordinary absence of self-government in rural communities. We are wont to look back on Saxon times as barbarous, and on the feudal system as oppressive; but the simple truth is that nine-tenths of the population in an English country parish have at this moment less share in Local Government than belonged to all classes of freemen for centuries before and for centuries after the Norman Conquest. Again, they have not merely less share in Local Government than belongs to French peasants of the present day, but less than belonged to French peasants under the eighteenth century monarchy, though more, it must be allowed, than belonged to their own ancestors of the same age, as described by Fielding. They are protected, it is true, against arbitrary injustice by Imperial laws, enforced, or supposed to be enforced, through Imperial officers, and the county magistrates, who possess a legal authority more patriarchal than could be claimed by Norman barons of the second order, exercise that authority under the searching eye of public opinion. But while the purity of magisterial decisions is rarely impeached, they not unfrequently bear traces of subservience to local or class prejudices, even when they are not indefensible enough to be reversed. If the sentences of borough magistrates on ruffians convicted of wife-beating, and other violent outrages, are apt to be unduly light, because popular sentiment does not regard such crimes with adequate abhorrence, the sentences of county magistrates on poachers and turnip stealers are apt, for a converse reason, to be unduly severe. If the propensity of borough magistrates to favouritism in the regulation of public-house licenses was one principal ground for an alteration of the law, the exercise of the same discretional jurisdiction by county magistrates sometimes laid them open to a suspicion of seeking the benefit of their own properties rather than of the population concerned. If a clique of shopkeepers occasionally succeeds in pulling the wires of municipal elections in boroughs so as to keep patronage and profits in its own hands, county magistrates have been known to support each

other on assessment committees in rating splendid mansions at a preposterously low valuation. Yet few will deny that more intelligence and public spirit is to be found in the county magistracy, whether assembled at Quarter Sessions, or acting ex-officio on various mixed boards, than is manifested by the elective delegates of parishes. It is generally felt that an ordinary body of parochial ratepayers could not be safely trusted with judicial authority of any kind, with the control of licenses, or with the management of schools; and the Legislature still treats them as incompetent to use the Parliamentary franchise aright, for want of proper training in the old English art of local self-government. Nor is this degeneracy of rural districts in the capacity of democratic action redeemed by a thoroughly vigorous and complete organisation of counties on the departmental system. On the contrary, whereas elective mayors of boroughs may be and have been held responsible at law for the peace of their respective precincts, there is no individual or permanent representation of Government, either Local or Imperial, in counties. The prerogatives of the Lord Lieutenant are becoming more and more shadowy; the Court of Quarter Sessions is a fluctuating body whose meetings are intermittent; and the magistrates, though responsible in theory for the maintenance of order, are subordinate to no head or department of State, and are left to do what is right in their own eyes. Let it be granted that small farmers and cottagers, however impatient of Local Taxation, are by no means disposed to grudge their landlords the burdensome privilege of conducting Local Government on their behalf; still, the fact remains that in the rural districts of England many of the powers which properly belong to village communes are either quite extinct or have passed into the hands of non-elective magistrates.

5. It would not, however, be correct to measure the whole amount of self-governing energy in the rural districts of England by the standard of parochial or county organisation. The same process which has impaired the organisation of counties and of parishes has

also, as we have seen, created new centres, as well as new modes, of Local Government; and, moreover, as we are about to see, has diverted a large amount of self-governing energy from Local to Imperial legislation. A due appreciation of these and other centralising tendencies is doubly necessary, for it is here that we must seek both an explanation of the changes that have been wrought in English local institutions, especially during the present reign, and a starting-point for their future reform.

Perhaps the most distinctive feature of English Local Government in modern times, is the system which enables the Imperial executive to exercise an indirect control over many of its functions by means of State inspection, and State grants dependent on efficiency. No such expedient was known to our ancestors, whose only device for enforcing the performance of their duties by local authorities in counties, hundreds, townships, or boroughs, was the imposition of pecuniary fines, which it was not always easy to exact. But State influence in the present day is not limited to indirect pressure. It extends also to a direct interference by Parliament, and the central departments of Government, with matters previously left to local or private regulation, such as the hours of labour, the working of mines, and even domestic arrangements, so far as they may bear upon health. The demand for this kind of interference, which is as old as sumptuary laws, has not arisen so much from any despotic or bureaucratic jealousy of local independence, as from a popular eagerness to employ the powerful machinery of central legislation and administration to compass some end which is ardently desired. Those who advocate the nationalisation of poor-law relief, of educational management, and even of land-tenure—who clamour for a State guarantee of sea-going vessels, and of friendly societies, or who maintain that Government should test not merely weights and measures, but the quality of every article sold—are not consciously opponents of local or individual liberty, but simply anxious to attain beneficial objects by the shortest possible

method. This anxiety may, and sometimes does, lead to legislative mistakes, which a wise respect for local and individual liberty would have rendered impossible. But, after all, it must be confessed that English civilisation should not be retarded until the more backward party of the country have placed themselves on a level with the more advanced; and the example of municipal corporations shows both how little self-reform can be trusted, and how much self-government may gain by Imperial intervention.

Other centralising tendencies have sprung from a patriotic craving for a higher national life, from a bitter experience of the abuses and disorders incident to an excessive subdivision of local powers, from a legitimate expansion of social ambition and political energy, chiefly due to such irresistible agencies as printing, steam, and telegraphy. In the olden times, when people were far more rooted in the soil, and seldom thought of changing their residence, or buying land in another county, there was an instinctive attachment to local institutions, and a readiness to serve in local offices, which it would be absurd to expect in days when men are more familiar with national, and even international, interests; when county families, and the burgher aristocracy, look upon London as a second home; when the rural labourers themselves have become migratory; and when smaller are attracted towards larger masses of population, as by a fixed law of political gravitation. It must not be forgotten that men who cheerfully spent their lives in gratuitous exertions on behalf of their own neighbourhoods had to be remunerated for transacting the affairs of the nation in Parliament, and would have thought it an intolerable hardship to be impressed into any unpaid commission, such as those which nowadays perform so much useful work for the public. Nor must it be forgotten that, putting aside all those persons who live only for sport or self-indulgence, a very large proportion of the leisure and brain-power otherwise available for Local Government is actually devoted to semi-public duties of a commercial or a philanthropic nature, which

had no place in earlier states of society. If we could lay our hands on all the directors of railway and other joint stock companies, all the governors and trustees of schools and other educational institutions, all the managers of religious and charitable societies, and if we could employ their undivided powers on Local Government, we should no longer have reason to lament a dearth of materials, whatever difficulty we might have in organising and applying them. In fact, Local Government has been to a considerable extent supplanted by voluntary association; and though it may well be doubted whether voluntary association fosters so active and conscientious a sense of citizenship, it certainly has merits of its own to which the old English squire or burgher was altogether a stranger.

6. But centralising tendencies are not the only forces antagonistic to effective Local Government in modern England. The unequal distribution and exorbitant influence of wealth, especially in the form of landed property, would be a formidable counterpoise to local institutions of a popular character, even if the social current did not set in the direction of centralisation. A foreigner might, perhaps, imagine that in every county the great landowners and their eldest sons would be the natural champions of such institutions, from which the country party drew its very life-blood in olden times. So, too, a foreigner might imagine that municipal independence should be cherished by the leading citizens of great towns with as much jealousy and pride as in the days of which Macaulay tells us, when "London was to the Londoners what Athens was to the Athenians in the age of Pericles; what Florence was to the Florentines in the sixteenth century." Experience, however, teaches us that a revival of self-government in counties is not ardently desired, if it be not discouraged, by the landed aristocracy, and that no class has less concern for self-government in towns than the commercial aristocracy. The reason in both cases is obvious enough. The power which a great landowner might acquire as chairman of a parochial council, or even as member of a

county parliament, would be as nothing compared with the power which he already possesses, as lord of all the farms, cottages, and allotments round his own domain; as the chief employer of labour in the locality, and as a resident magistrate. Such a man will often attend a board of guardians, because he has a seat there *ex officio;* but why should he care to obtain an elective office by the votes of his own dependants, whose unanimous resolutions in any communal assembly which could be constituted would be practically outweighed by the expression of his own individual will? The merchant-princes of the City, and the richest capitalists in manufacturing towns, are deterred by similar motives from aspiring to civic dignities. Their sense of self-importance and their sense of responsibility find a far more complete gratification in the colossal operations of trade, and in the management of country estates far removed from their place of business, than is offered by a career of municipal statesmanship crowned with knighthood, or baronetcy itself. The one municipal distinction which is generally coveted by them is that of being placed on the commission of the peace of the borough; and those who have once become magistrates too often decline any other municipal duty which they may previously have been persuaded to discharge.

Nor is this indifference to Local Government among the highest classes—both in towns and rural districts—compensated by a corresponding zeal for it among the lower classes. With all its advantages, the parochial system, as it exists in English country parishes, is singularly ill-calculated to supply any democratic training for self-government, or to promote the recognition of common interests and mutual duties in village communities. The humblest member of a Presbyterian congregation, by virtue of his spiritual independence, is made to realise that he is a citizen; but the ordinary English farm-labourer, accustomed to depend on the clergyman in spiritual matters, as he depends on the squire for his cottage and the farmer for his wages, does not yet feel himself to be a citizen, and will not be

made to feel it by the mere acquisition of a Parliamentary vote. When he is roused into a belief that he is deprived of his rights, his first instinct is to combine with his fellows, and his next to demand protection from Parliament. He scarcely dreams of claiming a share in Local Government; and even trade-unionists in towns, with all their capacity for organisation and agitation, have seldom put forth their strength in municipal elections. The consequence is that, whereas the Local Government of rural districts is chiefly in the hands of magistrates, but partly in the hands of tenant farmers, the Local Government of towns is almost entirely in the hands of shopkeepers and struggling professional men, engaged in busy callings, and with few hours to spare for public business. The mass of the population take little part in political life of any kind, except when called upon to vote, to attend a town-meeting, or to sign a petition; and so far as they read the newspapers, they probably gain more knowledge of national than of local affairs. Neither in rural districts nor in towns can it be said that activity in local administration is an avenue to Parliament; and persons who could speak with authority on local affairs, are often set aside by constituencies in favour of successful money makers or political adventurers. At the same time, it is notorious that contests for municipal office are mostly determined by the same political considerations, and managed by the same agents, as Parliamentary elections. This partisanship is manifestly an evil, for it may involve the rejection of a good alderman or councillor, solely because he is on the less popular side in Imperial politics; but it is not an unmixed evil, for it helps to clear the atmosphere of jobbery in its worst forms, and may stimulate men of a higher stamp to accept municipal office. Moreover, the prevalence of keen political interest in a borough, is a potent security for a vigilant and searching criticism of its Local Government. It is one great advantage of Imperial over municipal administration, that it is conducted in the fierce glare of publicity—under the scrutiny of a metropolitan

press, which no blunder can escape, and no bribe or solicitation can silence. The same can hardly be said of local journalism, except in one or two provincial towns of the first order; but it is certain that where local party spirit runs high, there is much less danger of public interests being neglected than where a non-political local oligarchy rules supreme.

IV.

1. Such are some of the general conditions under which any system of Local Government must be worked in this country. It remains to consider the principles and limitations to be observed in framing a legislative scheme for the reform of Local Government in England. Several of these have been admirably laid down and illustrated by Mr. J. S. Mill, in his treatise on Representative Government; but there are others, no less deserving of attention, which are suggested by our previous review of the subject.

The very first rule which a statesman would set before himself in attempting so difficult a task, would be a rule against destroying any local institution which has real life in it. There is real life in county institutions, not merely by virtue of the many historical associations belonging to counties, but also by virtue of the many common ties and interests of which county towns are the centre, and of the vast administrative business actually transacted by magistrates and other county authorities. However great the disparity in size between the smallest and largest counties, even the smallest contains all the elements requisite for an independent organisation; nor is there any virtue in uniformity of size, if the parts of each organisation be duly proportioned. For similar reasons, there is real life in borough institutions, the vitality of which is still further strengthened by a community of sentiments, wants, and occupations, such as can only exist in a town-population. There is real, though less vigorous, life in the institutions of parishes, due to causes already explained, as

making all descriptions of property contribute equally to local taxation. Now, whatever this difficulty may be, and however necessary it may be to surmount it before reforming local taxation, a little reflection will show that it has no direct bearing on a reform of Local Government. Whether or not the rich fundholder ought to bear as large a proportion of local burdens as the occupier of lands and houses, and whether his pocket can be reached more effectually by a local income-tax or by increased subsidies from the Consolidated Fund to local treasuries, neither the proper basis nor the proper organisation of Local Government is determined thereby in any material degree. No doubt, if personalty is to be rated as well as realty, its owners will be entitled to votes at local elections in respect of it; and it is quite possible that, in some places, they may concern themselves more actively than heretofore in local affairs, with great advantage to their neighbours. The same argument has been used, with equal force, in favour of what is called the half-rating system, under which the immediate liability to rates would be equally divided, as to real property, between owners and occupiers. This was the proposal made by Mr. Goschen in 1871, and it is strongly recommended by the experience of Scotland, where landowners, having formerly paid all the rates, and still paying half the rates, have brought an enlightened interest to bear on Local Government. But it would be worse than idle to complicate the question of Local Government with speculations on rival schemes of local taxation. There are as many points of contact between Imperial Government and Imperial Taxation, as between Local Government and Local Taxation; but no reasonable man would seek to make his views of national policy mainly depend on his views of national finance. It is not even necessary, though it may generally be convenient, that areas of Local Government should correspond exactly with areas of Local Taxation, and much confusion of thought might have been avoided, had this distinction been more fully realized. Let us, then, prosecute our inquiry unmoved by the controversy which prevails respecting the principles of

rating, and assured that no conclusions to which it may lead can shake those legitimately founded on a careful study of Local Government, from its historical and political side.

The constitution of electoral and governing bodies is a problem of still greater delicacy, because the facts to be considered are more complex, and the possible modes of dealing with them more various. Happily, there is little dispute as to the expediency of making the electoral franchise at least as wide as the liability to rates, and, by the existing law, all ratepayers are qualified to vote for the majority of those local offices which are elective. It has been much disputed, however, whether all ratepayers should have equal voting power, whether all local offices should be elective, and, if not, how the elective should be distinguished from the non-elective offices.

It is remarked by Mr. Mill, that, inasmuch as Local Government is mainly concerned with the disposition of local taxation, there is the less to be said against proportioning electoral power to pecuniary contribution, as in the case of elections for poor law guardians and local boards. It may be added, that, inasmuch as the educated classes have much less influence over Local than over Imperial Government, by virtue of their education, there are stronger reasons for giving them an advantage by means of plural or cumulative voting, especially as their active participation in local affairs is for the common good of all. But it must not be forgotten that, of all classes in the community, the working classes are the most directly interested in Local Government, and, above all, in sanitary regulation, upon which their health and domestic comfort so vitally depend. Yet vast numbers of the working classes are disabled, for want of a ratepaying qualification, from voting either for town councillors in boroughs, or for vestrymen in London, or for guardians of the poor. There are districts in the Metropolis where petty tradespeople predominate in the local constituencies, and absolutely rule the vestries, unchecked by any resident gentry, and practically uncontrolled by the Local Government Board

Many of the vestrymen in such districts are themselves owners of the miserable tenements in which the poor are huddled together, or the retailers of articles peculiarly liable to fraudulent adulteration. The mockery of entrusting such persons with the duty of enforcing remedial measures against themselves would be quite flagrant enough, even if it were not aggravated by the fact of their lodger-tenants and poorer customers being actually unrepresented. This is an anomaly which it is by no means easy to remedy, inasmuch as lodgers seldom reside long in any one locality; but it is an anomaly which cannot be overlooked in discussing any plan for extending the system of plural voting, so as to multiply the electoral power of the rich. It may be most desirable to assimilate all local franchises to each other, establishing one uniform qualification, as well as one mode and one day of election for all local offices. But it is an object of still higher importance to bring as many as possible of those over whom Local Government is almost omnipotent, for good or evil, within the pale of local representation.

It by no means follows that all local offices should be representative, in the sense of being filled by direct, or even by indirect, election. On the contrary, there are many reasons for preferring nomination to election in appointments to purely executive offices, and some reasons for preferring indirect to direct election in appointments to certain representative offices. "It is ridiculous," as Mr. Mill says, "that a surveyor, or a health officer, or even a collector of rates, should be appointed by popular suffrage." A large mass of electors, who may have sufficient means of estimating the claims of candidates for the office of town councillor or vestryman, can rarely have sufficient means of estimating the claims of candidates for offices requiring special ability of a kind which has nothing to do with popular qualities. Such offices, if filled up by the choice of ratepayers or large representative boards, inevitably become the prizes of persistent canvassing, or shameless appeals to sympathy; whereas, if they are filled up by small representative boards, they are very apt to be distributed

within a narrow circle of selection. Experience shows that, on the whole, the best security for executive offices being filled up wisely and honestly is individual responsibility; and, if this principle were judiciously carried out in a complete reform of the local Civil Service, its efficiency and tone would be raised to a much higher level. Again, a large mass of electors, who may be quite fit to choose persons to be charged with the ordinary powers of vestrymen or guardians, may be quite unfit to choose persons to be charged with extraordinary powers; as, for instance, members of the Metropolitan Asylum District Board, or of the Metropolitan Board of Works. Accordingly, these are chosen by the Boards of Guardians and Vestries respectively, with excellent results; and, if the same principle of double election were judiciously carried out in a complete reform of Local Governing Bodies, it might be safe to combine a democratic suffrage with a considerable extension of the functions which are sometimes found too arduous for the immediate representatives of ratepayers. It would also be highly desirable, were it possible, to provide for the better conduct of public business on boards which are partly deliberative and partly administrative. In the Imperial Parliament, the Prime Minister and his colleagues are virtually responsible for all necessary measures of administration, and for the initiation of legislative policy; but in a Town Council, or Court of Quarter Sessions, no one is responsible for either duty, though an energetic mayor or chairman may take them upon himself. Perhaps a standing executive committee, elected by these bodies from their own members, and invested with definite legal attributes, might be trusted both with the distribution of their patronage, and with the general direction of their proceedings—subject, of course, to such control as Parliament exercises over the Imperial Ministry.

But, however perfect may be the system of election on which Local Government is based, and however admirably its legislative may be separated from its executive department, it will fail to attract the highest capacity, or to perform its allotted work successfully,

without a vigorous concentration of local councils. If a borough hardly contains within itself good materials for one municipal board, how can good materials be procured for the town council, for the board of guardians, for the improvement, commission or local board, if any, and for the school board? We are here supposing, be it observed, that eligible candidates are equally ready to solicit a gratuitous office, whatever degree of power or influence be attached to it. The case is very much stronger if we take into account the natural motives of local ambition and public spirit. It is morally certain that if, as Mr. Rathbone has lately proposed, there were but one body in each borough or rural district, entrusted with all the powers of Local Government, including the management of schools, men of education, independence, and leisure, would be far more disposed to serve on it than on some one of half-a-dozen boards, whose relations no one understands except the local attornies. It is not so certain that men of this class are to be found at all in every borough and rural district, or that school boards, in particular, would not suffer in character and influence, if they ceased to be elected by a special mode of voting for a special duty. But the great mass of local business now done by a multiplicity of co-ordinate boards, composed of busy men, would surely be done better if it were subdivided among committees, under the direction of a single board. This concentration, too, might be effected without enlarging the average size of the areas selected for the groundwork of it—as, for instance, without enlarging the average size of urban or rural sanitary districts—though it would be far more beneficial if accompanied with a revision of areas. Nor is it open to any objections that can be urged against Imperial centralisation. It is the weakness, and not the strength, of local institutions in England that has favoured and almost justified the growth of Imperial centralisation in late years. If many of these institutions resemble detached fragments of Imperial Government rather than organic parts of Local Government, the evil is to be cured, not by a

further dispersion, but rather by a wholesome consolidation, of local forces.

In attempting to define the proper sphere of Local Government, we must be quite as careful to guard against encroachments on individual liberty and duty, as to guard against encroachments on Imperial authority. The province of law is not to punish the violation of moral obligations, as such, but to protect society against injury. Sometimes this protection may be given most effectually by a direct public regulation of matters, like sanitary arrangements, which, in more primitive times, each citizen was left to manage at his own discretion. In other cases, the object will be more surely and safely attained by recognising and enforcing individual responsibility. It is possible for Local Government to become too meddlesome and inquisitorial, though at present the danger may rather lie on the opposite side, and Local Government may need to be strengthened at once against the selfishness of individuals or companies, and the bureaucratic aggressions of State officials. The broad line which should divide the sphere of Local from that of Imperial Government is clearly drawn by Mr. Mill. "The authority which is most conversant with principles should be supreme over principles, while that which is most competent in details should have details left to it. The principal business of the central authority should be to give instruction, of the local authority to apply it. Power may be localised, but knowledge, to be most useful, must be centralised." Thus, Parliament has laid down fixed principles for the assessment of property to local rates, so that no local authority could either levy a graduated rate or rate personalty at all; but the assessment is actually made by the overseers of each parish, and it is well known that rates so assessed are collected with less difficulty than Imperial taxes. But the degree of power which it may be wise for Parliament to vest in local governing bodies must evidently depend very much on the capacity of those bodies. Even country parishes have been treated as competent to decide for themselves whether they shall have a school

board, and school boards have been treated as competent to decide for themselves whether school attendance should or should not be made compulsory; but no local authority has yet been treated as competent to superintend the redistribution of educational endowments. The formation of county boards for this purpose was suggested thirteen years ago by the Duke of Newcastle's commission, and a similar proposal for the formation of county boards of health was made by Sir Thomas Acland, as a member of the sanitary commission. No one can deny that much is to be said for both schemes, neither of which conflicts with Mr. Mill's conception of the functions belonging to Local Government, but no one can affirm that Local Government as now organised in counties is strong enough to bear such an additional weight.

In short, a thorough reform of Local Government must needs precede any legislative extension of its sphere, and any legislative extension of its sphere must be founded on a policy very different from that which inspires most Permissive Bills. It may be desirable to give a borough the power of buying up gas or water companies without compelling it to do so, but the great majority of powers which it is desirable to confer on a local governing body are powers which involve important duties. Such duties are left to it by the Imperial Government, not because it does not concern the nation whether they are done or not, but simply because they can be done better, more cheaply, or more conveniently by local authority. It is, therefore, not enough to arm the Imperial Government with the right of advising, inspecting, and reporting; a right of coercing must also be reserved, and occasionally exercised. Even Mr. Mill would allow the central executive, in "extreme cases," to dissolve the local representative council, or to dismiss the local executive, and if a safeguard were needed against the abuse of this prerogative, it might be made necessary that a *mandamus* against the defaulting local governing body should previously have been obtained in the Court of Queen's Bench. Nor

does there appear to be any good reason why, in the last resort, local institutions should not be suspended altogether, just as inveterate corruption in a constituency is punished by temporary or permanent disfranchisement. The effect of this penalty would be to deprive the contumacious district of its self-governing privileges, and to place it under the direct administration of county or imperial authority, as the case might be. Short of these high-handed measures, there are many expedients whereby salutary pressure can be applied to local governing bodies, from a central office. Such is the power of refusing subsidies from the Consolidated Fund, or from other funds, like the Common Poor Fund of the metropolis, under the control of a State Department. Such, too, is the exceptional power by virtue of which Mr. Goschen was enabled to amalgamate the guardians of Holborn, Clerkenwell, and St. Luke's into a single board, and that habitually exerted by Poor Law auditors in the disallowance of questionable items and the "surcharging" of accounts. There is a vital difference between interference of this kind, however constant, and interference which takes the form of substituting imperial for local administration. If the latter be ever admissible, it is admissible only where the whole nation is interested in the due performance of the local duty. It is possible to conceive the corruption of local tribunals becoming so flagrant as to warrant the provisional transfer of their jurisdiction to a special commission, but it is not possible to imagine the paving or lighting of a town becoming so bad as to warrant the improvement of it by a similar method.

2. It is now time for us to inquire what kind of change the gradual and discriminating adoption of these principles would involve in the existing Local Government of this country. It is self-evident that it would involve an exhaustive reconstruction of boundaries and areas, but it does not follow that any violent derangement of local associations would be necessary. Each county might retain its integrity, with slight variations, such as the annexation of its detached portions to other

counties, and the revision of its frontier-line. Municipal boroughs might also retain their integrity in all essential respects, though more alteration of boundaries would here be necessary to make their circuits identical with those of Parliamentary boroughs, to prevent borough areas overlapping union areas, and to bring within the former any purely suburban districts which happen to be outlying parts of rural parishes. This would of course imply a corresponding disturbance of parish boundaries, and it would, on other grounds, be expedient that parish boundaries, of which the importance has been much diminished by union chargeability, should be thoroughly rectified. There remain Poor Law Unions, districts under local boards, districts under improvement commissions, petty sessional divisions, and districts created for special purposes under recent Acts, like the school board district and the highway district. Among these, districts under local boards and districts under improvement commissioners have already been designated as self-governing urban communities by the Public Health Act of 1872, and armed with powers for the regulation of building, which presuppose a dense population. Having advanced so far in municipal independence, they—or at least the more populous of them—might well be invited to advance a step further and to accept the position of corporate boroughs, unless their inhabitants should object to incorporation, and prefer the alternative of falling within the circuit of county organisation, which should embrace all non-corporate communities, both urban and rural. The whole of England, excluding the metropolis, would then exhibit, as of old, but two principal forms of Local Government, presently to be described, the one applicable to boroughs and the other to counties. It would next be requisite to reduce all the heterogeneous sections of counties to a common measure, so as to make Poor Law Unions coincide with highway districts and petty sessional divisions, and to obtain one secondary area intermediate, like the ancient hundreds, between the parish and the county. In most instances, the Poor Law Union would

probably be taken as the approximate basis for this new area, because of the large establishments and complex machinery which belong to it. But it might often be convenient that union boundaries should conform to boundaries of highway districts, which have the advantage of not encroaching on towns, and sometimes the Petty Sessional divisions might indicate the natural watersheds, so to speak, of Local Government, better than either unions or highway districts. It is needless to add that whatever lines of demarcation might be selected, all cross-divisions would be absolutely eliminated. Every parish would be wholly included within one secondary area, be it what it might; every secondary area would be wholly included within one county, and no *imperium in imperio*, except the municipal precincts of corporate boroughs, would discolour a map illustrative of Local Government in England.

In corporate boroughs, the sphere of municipal authority would scarcely need to be enlarged. The Town Council would continue to possess all the powers assigned to it by the Municipal Corporation Act and the Public Health Act of 1872, and it is possible that in some of the largest boroughs no considerable extension of these powers may be expedient. In the great majority of boroughs, however, it would be well if the board of guardians or select vestry could be transformed into a committee or independent delegacy of the Town Council, whose numerical strength would have to be proportionably increased. A seat on the Town Council would thus become a position of great influence and responsibility, and its dignity would be materially enhanced if the borough magistrates were made *ex-officio* town councillors. The question of merging school boards in Town Councils would have to be treated on its own merits, and might, perhaps, be reserved for subsequent consideration. No doubt, the cumulative vote has proved a valuable safeguard for the rights and interests of ecclesiastical minorities, but there are other rights and interests which deserve respect besides those of ecclesiastical minorities, and other modes of protect-

ing the latter. If five-sixths of the ratepayers in a borough should desire to amalgamate their school board with their Town Council, it would not be very easy to show why their wishes should not be allowed to prevail, or why, if need be, Town Councils should not be permitted to associate clerical or lay assessors with themselves for purposes of school management. At all events, the presence of councillors mainly representing educational parties, coupled with the admixture of a judicial and non-representative element, might impart to an ordinary Town Council a character which a few only of the best have as yet succeeded in attaining. If further securities were needed against what Mr. Rathbone calls "hot or cold fits" of popular caprice, and especially if the municipal suffrage were extended to lodgers, there would be no innovation in borrowing the method of cumulative voting, or that of plural voting, for the election of Town Councillors, or a certain proportion might be elected by owners of rateable property. In boroughs too small to be formed into separate poor law unions with due regard to economy, the Town Council might be empowered to make special arrangements for indoor relief with the nearest workhouse, and in the future incorporation of small boroughs the privilege of maintaining a separate police force should not be granted without reserve.

It would be far more difficult to deal with counties, and rural or semi-rural divisions of counties, because new powers as well as new governing bodies would have to be created by Parliament. The parish would probably be retained as the elementary unit, but it might be needful to elevate the larger townships into the legal status of civil parishes for all but merely ecclesiastical purposes. This having been done, it would be seen that if the parish is to be anything more than a rating area, it requires some kind of parochial constitution. Mr. Goschen proposed, in his Bill of 1871, that in every parish the ratepayers would annually elect a parochial board, varying in number according to population, with the joint powers of overseers, inspectors of lighting and

watching, highway surveyors, and nuisance authorities, the chairman of which board, also to be elected by the ratepayers, would be the civil head of the parish, and its representative in any higher local council. One great merit of this proposal is that it would provide a single accessible officer in each village, like the maire in a French commune, to whom all official communications might be addressed, and reference might be made on various parochial matters which the clergyman, for want of a civil head, is often obliged to settle as best he can. Considering that overseers have long filled a distinctive place in the parochial system, it might be convenient to retain this name for the civil head of a parish, nor would the utility of such an elective officer altogether depend on his being chairman of a parochial board. For it is clear that no parochial board of a rural village could safely be entrusted with any but the subordinate and ministerial functions of Local Government, and that it would be chiefly valuable as a select and permament committee of the vestry. The real mainspring of Local Government in rural districts would be placed in the governing body of the union, or whatever district might be substituted for the union as the secondary area of administration. This body, not merely composed of overseers from country parishes, but also representing non-corporate towns within the district, would regulate poor-relief, highways, sanitary concerns, and all other local matters, except those which, like the management of gaols, lunatics, and police, would continue to be regulated by the county executive. It might, however, be commissioned to act, for some purposes, as a branch of the county executive, and it might, in like manner, commission a parochial overseer, or a parochial board, to act as its own agent within a given parish. Non-corporate towns which now enjoy the privilege of managing their own highways and sanitary affairs, might retain that privilege under the general control of the district council, and any equitable adjustments of local taxation might be made by the same authority. The district council, too, rather than any parochial board, would be the body

most competent to superintend elementary schools within its district—subject, however, to such exceptional considerations as have been admitted in the case of boroughs. The administrative capital of the district would also be the centre of petty sessional jurisdiction, and it is difficult to believe that Police arrangements, Post Office arrangements, and Inland Revenue arrangements, might not be so modified by degrees as to make them correspond with the new organisation. If the method of plural voting were not adopted in the election of parochial overseers, it might be well to have on the district council a certain number of members elected by that method from the whole district, and it would, in any case, be well that resident magistrates should have the same right of sitting *ex-officio* on district councils which they now have of sitting on boards of guardians.

The higher board of the county, whatever functions might be reserved to it, must needs be constituted on like principles—that is, it must contain both representatives of ratepayers and a certain proportion of magistrates. Considering the great experience of magistrates in county administration, and considering, too, how largely they are interested in it as owners of property, there would be nothing unreasonable in allotting them one-half of the seats on the county board, and the other half might be filled by members elected from the district councils. Such an assembly would certainly not err on the side of being too democratic, and it might possibly be necessary to reinforce the popular element in it, if it should ever acquire extended legislative powers. As an executive body, and board of control, however, it would command all the more confidence from not being the creature of a *plebiscite*, or directly amenable to impulses from below. It would exercise, of course, all the non-judicial powers now vested in the court of Quarter Sessions, as well as such other powers of inspection and direction as the Imperial Legislature might delegate to it. For instance, there is no reason in the nature of things why a county should not superintend its own factories or mines, as well as its own schools of every grade; why

it should not regulate the inclosure of its own commons; or why it should not have its own licensing system, within limits to be laid down by Parliament. On the other hand, it would be necessary, for these purposes, to bring corporate boroughs within the sphere of effective county authority; a measure which, even in ancient times, was found to be fraught with insuperable difficulties. It would be more prudent, in the first instance, to be content with establishing effective county authority over rural districts, and those urban districts which may not have reached the rank of boroughs, and therefore have not a separate magistracy and local tribunal. The judicial business of the Quarter and Petty Sessions would not be affected by any reform of Local Government, and might remain on its present footing, until the time comes for a comprehensive reform of the Judicature. If, however, the criminal jurisdiction of Quarter Sessions should ever be committed, as in Ireland, to a stipendiary chairman, it would be worthy of consideration whether he should not be further invested with a civil jurisdiction equivalent or superior to that of a modern county court judge. There are many local disputes about rights of way, estate boundaries, pollutions of water, and the like, which are now brought at a vast expense before the superior courts, but which might be determined far better in a summary manner before a judicial committee of Quarter Sessions, as they formerly were before the assembled suitors of the old county court.

It must be acknowledged that no reorganisation of Local Government in England would be complete which should not include the metropolis. But it is not to be assumed too hastily that a drastic reform of municipal institutions is more urgently needed in London than elsewhere. By virtue of its mere size and population, London is incapable of being governed like an ordinary borough, whatever constitution may be imposed upon it. By virtue of being the capital of the empire, it contains an infinitely larger number of men with the leisure and ability requisite for municipal office, over and above the

vast floating mass of summer residents, and, so far, has an apparent advantage over other great towns. But then, by virtue of the same exceptional circumstance, it contains a very small proportion of wealthy and highly-educated citizens born and bred within it, attached to it by family ties, and willing to serve it with a life-long fidelity. The want of public spirit displayed in London elections, both municipal and parliamentary, the want of intelligence and sense of duty which has characterised the action of certain London vestries, and the general want of corporate vitality in the whole metropolitan community, are the natural consequence of these peculiar conditions, rather than of defects in the formation of local areas or local governing bodies, which might be cured by legislative measures. If the existence of a flagrant anomaly calls for prompt legislation, the arbitrary power of non-elective magistrates in rural districts is a far more flagrant anomaly than any faulty distribution of self-governing power which may prevail in London. If legislation be demanded to correct practical evils, arising from local misgovernment, it remains to be proved that London is worse governed, on the whole, by the Corporation, the Metropolitan Board, and the vestries, than most boroughs are governed by Town Councils —with inferior resources, it is true, but with slighter difficulties to overcome. This, however, is no reason why the municipal government of London should not be improved, and there are decisive reasons for believing that it is capable of improvement. However creditable may be the management of the Corporation, or of each parochial vestry, considered by itself, no one can defend a system which places the same great thoroughfare under two or more independent authorities, besides making it liable to be constantly broken up by gas and water companies. However conscientiously vestrymen may perform their duties, no one can fail to see that few London parishes contain the necessary variety of elements for enlightened self-government, or that London as a whole possesses a stronger individuality and cohesion than any one of its constituent parts. It is not merely

an absurdity, but an evil, that Parliament should be incessantly called upon to meddle with the local affairs of London, and that a Ministry should be discredited by its failure to regulate metropolitan cabs. Upon these grounds alone, if no others could be alleged, the present government of London must be regarded as unsatisfactory, though not as scandalous or intolerable.

Two alternative plans of municipal reform have been proposed for the metropolis—the one erecting the existing parliamentary boroughs into separate municipalities; the other subordinating them, as "municipal districts," to one central "Municipality of London." Any detailed criticism of the last, which is now before the public, would here be out of place; but it is right to point out that, in some of its leading features, it is in conformity with the principles before laid down. These features are the maintenance of the Corporation as the focus of municipal life, and the extension of its organisation to all the surrounding districts of the metropolis. A reform might be conducted on this basis with less disturbance of vested interests and existing arrangements than would be caused by the creation of nine distinct municipal boroughs within the metropolitan area upon the ruins of the vestries and district boards. Unfortunately, the wholesale destruction of vestries and district boards is equally contemplated by those who advocate the expansion of the Corporation; and the municipal districts which it is proposed to substitute for them are, in fact, intended to be electoral areas rather than independent areas of administration. The almost inevitable consequence of such an arrangement would be that, in the language of Guizot, the supreme municipal council would resemble an edifice detached from the soil, and that London would be governed by an army of paid officials under the ineffective control of a deliberative assembly.

Supposing this part of the scheme to be abandoned, and the vestries to be retained as subordinate governing bodies, their efficiency might be increased by means already suggested. If, for instance, their func-

tions should be amalgamated with those of the metropolitan boards of guardians, it might be made worth the while of better candidates to offer themselves for election, the benefit, if any, of plural voting might be imported, and magistrates or nominees of the Government might be introduced as *ex-officio* members. But in any case a supreme governing body must be created for the metropolis, capable of directing and controlling the action of vestries, as well as of dealing with such questions as the provision of dwellings for the labouring population. This body might be partly composed of members chosen by the vestries themselves, partly of members chosen directly by ratepayers—voting, not in small wards, but in districts as large as the Parliamentary boroughs—and partly of officials and other persons representing the interest of the nation in the government of the metropolis. It would of course exercise all the powers now vested in the Corporation, or the Metropolitan Board of Works, but would be clothed with many additional powers which the Board of Works does not possess, and, in particular, with the power of compelling vestries to carry out its rules in concert with each other. The only corporate privilege of any importance which it would be hardly possible to conserve under such an administration, would be the independence of the City Police; and it would not be impossible to devise provisions whereby the advantages of this independence might be secured without the inconvenience of a divided command. The absolute control of an independent police force is the most imperial of all the functions which are entrusted by the nation to local governing bodies. There are special reasons why it should not be entrusted to a local governing body in a city which not only contains nearly four millions of inhabitants, but is also the seat of Imperial Government. The surrender by the Corporation of London of its very limited police authority would be a trifling sacrifice to make for the privilege of becoming the central force of the most powerful commune in Europe.

There are also special reasons why the London

School Board, having set an example of municipal statesmanship to other local councils of the metropolis, should not be swallowed up by a new municipality of London. All such changes as we have been contemplating in the present organisation of Local Government must needs be experimental; and all experimental changes in politics should be made tentatively, so that a false step may be easily retraced. The London School Board itself has not yet ceased to be on its trial, but it has already taken root and borne excellent fruit—the best proof of vitality, and the best claim to preservation. The mere fact that it has won the confidence of London parents, London schoolmasters, and London clergymen, entitles it to be treated with respect, for the confidence of the people is the very breath of life to local institutions. All lasting forms of government have either grown out of or grown into national habits; but forms of Local Government are, above all others, dependent for their success on this condition. It is sometimes possible to enforce tyrannical laws upon a whole people by Imperial power; but it is not possible to make unwilling men serve heartily, and unprincipled men serve honestly, in local offices, or to keep the machinery of local administration in working order, if many of the wheels have the will—as all have the power—to put themselves out of gear. Let us, then, dismiss the notion that any single Act of Parliament, though it were passed unanimously by both Houses, could regenerate all the local institutions of this country, or even give effect to such modest practical conclusions as our reasoning may have led us to adopt. Centuries were needed to develop the ancient system of local government in England, to mould it into accordance with mediæval feudalism, and to accomplish the disintegration which it underwent between the Reformation and the Reform Act. The forty years which have since elapsed have done much to revive its spirit, and to constitute powers which, duly harmonised, would enable it to fulfil its legitimate ends; but the process of harmonising these powers has barely commenced, and will hardly be completed in less than one generation.

But it may be asked whether, after all, the benefits to be attained by a gradual reconstruction of Local Government in England would repay the efforts which it would assuredly cost to attain them. This is a question which no true reformer will shrink from putting to himself, and in answering which he will prefer to err on the side of moderation. Let it be confessed that political miracles are not to be wrought by safe methods in quiet times, and that even the ultimate result of measures like those which have been considered would fall very far short of the heroic legislation ascribed to Alfred, or the imposing creations of the French Revolution. They could not galvanise into life the Local Government of those bygone ages, with their picturesque variety of provincial institutions, when the law of gavelkind was but one of many customs which divided English counties from each other, when local and personal allegiance was often stronger than national allegiance, and when the Great Council of England was little more than a federation of local assemblies. They could not give back to English society the warlike burghers who upheld the Saxon traditions of self-government against Norman kings, or the sturdy yeomanry who fought at Cressy and at Agincourt, or the gentry who devoted their whole lives to magisterial duties in days when London and the Continent were comparatively inaccessible. Neither would they satisfy the requirements of the *laissez-faire* doctrine—too palatable to political indolence and selfishness—which acquits the Imperial Government of almost all responsibility for the acts of local governing bodies, as well as of individual citizens; nor would they realise the aspirations of those who seek to invigorate Local Government with the ulterior design of enfeebling the capacity of Imperial Government for mischievous activity. Nevertheless, so far as they should actually invigorate Local Government, they would reconcile, by a happy necessity, two conflicting ideals, building up conservative barriers or breakwaters against revolutionary flood-waves, yet gratifying the democratic instinct which craves for greater communal liberty. By

opening a wider career to municipal patriotism, and supplying a missing link between Municipal and Parliamentary representation, they would not only contribute to make civic offices more attractive to men of ability and social position, but would also give such men stronger motives for public-spirited exertion. By restoring to rural communities the idea of common rights and duties, they would help to diffuse among their various members a sense of local responsibility now almost confined to landowners, and they would help to bring landowners themselves within the reach of local opinion. By accustoming representatives of all classes to work together daily for public but non-political objects, they would strike at the root of those class prejudices, mainly springing from mutual ignorance, which are not corrected, if they are not rather aggravated, by the rare and boisterous association of rich and poor voters at Parliamentary elections. By relieving the national Legislature of purely local business which ought never to have been cast upon it, they would set free a large reserve of legislative energy for purely national business, which no local body can discharge at all, but which the Legislature, overburdened as it is, cannot discharge efficiently. And thus, without encroaching on the province of Imperial sovereignty, or outgrowing the humbler and homelier ministrations which are its characteristic function, Local Government in England might once more become a great constitutional power intermediate between the State and the individual citizen, the permanent bulwark of social order, and the national school of civil liberty.

LOCAL GOVERNMENT AND TAXATION IN SCOTLAND.

By Alexander M'Neel-Caird.

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LOCAL GOVERNMENT AND TAXATION IN SCOTLAND.

I.—Historical Sketch.

Under the feudal system the sovereign succeeded early in asserting a supreme right, not as governor merely, but as fundamental owner, to all the land in Scotland. He either dispossessed those who disputed his right, or conciliated them, by giving them new grants to be held of himself. In some principalities the estates of great families were originally held without parchments, like the sovereign's own, won and kept by the sword. But these were gradually brought into dependence on the Crown, and it has long been a settled principle in the law of Scotland that all territorial rights are subordinate to and derived from the Crown.

The Crown in its grants of land created baronies, and gave the barons, its vassals, ample jurisdiction within their territories. By the ancient grant of "pit and gallows," the power of life and death was conferred on them, and the wrath of an old feudal baron was occasionally appeased by the prompt use of the nearest tree. The most ancient form, therefore, of local jurisdiction of which any trace remains, was the baronial; and the power of the barons grew till it alarmed the Crown which had created it.

There sprung up, in the course of time, communities who engaged in manufactures and merchandise, and the Crown sought in these some counterpoise to the great barons. It gave charters to these communities of the lands in their neighbourhood, and made them perpetual

corporations, with power to choose councils and magistrates, and with special privileges of trade. These, after a long term of abuse, have grown into veritable republics, with magistrates chosen by the people, practically independent in their office of the Crown, and their acts subject only to revision, for error or illegality, in the courts of law.

It was one of the essential duties of a baronial fief to give attendance on the high courts of the sovereign, and to advise the Crown in the administration as well as the amendment of the law. In the burghal fiefs this service was necessarily done by representatives of the burghal communities, and the dignitaries of the Church gave attendance also, for the Church lands. This duty of attendance was earnestly enforced, for it brought the great subjects of the Crown periodically within the reach and power of their overlord. It was a system which greatly enhanced the dignity and apparent strength of the Crown. But from the facilities which it gave to the barons and burgesses to consult and act together whenever they had a common interest, it was certain in the end greatly to mitigate the royal authority. It thus happily contained the unheeded germs of a free constitution, and led, after many centuries, to government by and for the people.

A multiplicity of local jurisdiction was thus established. Each baron was paramount, indeed practically absolute, within his own bounds, and, in those rough times, thought little of going beyond them. The barons were thus in frequent conflict. Many of them had strengthened themselves greatly by giving grants of land, binding their vassals to military service on pain of forfeiture. And thus their conflicts commonly broke into violence. The natural desire of the Crown to bring them under control, led to the establishment, by Crown grants, of Sheriffs of counties or other extensive districts. The sheriff held courts in the name of the Crown. All barons were consequently bound to attend his courts, and he seems to have been constituted a judge of appeal from their judgments in their own courts. There was

also conferred on him a right to be present at their courts, apparently to observe the proceedings. But the sheriffs were themselves of the order of barons, and their office was made hereditary.

The baronial courts and the hereditary sheriffs continued in full vigour, till the great rebellion of 1745 disclosed that they were still too strong for the peace of the country. The union with England, less than forty years before, had brought in a power of which the Scottish barons had little experience. In the following year (1746) Parliament swept away and prohibited military service in the tenure of land, converting it into an annual return in money or goods, and by another Act abolished the hereditary sheriffships, and limited the Baronial jurisdiction to petty offences punishable by fines not exceeding twenty shillings, and to debts not above forty shillings. The Act bears that it was passed to remedy "the inconveniences that have arisen from the multiplicity and extent of heritable jurisdictions, to restore to the Crown the powers of jurisdiction originally and properly belonging thereto according to the constitution, and to extend the influence, benefit, and protection of the King's laws and courts of justice to all His Majesty's subjects in Scotland." It also enacted that no principal or high sheriff shall judge personally in any cause, civil or criminal, in virtue of his office; and that no such office shall be granted for life, or for any fixed term beyond a year. Parliament at the same time empowered the Crown to appoint trained lawyers to the office of "Sheriff-depute," and empowered the sheriffs depute to appoint substitutes.

II.—Minor Courts.—Justices and Burgh Courts.

After the jurisdiction of the barons was thus limited by Parliament, it gradually decayed, and has now nearly died out by disuse. This may seem strange at first sight, but it is easily accounted for. Most of the barons were justices of the peace, and the jurisdiction of the

justices extends over wider territory, and is in every way much more important than that to which their baronial jurisdiction had been restricted. The justices, however, were not of very early growth in Scotland. The institution was borrowed from England, but has never had the depth of root nor the influence which it holds there. It has been dwarfed by the sheriff courts. Still it is an important office. The chief practical exercise of the justices' jurisdiction is to protect the peace, to take affidavits and affirmations, to issue warrants against criminals, to try petty offences, poaching cases, and breaches of the revenue and mercantile marine laws, to regulate public-house licenses, and to sit in judgment on debts and demands not exceeding £5. Revenue and mercantile marine cases occasionally involve nice questions and severe punishments, as well as most serious results to the character and status of the parties. The Law Courts Commission of 1868-70 reported on this subject:—"It seems undesirable that such cases should be disposed of by gentlemen selected, often at random, from those on the commission of the peace. And in the case of offences against the Game Laws there is a wide-spread feeling among the public that the justices are really judges in their own cause, and that this exposes their decisions to invidious comment." The Commissioners recommend that a "cumulative" jurisdiction in these classes of cases (revenue, mercantile marine, and game), should be given to the sheriff; which implies that the prosecutor shall have the power to bring the accused to trial before the justices or before the sheriff, as he chooses. This seems rather a halting conclusion from their own premises, for it is not the prosecutor but the accused who objects to be tried before the justices for poaching, and the difficulties and consequences of a revenue or a mercantile marine case before the justices would be little helped by the knowledge that it might have been brought before a trained judge. In regard to mercantile marine cases, indeed, the sheriff has, and had for more than sixteen years before the Commissioners reported, the very jurisdiction which they

recommend as a remedy for the evils that have grown up in the justice of peace court, alongside of it. The true remedy is to make these cases triable only in the sheriff court.

The small debt jurisdiction of the justices is extremely useful, and largely resorted to in some parts of the country. In 1872, 12,783 causes, involving claims to the amount of £19,178, were tried in the justices' small debt court. In 1873, 12,340 were tried. Disputes under £5 may in general be very well handled, without lawyers, by men of common sense. But some of the forms of the justices' small debt court are cumbrous and unnecessary, and the liability of a defendant to pay a fee to the clerk before he can be heard, and of the party adducing a witness to pay a fee before he can have him examined, is vexatious, and a real hardship to the class of people who frequent these courts. It looks to them as if they had to buy justice. The clerk ought to be paid by salary.

The Burgh jurisdictions were reserved entire when the baron courts were restricted. But the estimation in which the sheriff courts are held has led to the burgh courts also being less resorted to. The existence in every county in Scotland of local judges, practised in the law, paid by the public, and devoting themselves to their duties, explains this gradual and voluntary disuse of functions by unprofessional magistrates.

The magistrates of a royal burgh are considered to have a civil jurisdiction, within the burgh, as broad as the sheriff has, at common law. But as every burgh is situated within the sheriff's territory, the burgh magistrates have come in practice to limit the exercise of their civil judicial powers mainly to the removal of burgh tenants, and to the applications of debtors in prison for maintenance by the imprisoning creditors, and their liberation on evidence that their lives are endangered by confinement.

In most royal burghs the criminal jurisdiction of the burgh court is co-ordinate with that of the sheriff. It entitles the burgh magistrates to investigate crimes of

any magnitude, to examine the prisoners, and to commit for trial; also to try cases involving punishment to the extent of two years' imprisonment. But in practice the exercise of that jurisdiction is very much confined to minor offences, and proper matters of police. Even so limited, the duties have become extremely onerous in Glasgow and other large towns, and there is a growing desire that in such cases there should be a paid magistrate for the discharge of these duties. Application was made to Parliament to sanction the appointment by the larger burghs of such a magistrate, for whom an adequate salary was to be provided by the community, and who was to be a practised lawyer, and to hold the office *ad vitam aut culpam*. It was unhappily frustrated by an attempt to vest the patronage in the Crown, an encroachment on the ancient privileges of the burghs to which they declined to submit.

One of the burgh magistrates, the Dean of Guild, has peculiar functions, and his jurisdiction, where operative, excludes that of the sheriff. He determines questions of boundary within burgh, and regulates the erection, alteration, repair, and pulling down of houses. But in the majority of burghs this jurisdiction has fallen into desuetude. In the five years, 1864-5-6-7-8, there were only twelve burghs in which there were any cases in the Dean of Guild Court, and the average annual number of cases did not exceed four in any of these burghs except Dundee, Edinburgh, Glasgow, and Greenock. In these circumstances the Law Courts Commission recommended that the Dean of Guild Court should cease to exist, and its jurisdiction be transferred to the skilled magistrate, the sheriff. In large towns, however, it would probably be better to sanction the appointment of a qualified and paid officer for these duties.

The Dean of Guild has also a very special jurisdiction which has been overlooked by the Law Commissioners. In order to prevent town buildings from falling into a state of dilapidation, a person whose title is doubtful or insecure may apply to the Guild Court to have them inspected, and for a warrant to execute such repairs and

building operations as the court shall sanction. After public notice, and notice to any persons who are supposed to have interest, that they may be heard, the works are executed under due supervision, the cost is ascertained, and by a decree of the court is made a charge on the property in case the applicant should ever be dispossessed. With a similar object the Burgh Magistrates have an ancient statutory power to warn those who have right to or interest in houses within burgh which have for three years been "waste or not inhabited," to build or repair them "in a decent way." Where the owners are not known they are to be called by proclamation at the market cross and parish kirk; if out of the kingdom they are to be called on sixty days' notice at the market cross of Edinburgh, and pier and shore of Leith. And if for a year and a day after the expiry of these notices the persons interested fail to comply, the magistrates are to have the property valued and sold, preserving the price for the owner. These are useful powers in the public interest, and there has been no complaint of their having been abused. But the notices at the cross, kirk, and pier would now have a better chance of reaching the parties for whom they are intended, if published in the newspapers; and judicious magistrates are likely to require that this shall be done.

III.—Sheriff Courts.

The Act of Parliament which suppressed the hereditary sheriffships, and vested their authority in trained judges appointed by the Crown, and paid by the Exchequer, accomplished a change which has proved most salutary. These local courts, after an experience of more than a century, have gained a firm hold on the confidence of the country. The office of the ancient principal or high sheriffs has been completely superseded in practice, although nominally continued in the commissions of lords lieutenant; and the chief authority of the office so entirely passed to the professional sheriffs, that their original title, sheriffs depute, has fallen into disuse, and

by the authority of Parliament they are now addressed as the sheriffs.

The sheriff courts have a very large and varied jurisdiction. They try and determine questions of debt and contract, and questions of all kinds relating to personal estate, without limit of value. They also try possessory questions as to lands, houses, roads, and servitudes, and generally as to the use and exercise of heritable rights (real estate). They judge of the right of heirs to succeed to heritage, whatever the value of the estates, but are not yet authorised to try any other questions of heritable title. They have a large equity jurisdiction, including interdict or injunction. They award bankruptcy, and dispose, without limit, of all questions competent to courts of bankruptcy and insolvency. In the year 1871, 2,898 cases of bankruptcy were proceeding before the sheriff courts. In those which were brought to a close during the year the sums recovered were, on an average of the whole, £1,276 3s. 3d. per case, and the average cost for trustees' commission and law expenses was £154 13s. 4d. The sheriff courts have jurisdiction also in admiralty causes. As commissaries, coming in place of the ancient ecclesiastical courts, they confirm wills, and determine competitions for executorships, corresponding to the grant of probate and letters of administration in England. Sequestrations (warrants to distrain) for rent, removal of tenants and actions of slander and damages are tried in the sheriff's court, and the resident sheriff is bound to inquire into every complaint of relief having been refused by the administrators of the poor. The sheriff is statutory judge in various questions under the Police and Lunacy and Conjugal Rights Acts, and as to registration of births, deaths, and marriages. He has, further, a special summary small debt jurisdiction, in which his decisions in cases up to £12 are not subject to appeal, and in the year 1872 the number of such cases was 43,196, involving claims to the extent of £142,548. The sheriff court has also a special summary jurisdiction for recovery of mercantile debts up to £50, and in the same year the number of

these was 3,451, involving claims to the amount of £53,000.

The sheriff is charged with making up and revising the register of parliamentary electors. He is the returning officer in all parliamentary elections. And as the chief magistrate of the county he is specially charged with the preservation of the peace. Besides these duties, all crimes are within his cognisance. He judges of bail in all cases. Warrants limiting the time within which a prisoner must be brought to trial are issued by the sheriff. These warrants are in fact the Scottish Habeas Corpus, along with the common law right of every prisoner in Scotland to have the warrant, on which he is detained, examined by the supreme courts, under a very summary process called suspension and liberation. Capital crimes, and such as were formerly punishable by transportation, are investigated under the sheriff's warrant, and he decides whether or not the accused shall be committed for trial, after which cases of that class pass to the higher courts. All other offences, whether at common law or against particular statutes, unless they exclude the sheriff's jurisdiction, may be tried before the sheriff court, summarily or with a jury, according to their magnitude. And except where the penalties are defined by statute, the sheriff court has the power to punish by fine and imprisonment nominally without limit, but practically never exceeding two years.

In the exercise of these great powers the sheriff court is of course subject to the supervision and review of the supreme court, except in some particular classes of cases. For instance, causes in which the value of the matter in dispute does not exceed £25 cannot be removed from the sheriff court; and a very small proportion only of the appealable cases are appealed to the higher courts.

The Law Courts Commission recommend that the sheriff court should also have jurisdiction in all questions of heritable right and title, without limit of value, and that certain forms of action (declarators and reductions) which have hitherto been reserved to the supreme court,

should be made available in the local court of the sheriff. They report "this skilled magistracy has been found so efficient, that their jurisdiction, both judicial and ministerial, has been from time to time enlarged, and with so much success that we have felt warranted in recommending its further extension."* Public opinion cordially supports these views.

The professional sheriffs, established under the Jurisdiction Act, appointed substitutes, who at first were seldom trained men. All court pleadings were then in writing, and the substitutes, in cases of any difficulty, indeed very often as a matter of course, merely transmitted the papers to the sheriff, and acted by his instructions. The substitutes were removable at the sheriff's pleasure, and were paid by him. From these causes dissatisfaction arose. Parliament interposed, provided salaries for the substitute sheriffs, required that they also should be trained lawyers, and, while it still left their appointment in the hands of the sheriffs, made them irremovable except by the joint concurrence of the sheriff, the Lord President, and the Lord Justice Clerk.† The same Act required that the substitute sheriffs shall reside personally within their jurisdiction, and shall not be absent more than six weeks in any year, nor more than two weeks at any one time, unless another fit person be appointed to do the duties. Their personal administration of justice on the spot has contributed much to the popularity of the court. Oral discussion has superseded the written arguments which were formerly necessary, and which are now never resorted to before the sheriff-substitute. But at the same time when this beneficial change was made in their position and duties, a change in the opposite direction was sanctioned as to the sheriffs. They were released (except in the case of Edinburgh and Glasgow) from an obligation which had been originally attached

* The report is signed, among others, by Lord Selborne, Lord Colonsay, Mr. Justice Willes, the Lord President of the Court of Session, the Lord Justice Clerk, and by the present Lord Advocate Gordon, and the late Lord Advocate (Lord Young).

† 1 & 2 Vict., c. 119.

to their office, that they should reside at least four months every year within their sheriffdoms.

There are thus everywhere a resident sheriff-substitute, with a non-resident sheriff over him. The latter has come to be regarded very much as a judge of intermediate appeal, between the resident judge and the supreme court; and, although the sheriffs are bound to hold in some cases three, in others four, sittings annually, in their counties, and to attend personally, "on all necessary and proper occasions," discussions before the sheriffs, on appeal, are sometimes necessarily conducted in writing.

The duties of the sheriffs (as distinguished from the sheriffs-substitute) having thus been lightened, Parliament has made provision for diminishing their number, by placing several sheriffdoms under a single sheriff. The patronage of the sheriffs has always been exercised with great purity and judgment. But under the new arrangements a sheriff will, in a number of instances, have the appointment of no fewer than six or seven public officers of great importance, viz., resident judges and procurators-fiscal. The Sheriff of Lanarkshire has already in his sole gift seven judgeships (sheriffs-substitute) and four procurator-fiscalships, an accumulation of patronage in the hands of a gentleman not immediately responsible to Parliament, which has grown up unheeded, because its growth has been gradual, and which it is difficult to justify on constitutional grounds.

There has been some discussion in Scotland as to the necessity for continuing the office of non-resident sheriff. The preponderance of opinion among the practitioners in these courts is, that an efficient and inexpensive appeal from the resident sheriffs is desirable, without the necessity of going to the supreme court in minor cases. They thought it might be found by requiring two or more sheriffs to sit together on intermediate appeals. But the Law Courts Commission (1868-70) reported that no benefit would accrue from this. They say, "Such a combination was tried for some years, under the Registration of Voters' Act, and, having

been universally admitted to have been unsatisfactory, was abolished." The cause, however, of the registration appeal courts having been unsatisfactory was that they were final, with no central authority by which conflicting judgments could be reconciled, the supreme court having been, at that time, excluded in registration cases. It was not proposed that the intermediate appeal court of two or more sheriffs should be final in that sense.

The Law Commissioners were decidedly of opinion that no change should be made as to the sheriffs, and the same view was held by two earlier commissions which reported on the subject. Other authorities think the appeal from the resident sheriffs, except in important cases, should be to the judges on circuit; and others, again, that it should in all cases be direct to the supreme court.

One thing is clear, that the resident sheriffs-substitute, who bear the heavy work of these courts, are much underpaid. Their average salaries are from £650 to £700 a year, quite inadequate to maintain the position which they hold in the country, and much below the professional incomes common among those who practise before them. They ought to be placed on the same scale with English county-court judges, whose range of duties is much more limited.

IV.—The Public Prosecutor.

There is in every sheriff court an officer of peculiar and very important functions—the procurator-fiscal. Private prosecution for crimes, though competent, has long ceased in practice. All complaints of crime are brought to the procurator-fiscal by the parties aggrieved, or by some neighbour or bystander, or by the police. It is the duty of the procurator-fiscal to inquire into them, and on being satisfied that the complaint proceeds on just grounds, he obtains a warrant, and prepares the case for trial. Offences to which a punishment not exceeding sixty days' imprisonment would be appro-

priate, he at once prosecutes summarily before the sheriff, unless there be some peculiarity in the crime or its circumstances requiring special consideration. Cases of such peculiarity, and all crimes of a serious character, he investigates more formally. The accused is taken into custody. The statements of the witnesses (called the "precognition") are written down, and if on these the procurator-fiscal is of opinion that there is a sufficient case, he applies to the sheriff for a warrant to commit for trial. The sheriff considers the precognition, and grants or refuses the application. The precognition is then transmitted to Edinburgh, for the consideration of Crown counsel, who, in cases of serious difficulty, consult with the chief law officers of the Crown. If, in the opinion of the Crown counsel, there is not a case to warrant trial, the accused is at once set at liberty. If they think the investigation imperfect, they order further inquiry, and, when satisfied that the case is fit for trial, they determine in what court it shall be tried. Cases in which a punishment not exceeding two years' imprisonment would be suitable, are commonly remitted to the procurator-fiscal, to be tried by jury before the sheriff. These the procurator-fiscal prosecutes in his own name, as public prosecutor, before the sheriff court, and himself conducts the prosecution till he obtains the verdict of a jury, and the judgment of the court. He reports the result to the Crown counsel, who thus see that there is no unwarranted delay. Cases of greater magnitude, or of special character, are taken by the Crown counsel on the procurator-fiscal's precognition, to the High Court or Circuit Court of Justiciary, and the prosecution is there conducted by the Crown counsel, in the name of the Lord Advocate, as public prosecutor.

In all except summary cases the accused is furnished with a list of the jury and of the witnesses for the prosecution, also a copy of the indictment, at least fifteen days before he can be sent to a jury. The witnesses must be sufficiently described in the list to enable them to be found, but any objection to their description must

be stated before the jury is sworn, and the court will, on such objection, give such delay as is necessary to protect the accused. Counsel and agent are assigned by the court to those who cannot procure them.

The procurators-fiscal are chiefly paid by Crown salaries, with some small additions from the county funds for minor duties. They are not only responsible in their office for misconduct, but are liable to civil prosecution by any person aggrieved, for irregularity or excess in the exercise of their functions. They act semi-judicially. Their duty is to see equal justice done to all Her Majesty's subjects. The feeling of parties injured neither promotes undue prosecutions for crime, nor when appeased can hinder its due prosecution. No arrangement between the parties stays the public prosecutor.

There is no grand jury in Scotland, but the innocent have efficient practical safeguards. The procurator-fiscal must be satisfied that there is ground for proceeding, and must take the responsibility of making a written charge and asking a committal for trial. The committing magistrate must be satisfied that there is a case for trial. Then the whole is carefully reviewed by the Crown counsel. Finally, there is the trial itself, at which the prisoner's counsel always has the last word.

On the other hand, serious crimes cannot escape notice. The public know their right to have them investigated without responsibility for the cost, and are not slow to exercise it. And the care which is used in the preliminary investigations and in the preparations for trial leave comparatively few chances of escape to the guilty.

In England the proportion of acquittals to prosecutions is more than double what it is in Scotland. The percentages of acquittals to trials in the two countries, for four years, and on an average, were :—

—	1869.	1870.	1871	1872.	Average of Four Years.
England	25.60	26.03	26.32	26.35	26.07
Scotland	10.16	9.13	9.81	10.45	9.88

In short, every fourth man who is brought to trial in England escapes out of the hands of justice; in Scotland not quite one in ten escapes. The excess seems to indicate either that an undue number of guilty persons escape, or that an undue number of innocent persons are put unnecessarily to trial, in England. Both causes may be at work in producing such a remarkable and persistent difference between the two countries.

It is one of the curiosities of law that when the Sheriff dies the Procurators Fiscal die officially with him. There is an instant surcease of criminal justice all over the Sheriffdom, till a new Sheriff shall be selected by the Crown, and till he, after entering on office, shall renew the appointments of the Procurators Fiscal. If there are trials impending, the criminals, and the witnesses, and the jury, who have been previously summoned, may assemble, and the Sheriff-Substitute may take his seat on the bench, and all be ready and competent to proceed; the accused may even desire to plead guilty; but the public prosecutor has ceased in law to exist, and nothing can be done. On the occurrence of new crimes the inconveniences are even greater.

So long as a Sheriff held only one county, the risk was limited. But now, when one Sheriff commonly holds office over three counties, the extent to which the administration of the criminal law will thus be from time to time suspended, is certain to occasion serious difficulties.

V.—The Church Courts.

The Church in Romish times obtained vast territories, with jurisdiction equivalent to that of the barons, much by direct grant from the Crown, and much by Royal Charters confirming the bequests of subjects. One of the ancient kings was called a saint on account of the liberality of these grants. His successor said, grimly, "He was a sair sanct for the Crown." But the Church was not content to limit its jurisdiction to its own territories. On the plea that marriage was a sacrament,

it established a right to judge exclusively of marriage and divorce. It enlarged its powers successfully to questions of tithes, patronage, testaments, and intestacies. Nay, on the ground that an oath is an act of religious worship, it claimed the cognisance of all controversies in which an oath was necessary; so wide, while it had the power, did the Church stretch the domain of faith and morals. At the Reformation the Church lands, which then probably extended to a third of the whole kingdom, were divided among the turbulent barons. An Act was passed by Parliament "abolisching of the Pope and his authoritie within this realme." The secular jurisdictions which had been held by the Church were then vested in commissioners appointed by the Crown, and were eventually transferred to the ordinary civil courts. And the purely ecclesiastical jurisdiction remained with the Reformed Church, and continues to be exercised locally through its kirk-sessions, presbyteries, and synods, subject to the control of the General Assembly of the Kirk. These are real courts recognised and sustained by law.

The kirk-session consists of the minister and elders of each congregation. The elders, though laymen, are admitted by ordination. The session exercise the power of giving or withholding Church privileges,—baptism, and admission to the Sacrament of the Supper,—and for that purpose inquire into cases of Church scandal. Their judgments are subject to correction by the presbytery and the higher courts of the Church. The kirk-session is also intrusted by law with the duty of examining into and reporting to the civil courts on the circumstances of persons who desire the privilege of prosecuting civil claims in the civil courts *in forma pauperis*, for which purpose the civil courts assign lawyers to the poor, to act without taking any fee from the pauper litigant.

The presbytery consists of the ministers and a representative elder from each parish within its bounds, which do not always coincide with the bounds of the civil courts. The number of parishes in a presbytery is

very variable—chiefly from ten or twelve to thirty, though some presbyteries include more than fifty parishes.

The presbytery, subject to the control of the synod and general assembly, exercises discipline over the clergy and elders, and also, on appeal or reference from the kirk-session, over the lay members of the congregations. It licenses probationers, ordains ministers, brings them to trial before itself for moral offences, heresy, &c., and when necessary deposes (deprives) or inflicts minor censures upon them, always subject to appeal to the higher church courts. No great scandal of life or doctrine can long escape. Any member of presbytery, or any parishioner, may bring such matter before the presbytery. They examine into it, and, if there is ground for charge, put the charge into a formal shape, and serve it on the office-bearer who is accused. The case is then openly tried before the presbytery. They hear the evidence of the parties, and pronounce judgment, the majority of votes prevailing. Any party, or any member of the presbytery, may appeal against the judgment to the synod, and again from the synod to the general assembly, who determine finally on behalf of the whole Church. The presbytery has also a special civil jurisdiction in regard to the renewal and repair of churches and manses, but in the exercise of this jurisdiction it is subject to the control of the court of session.

The Synod is simply a collocation of presbyteries. It meets twice a year at some central town of the district. Every member of presbytery has a seat in the synod. It maintains a supervision over the presbyteries, and judges of all appeals from and complaints against each presbytery included in it. Adjoining synods send what are called "corresponding members," to advise with each other. The decisions of the synod are in turn subject to appeal to the General Assembly, which meets once a year in Edinburgh.

That venerable body is composed of ministers and elders elected by each presbytery, and has supreme

authority in the government of the Church. The Act of Parliament, 1690, chap. 5, enacted "That whatsoever "minister being convened before the said general meeting "and representatives of the Presbyterian ministers and "elders, or the visitors appointed by them, shall either "prove contumacious in not appearing, or be found "guilty, and shall be therefore censured, whether by "suspension or deposition, they shall, *ipso facto*, be sus- "pended from or deprived of their stipends and bene- "fices."

The General Assembly has a standing Commission of its whole members, and this Commission meets three times a year, besides other days to which it may adjourn.

All the Presbyterian churches of Scotland, Established and Dissenting, abide by the Westminster Confession of Faith, and are governed on a similar model, through kirk-sessions, presbyteries, and synods, but the Established and Free churches alone form themselves into general assemblies.

VI.—Local Finance and Administration in Counties.

The administration of local finance may be conveniently considered under three heads—counties, parishes, burghs.

COUNTIES.

Except the assessments for maintaining roads, and some minor assessments under Special Acts of Parliament, all county rates in Scotland are laid on the owners of lands and heritages, and are directly or indirectly administered by them as Commissioners of Supply. These bodies, as their name indicates, were at first established to facilitate the collection of a national revenue. There are traces of them in Cromwell's time, and they were continued after the Restoration as county committees, nominated by Parliament, to collect the Malt-tax and Excise, functions with which they have long ceased to be connected. They were afterwards appointed to levy the Land-tax. It was necessary that a Commissioner should

possess £100 Scots yearly of ancient valued rent, in property superiority or life-rent. Since 1856 the nomination by Parliament of Commissioners of Supply has ceased,* and every person is entitled to be placed on the list who is—

1. Proprietor, or husband of a proprietor, infeft in lands and heritages of the yearly rent or value of £100 sterling.

2. The eldest son and heir apparent of a proprietor to the extent of £400 a year, or

3. The factor (land agent) of a proprietor to the extent of £800 a year, but a factor can act only in the absence of his principal. By a singular provision the yearly rent or value of houses and other buildings (not being farmhouses or agricultural buildings) "shall be estimated at only half of their actual yearly rent or value, with reference only to the qualification of Commissioners of Supply."

By the Reform Act of 1832 the whole powers, duties, and functions of an ancient court, called the Court of Freeholders (persons holding lands immediately of the Crown) were transferred to the Commissioners of Supply. One of these duties was the levying of "rogue-money" on the lands situated in the county, under an act of George I.† "for defraying the charges of apprehending criminals and of subsisting them in prison until prosecution, and of prosecuting such criminals for their several offences by due course of law." Rogue-money was abolished by Parliament in 1868,‡ and the Commissioners of Supply were then authorised to levy a "county general assessment" on all lands and heritages within the county, previously liable for rogue-money. This general assessment is to provide for—

1. The expense of searching for, apprehending, subsisting, prosecuting, or punishing criminals.

2. The salaries and charges of procurators-fiscal and justice of peace clerks, so far as previously in use to be paid by each county.

* 19 & 20 Vict., cap. 93; 17 & 18 Vict., c. 91, s. 19. † 11 Geo. I., c. 26.
‡ 31 & 32 Vict., c. 82.

3. The expense of maintaining court-houses.

4. The damages done by riotous assemblies, and the expenses incurred in the prevention of riots.

5. The payment of clerks and officers, and

6. All expenses previously payable by Act of Parliament out of the rogue-money. This includes the cost of district asylums for lunatics.* But these charges are to be made the subject of this general assessment so far only as not by law or usage payable or provided from other funds.

Considerable as these burdens seem when thus enumerated, by much the heaviest part of them has for many years been provided out of funds voted by Parliament on the same principle on which similar charges are provided in England and Ireland. By ancient usage, the cost of criminal cases reported to the Crown Counsel has always been a Crown charge.

Half the cost of erecting new court-houses for the sheriff courts is payable by the Commissioners of Supply, and leviable on the owners of lands and heritages in the county and burghs situated therein.† This assessment may be levied from the tenant, but if he pays it he is entitled to deduct its amount from his rent. The other half of the cost of erecting court-houses is paid out of funds provided by Parliament.

The Commissioners of Supply have the chief control of the county police, through a police committee appointed by them,‡ and they provide for the expense by a police assessment on all lands and heritages. In this case also, if the assessment is paid by the tenant he is entitled to deduct the amount from his rent. A considerable portion of the expense of the police is also provided from funds voted by Parliament.

The local prisons are governed by county boards.§ Some of the members of these boards are chosen by the town councils of royal burghs, but, except in the shires of Edinburgh, Lanark, Forfar, and Renfrew, a

* 20 & 21 Vict., c. 71. † 23 & 24 Vict., c. 79.
‡ 20 & 21 Vict., c. 72; 21 & 22 Vict., c. 65.
§ 23 & 24 Vict., c. 105.

large majority of the members of the County Prison Board are nominated by the Commissioners of Supply. The county board determines annually the amount to be levied for prison purposes, including any sums which the board may see fit to contribute to reformatories, with the consent of the Commissioners of Supply and the approval of the Secretary of State.* The amount so fixed is divided between the county and burghs according to the total value of lands and heritages situated within them respectively. The Commissioners of Supply levy a rate on lands and heritages sufficient to raise their part, and the town councils of burghs may either pay their share out of any surplus revenue of the burgh, or levy a prison rate. Under the prison assessment levied in the counties, an occupier who pays the rate is (as in nearly all the other rates levied by the Commissioners of Supply) entitled to deduct the whole from his rent. In burghs half of the prison assessment is payable by the occupier himself.

The local authority, under the "Contagious Diseases Animals Acts,"† consists of members chosen by the Commissioners of Supply, to act along with an equal number chosen by occupiers. The sums necessary are notified by the local authority to the Commissioners of Supply, who assess it on lands and heritages. But this assessment, unlike other county assessments, is payable, one-half by the proprietors and the other half by the tenants.

The sheriff, and in his absence the sheriff-substitute, is *ex officio* a Commissioner of Supply, and a member of the Police Committee and Prison Board.

Prior to 1854 the Commissioners of Supply levied all the rates which they administered, according to valuations settled two hundred years ago. The relative value of lands had undergone such changes that the apportionment of the rates had become very unequal, pressing with great severity on some lands, while others escaped without contributing at all in proportion to their modern value. An Act was therefore passed‡ by

* 23 & 24 Vict., c. 105, s. 51. † 32 & 33 Vict. (1869), c. 70.
‡ 17 & 18 Vict. ,c. 91.

which the Commissioners of Supply for the landward parts of counties, and the magistrates of burghs, were required to make up a valuation roll annually, and were empowered, in future, to levy their assessments according to that roll.

This annual re-valuation would undoubtedly operate as a check on improvement, by increasing the rates as soon as improvements were made, but for a wise provision, that when lands are *bonâ fide* let on a lease not exceeding twenty-one years, for a yearly rent conditioned as their fair annual value, without any other consideration, the rent shall be taken as the value for assessment. This principle is of cardinal importance in the working of the system, and is applied to the levy of all rates, parochial and burghal as well as county, and whether charged on the owner or occupier.

There is, however, an unquestionable defect in regard to improvements made by the owner on land which he himself occupies. These are liable to re-valuation as soon as the improvements are made, which is a penalty on improvement, and ought to be amended. In practice, however, a sense of its impolicy prevents its being rigidly enforced.

The case of ground-rents is covered by a general provision as to all heritages let on lease of greater duration than twenty-one years. The lessee under such a lease is, for the purposes of valuation and rating, taken to be the proprietor, but is entitled to deduct from the ground-rent such proportion of the rates as corresponds to the amount of the ground-rent.* In effect, the building tenant and the ground owner are both treated as proprietors, each to the extent of his actual interest, as long as the lease lasts. This is substantially the true character of their rights, and, if that had been recognised, perhaps there might have been less obscurity in some discussions which have taken place in England as to the incidence of rates on the owners of building ground.

The practice as to the management of *roads* varies in different counties. Under one of the old statutes the

* 17 & 18 Vict., c. 91, s. 6.

proprietors were empowered "to cast about the highways to their own conveniency," if they did not remove them more than two hundred ells.* A few years later the justices were authorised to call out all tenants and cottars, and their servants, "with horses, carts, sleds, spades, shovels, picks, mattocks, and other instruments," to repair the highways, which were to be "so repaired that horses and carts may travel, summer and winter, thereupon," and if the labour of the tenants and cottars should not be sufficient, the heritors were to "stent themselves" for the purpose to an amount not exceeding ten shillings Scots, on each hundred pounds Scots of their valued rent.† The Commissioners of Supply were afterwards conjoined with the justices in the management. In later times the management of the highways, as well as of turnpike roads, where established, was vested, by local Acts of Parliament, chiefly in the heritors holding property of the annual value fixed by these Acts, and in most of these the duty of supplying labour to the highways, previously laid on the tenants and cottars, was commuted into money payments. It thus came that in various counties the burden of maintaining the highways was laid wholly or mainly on the tenants, while the proprietors alone had the administration. The dissatisfaction which naturally grew out of that system has led, in most, if not all, the local Acts recently obtained, to the tax being divided equally between landlord and tenant, and the administration placed in the hands of a mixed body of trustees. These are composed of all proprietors of a certain annual rental, and of representatives elected by the ratepayers from each parish. So far as yet tried, this change seems to have worked smoothly and well.—In more than a third of the counties of Scotland the vexatious and expensive system of levying a tax by turnpikes has been abandoned, and the cost provided by assessment.

* 1661, c. 284. † 1669, c. 37.

VII.—Local Finance and Administration in Parishes;—Poor.

The chief parish taxes are the *Poor Rate* and *School Rate.*

I. *Poor.*—The management of the poor, in all parishes which are assessed, is in the hands of a board for each parish, called the *Parochial Board.* Every owner of lands and heritages of the yearly value of £20 and upwards is a member of the board. The members of the parish kirk-session, not exceeding six, including the parish minister, are also members of the board. To these are added members elected by the ratepayers, the number of elected members being fixed for each parish by the Board of Supervision.

In choosing the elected members, every owner of lands and heritages, whose value is not sufficient (£20) to make him a member of the board without election, has one vote.

Every occupier who is assessed on value under £20 has one vote.

If the value is £20 and under £40, he has two votes.
„ „ £40 „ £60, „ three votes.
„ „ £60 „ £100, „ four votes.
„ „ £100 „ £500, „ five votes.
„ „ £500 or more . . . six votes.

The assessments are imposed and levied by each parochial board. Three methods of assessment are allowed. It may be—

(1.) One half on owners, and the other half on tenants and occupiers, according to the annual value of lands and heritages. The number of parishes assessed on this rule is 598.

(2.) In adopting the above method of assessment, the parochial board, with concurrence of the Board of Supervision, may distinguish the lands and heritages into two or more classes (as dwellings, factories, shops, &c., according to the purposes for which they are used), laying a different rate on each class, and may distribute

the occupier's half of the assessment according to such differential rates. This is done in 183 parishes.

(3). The entire assessment may be levied according to any usage established in the parishes, or under the provisions of any local Act. Only twenty-three parishes are rated according to such usages, which, of course, are various.

Although in all the rated parishes, except these twenty-three, the tenants and occupiers pay half the rates, and no doubt in some of them also, they have (except in thirty or forty special parishes, chiefly towns) been deprived of all effective voice at the parochial board. Parliament, when it gave them the right to be represented, instead of laying down some self-acting rule as to their proportion of representation, committed to the Board of Supervision the extraordinary power of fixing the number of members whom the occupiers should elect. And, in country parishes especially, the Board of Supervision—apparently with a distrust of popular election which is rather out of date—have limited the number elected by ratepaying occupiers in most cases to four, three, and very often two members of a board in which six members of kirk-session and every £20 owner in the parish is entitled to sit without election. It is manifestly wrong that the kirk-session of one, and frequently not the largest, religious denomination in the parish should have greater taxing and spending power than the entire body of those who pay half the rates. One of the kirk-session, the minister, who is always entitled to sit at the board, and usually does, has the privilege of being free of rates on his manse and glebe; and the other members of session are appointed for ecclesiastical purposes, and though generally worthy men, are not often large ratepayers.

There are eighty-one parishes, nearly a tenth of the whole, in which the poor are supported by voluntary contributions, without assessment; and the management in these parishes is very properly left with the heritors and kirk-session, who raise the money without taxing anybody. They spend their own money and the money

of those who voluntarily commit it to them, and, as might be expected, they use it with prudence and judgment.

The proportion of paupers to population for the year ending May, 1873, in these unassessed parishes, was less than one registered pauper (dependants included) to every 27½ of their population; and the cost for maintaining their poor, and all expenses connected with them, was only 4s. 0½d. per head of their population.

Over the whole of Scotland (population, 3,360,018) the number of registered paupers, including dependants, was 153,427; an average of one person supported by the rates to every 21⅘ of the population, and the average cost per head of population was 5s. 2½d. In England the average cost per head of population for the same year is returned by the Local Government Board as 6s. 7¼d.;* but that is calculated on an estimate that the population in 1873 was 600,000 more than when the Census was taken in 1871. The Scottish calculations are on the Census of 1871. Reckoned in the same way, the rate per head of population in England was 6s. 9¼d.

In both respects the unassessed parishes in Scotland show more favourably than those which are assessed. Their ratio of pauperism and expense to population are both one-fifth less than in the rest of Scotland. Nor does this appear to arise from refusal of relief. The refusals of relief in these parishes through the year amounted to only one in 1,478 of their population. The average of refusals over Scotland was one in 789 of the population; that is, there were nearly two refused, on the average of the rest of Scotland in proportion to population, for every case of refusal in the unassessed parishes. There were seventy-eight of the eighty-one unassessed parishes from which there was no complaint to the Board of Supervision, by the poor, of inadequate relief; from one of the others there were two, and from a second three such complaints, which were all dismissed as unfounded; and from the remaining parish there was one complaint, which was removed to the satisfaction of the Board of Supervision.

* *Third Annual Report*, 1873–4, p. ix.

Contrasted with these parishes are others which present an alarming aspect. We select a few of them from different parts of the country.

Reckoning the registered paupers and their dependants—

1.	In Kirkcowan, Wigtownshire, one in every 13 of the population is supported by the poor-rates .	1 in	13
2.	„ Kirkinner, Wigtownshire . . .	1 „	13½
3.	„ Marnoch, Banffshire	1 „	11⅓
4.	„ Mochrum, Wigtownshire . . .	1 „	11½
5.	„ Minnigaff, Kirkcudbright . nearly	1 „	11
6.	„ New Luce, Wigtownshire . . .	1 „	11⅕
7.	„ Kirkmaiden, Wigtownshire . about	1 „	10½
8.	„ Portpatrick, Wigtownshire . nearly	1 „	10¼
9.	„ Torosay, Argyllshire . nearly	1 „	10
10.	„ Killearnan, Rosshire . . .	1 „	10
11.	„ Dalry, Kirkcudbright . . .	1 „	9½
12.	„ Laggan, Invernesshire . . .	1 „	9
13.	„ Glenshiel, Rosshire . . .	1 „	8½
14.	„ Stoneykirk, Wigtownshire . . .	1 „	8½

And to crown them all—

15.	In Kilchrennan and Dalavich, Argyllshire . .	1 „	7¼

In order to ascertain whether the remarkable proportion of poor to population in the last case arose from any temporary cause, I have gone back on the previous years, with the following result:—

Kilchrennan and Dalavich, 1872, proportion to population of persons supported by the rates . .	1 in	7¼
On an average of three years, 1866, 1867, 1868 . .	1 „	8 9/10
On an average of three years, 1861, 1862, 1863, about .	1 „	8⅛

This hideous state of things has grown up under a system by which those who contribute nothing, or little, have a considerable voice in spending. The Board of Supervision has throughout limited the number of elected members in these parishes, in four of them to four members, in six of them to three members, and the rest to two members. The control is thus obviously in the hands of others when they choose to exercise it.

There is another remarkable feature of these parishes. They one and all, though in varying proportions, stand very high in their percentage of illegitimate births.

Taking the last issued (1874) *Detailed Annual Report*

by the Registrar-General, the sixteenth, I find that the average proportion of illegitimate births to legitimate over all Scotland was 9·6 per cent., which is about 1 in every $10\frac{5}{12}$ of the whole births . . . . . 1 in $10\frac{5}{12}$

1. But in Kirkcowan, Wigtownshire (placing the parishes for comparison in the same order as when speaking of their proportion of pauperism), every third birth was illegitimate—in other words, for every two legitimate births there was one illegitimate, . .
2. In Kirkinner, Wigtownshire
3. „ Marnoch, Banffshire
4. „ Mochrum, Wigtownshire
5. „ Minnigaff, Kirkcudbright
6. „ Kirkmaiden, Wigtownshire $6\frac{3}{4}$
7. „ New Luce, Wigtownshire $3\frac{5}{7}$
8. „ Portpatrick, Wigtownshire
9. „ Torosay, Argyllshire .
10. „ Killearnan, Rosshire .
11. „ Dalry, Kirkcudbright .
12. „ Laggan, Invernesshire .
13. „ Glenshiel, Rosshire .
14. „ Stoneykirk, Wigtownshire
15. „ Kilchrennan and Dalavich, Argyllshire

Dalry, in Kirkcudbright, probably stands in this respect pre-eminent in Europe, except Stockholm and perhaps Paris. In Paris the proportion of illegitimate births ranges from 27 to 32 per cent. In Stockholm it reaches 41·2 per cent., which is one half per cent. worse than Dalry.

These figures, though running so much on parallel lines, do not by any means prove that illegitimacy and pauperism stand in the relation of cause and effect even in these parishes, still less in any others whose circumstances may be different. But they lay ground for further investigation of the subject, and in the meantime raise at least a presumption, where both illegitimacy and pauperism stand so high together, that they are somehow correlated.

In a very able report by Mr. Malcolm M'Neill, visiting-officer of the Southern District, he mentions, in regard to one of these parishes, that nine single women, having twenty-one children, were in receipt of outdoor

relief. Even he does not seem, however, to have been quite aware of the depth of immorality and pauperism which exists in the parishes above named. It appears, moreover, that the nine single women, with their children, whom he mentions, were more than an eighth of all who were supported by the rates in the parish to which he refers. And the parochial board had not applied the poorhouse test to them, though it had ample poorhouse accommodation.

It is not difficult to see that a system of outdoor relief to unmarried young women, who have burdened themselves with children, is very like a premium on illegitimacy, by enabling them to live in greater idleness and ease than others of their condition in life, nor that the lax administration, which leads to their being so indulgently treated, is more likely to grow up when the power of spending is not restricted to those who have the duty of paying, and when contracted views prevail, owing to the narrow limits of the district administered. Nor is it surprising that there should be occasional or frequent failure of vigilance or judicious economy, among permanent and unpaid administrators of funds which they have compulsory power to levy from others who have no voice in their appointment, to whom they are not responsible, and who can neither remove nor control them.

The reports of the Board of Supervision do not give the parish ratio of pauperism to population in any case, and state the general ratio over all Scotland as 2·83* per 100 of the population. But the Board has left out of this calculation the dependants of registered poor. These dependants, as well as the registered poor themselves, are maintained by the poor-rates. They count in the population, and require to be taken into account in any just calculation of the proportion of pauperism and population. Reckoning dependants, the ratio for all Scotland of persons sustained by the poor-rates was 4·56 per cent., or, as already said, 1 in every 21⅘ of the population of Census 1871, for the year ending May, 1873. The returns of pauperism for England state the proportion

* *Twenty-eighth Report*, p. xxii.

of paupers in England to the population of Census 1871 as 1 in 26, or 3·9 per cent.,* on 1st January, and 1 in 28, or 3·6 per cent., on 1st July, 1873, and in this calculation dependants are included. But these proportions cannot be fairly compared with those given in the reports for Scotland, even as we have amended them; because the English numbers are of persons receiving relief only on two particular days, or whose allowance is for any period which includes these days, while the numbers for Scotland include all registered paupers, and their dependants, who have been in receipt of relief at any period of the year.

The English and Scottish returns are not well adjusted for comparison. But the Board of Supervision take returns of the poor relieved on three days of the year—1st January, 14th May, and 14th August. The 1st of January coincides with the first date taken in the English returns, and the 14th of August is the nearest to the second of the dates taken in England (1st July). Many of those who are classed in Scotland as "casual poor" are included in the figures taken for reckoning the English percentage, even vagrants relieved being included.† In making a comparison with England, we must therefore take the numbers relieved in Scotland on 1st January and 14th August, thus :—

—	1st January.	14th August.
Registered—Adults	73,292	70,247
Dependants	40,855	38,848
Casual Poor—Adults	2,491	2,288
Dependants	2,195	2,012
Totals	118,833	113,395

Which gives a proportion of about 1 in 28¼ (or 3·5 per 100) of the population (3,360,018) of Scotland for the 1st January, against the English proportion, 1 in 26 (or 3·9 per 100), on the same day; and a proportion of 1 in 29⅔ (or 3·3 per 100) of the population of

* *Third Annual Report* of Local Government Board, 1873-4, pp. 584, 598.
† *Third Report* Local Government Board; note at bottom of p. 586.

Scotland for 14th August, against the English proportion of 1 in 28 (or 3·6 per cent.) on 1st July. But the figures on which the English calculations are based include, on the mean of the two dates, 124,925* adult able-bodied persons, besides their children. As the able-bodied do not receive relief in Scotland, England is thus heavily weighted in the comparison. Putting aside the able-bodied, so as to compare the two countries more closely in regard to the classes which alone are chargeable in Scotland, the ratio of persons receiving support from the rates, on the mean of the dates taken for comparison, is—

Scotland 1 in every 28½ of population.
England 1 in every 31 of population.

And even if we deduct from the Scottish side the whole class of "casuals," the proportions would stand—

Scotland 1 in every 30 of population.
England 1 in every 31 of population.

While, if we were to deduct from the English side the dependants of its 124,925 adult able-bodied recipients of relief, the comparison would be very much worse for Scotland.

There is another comparative test which is more easily applied. The gross rental of lands and houses in England is £118,769,000, and its expenditure for the poor, including the able-bodied and their dependants, is equal to 1s. 3½d. per pound on that rental. The gross rental of lands and houses in Scotland is £14,124,000, and its expenditure for the poor is equal to 1s. 1½d. per pound on that rental. Thus, Scotland is within 2d. per pound of being as heavily burdened by the poor, without the able-bodied, as England is with the able-bodied: although the able-bodied and their dependants receiving relief in England on the mean of the two dates, January 1 and July 1, 1873, numbered 333,202, and all the rest of the poor in England with their dependants were only 523,467.

In short, Scotland, which up till the Disruption

* *Third Report*, Local Government Board, pp. xiii., 584, 598.

of the Church in 1843 was able to sustain its poor by the church collections and voluntary contributions, is already worse than England in regard to pauperism, except in one thing—that the able-bodied have no claim to relief; and she owes that to the law itself, not to its administrators. I have discovered no parishes in England—I am assured on high authority there are none—in which there is such intensity of pauperism as in some of the Scottish parishes which I have named. And a peasantry who, in my recollection, were sensitive in the highest degree to the imputation that any of their kindred had received parish support, now too often claim it with eagerness if given in money, though they still look on the poorhouse as degrading. There never was a contrivance, for rapidly sapping the honest self-dependence of the industrious poor, equal to that of committing to ecclesiastical managers the power of dispensing charity with ratepayers' money. The pecuniary burden is great, but the moral result is much more deplorable.

I have turned to Ireland, thinking that in that unhappy country at least I might find something to take away the reproach. And there are districts in Ireland where the proportion of pauperism is even greater than in the parishes in Scotland which I have named. In Dunshaughlan and Navan, County Meath, with populations of 11,697 and 19,311 respectively, two in every seven received relief in the year ending September, 1873. But taking Ireland as a whole, and looking to the amount of the burden, the comparison is not favourable to Scotland. The poor-rate collected annually in Scotland, on the average of the last four years—1870, 1871, 1872, and 1873, was £815,575 15s. In Ireland, on the average of the same years, it was only £774,322. Yet in Ireland the able-bodied poor are entitled to relief, and the population of Ireland is 5,402,759, while that of Scotland is only 3,360,018. I shall afterwards notice a distinctive feature in the management, which is the root of this great difference of cost.

It is painful to make comparisons so little to the

advantage of one's own country; but truth requires it, and we must bear the probing of the wound that we may have it cured. I have confidence that my countrymen will apply the cure, with their characteristic energy, when they see to what the country has been brought.

VIII.—Parishes and Poor—*continued.*

INDOOR AND OUTDOOR RELIEF.

One capital defect in the management of the poor in Scotland is the limited extent to which the poorhouse test is employed in the rural districts. Of the registered paupers and their dependants, numbering 153,427 in all Scotland, there were put upon indoor relief—

In the half-year ended 31st December, 1872 .	17,133
„ „ „ 30th June, 1873 . .	19,201
	36,334
Mean . .	18,117

Only 11·8 per cent. of the poor, therefore, were put on indoor relief. The proportion in England is about 20 per cent. But this by no means represents the full extent of the difference. Nearly two-thirds of those who were sent to the poorhouses in the half-year ending December, 1872, came from eleven or twelve town parishes. I shall afterwards give some details on this subject.

There are sixty-two poorhouses in Scotland, forty of which have been erected by combinations—that is, parishes which have agreed to join in building a poorhouse for their mutual use, without uniting in any other respect. These are the germs of natural unions. Three hundred and ninety-nine parishes altogether, containing a population of 2,388,236, being more than two-thirds of the whole population of Scotland, are now in this way enabled to use the poorhouse test, when they choose to do so. The average cost per head of the inmates of poorhouses, for food, fuel, clothing, light,

and maintenance, was 3s. 2d. per week in 1873. But the establishment charges are commonly paid by the contributing parishes *in proportion to the use they make of the poorhouse.* In this way the expense of each indoor pauper exceeds the average of outdoor relief, and many boards, therefore, think it "cheaper" to avoid the poorhouse as much as they can. If the establishment charges, which may be estimated at less than £18,000, were assumed by Parliament, there would probably be an immediate change.

In an interesting report, as to outdoor and indoor relief, by the Rev. William Bury, rector of Hazelbeach, in regard to the Brixworth Union, in England, which contains thirty-six parishes, he shows that down to the 1st of January, 1873, the average of paupers to population in that union varied from 1 in 12 to 1 in 14, and the proportion of indoor to outdoor relief varied from 1 in 9 to 1 in 17 of the paupers. In the early part of 1873 a freer use of the poorhouse test was resolved on, and carried out.

"The total number of paupers," he says, "in receipt of outdoor relief on January 1st, 1873, was 917; on January 1st, 1874, it was 542—showing a reduction in the space of twelve months of 375. The proportion of outdoor to indoor paupers on January 1st, 1873, was as 12 to 1; whereas, on January 1st, 1874, it was as 8 to 1." Again, "on January 1st, 1873, there was 1 pauper to every 14 of the population; on January 1st, 1874, there was 1 to every 22—being, however, still above the average throughout the country, which is 1 to every 26."

The expenditure on the average of 1871 and 1872 (before the new rule was acted on) was £6,333 9s. 1d., whereas it fell for the following year to £5,078 7s. 3d.

"The action of the board," Mr. Bury continues, "in a stricter application of the house test, has not had the effect, which some might have anticipated, of filling the house. The number of inmates on January 1st, 1873, was seventy-three, while the number on January 1st, 1874, was sixty-seven. It is true that the average for the year—which is, of course, a fairer test—shows an increase of six in the last year over that of the year before. This, however, may be accounted for by the fact that six children, whose parents are now supporting themselves, were received into the house early in the year, and have remained there ever since.—But it will be said, and with truth, that figures

do not represent the whole of the case. They may show a satisfactory balance-sheet to the ratepayers, but they tell nothing of that side of the question which, as guardians, we ought never to lose sight of; and that is the effect, moral as well as otherwise, upon the poor themselves. It is possible that, in attempting a reform, we have forgotten the humanity which is due from us; and the reduction in rates and pauperism may represent an increased amount of suffering to the poor, which we have no right to inflict. This most important side of the question cannot be omitted, if we would rightly estimate the work of our reform, while the difficulty of it will be apparent to all. I have been able, however, with the assistance of the relieving-officers, in some measure to meet it. Each case that has been permanently struck off the outdoor relief list has been watched, as far as it was possible to do so, and the subsequent condition and manner of living carefully recorded. It appears that, during the year ending December 31st, 1873, outdoor relief has been permanently discontinued from 241 paupers. Of these, two have died, three have accepted the offer of the house, twelve have left the district (this includes a family of six persons), nine are maintaining themselves with occasional help from relatives, fifty-five are supported by relatives who seem well able to do it; the remainder, to the number of 160, are entirely supporting themselves in the district, and of these only seven appear to have any difficulty in doing so, while four out of the seven are acknowledged to be cases requiring relief, but for whom the house is manifestly the proper place, the offer of which has been made, but persistently refused. The above statement serves, I think, to exonerate the board from any suspicion of harshness, and is a sufficient justification of the course that has been adopted. It appears from this, that of 241 persons who were supported by the rates on January 1st, 1873, only three were being so supported on January 1st, 1874; or, in other words, that 236 persons, who on January 1st, 1873, were paupers, on January 1st, 1874, were independent."

Mr. Malcolm M'Neill, in his report already referred to, mentions a similar case on a smaller scale in his district, in the town parish of Stranraer, in Scotland, where by merely applying the poorhouse test under the guidance of a sagacious chairman, Mr. MacLean, of Duchra, "in all cases where there is any reason for suspecting imposition, and in all cases where the pauper is of improvident habits, or where the applicant has illegitimate children," the proportion of pauperism has been brought, as he states it, to 1 in 31·2 of the population. The ratio was formerly 1 in 17. My calculation of the present ratio does not agree with his, perhaps from some difference of time. But I find that in the

parish referred to the expenditure for the poor stood thus:—

1854	£1,066	5 6
1868	904	17 6
1873	774	14 0

The descending scale of cost, with the relief so given to the ratepayers, and a noticeable increase in the value of property, show what can be done by judgment and vigilance. This is one of the small number of parishes in which the Board of Supervision has permitted to the occupying ratepayers an efficient share in the management. They are allowed to elect twelve members of the board. Strange to say, a radius of thirty miles from this parish would reach more than half of those whose position as to pauperism and illegitimacy are so much to be deplored.

Mr. M'Neill further states that the average of the whole county of Wigtown "exhibits the startling proportion of one pauper to 17·3 of the population, and is thus by far the most heavily burdened portion of my district. It is remarkable that in no other county is every parish furnished with poorhouse accommodation." Things have become worse since his report. On the year ending May, 1873, the average proportion over all Wigtownshire is one person supported by the rates in every 14½ of the population. But he states some facts which quite account for it.

"In this county there are receiving outdoor relief forty-eight single women, with 100 children—in all 148 persons; there are also fifty-one cases (the number of dependants unknown) in which pauperism is doubtful; 199 persons, therefore—and it is probable that investigation would discover a much greater number—are suitable subjects for the test. The number of single women with their children, including eleven individuals in the poorhouse, is as 1 in 244·2 of the population. In the whole southern district, such cases are only as 1 in 767·7; and this fact alone, indicating lax management in one direction, is probably a fair guide to what may be anticipated in others."

He shows that in one parish the ratio of single women paupers and their children to population is 1 in 83·5. In twenty-four parishes of Haddingtonshire he found on

the rolls forty-one single women with eighty children, in all 121 persons, or 1 in 312 of the population; and in the parish of Haddington he found the ratio of pauperism 1 in 17·5 of the population, and single women with their children on the roll in the ratio of 1 in 197·7 of the population, even a larger proportion than in Wigtownshire. In Kirkcudbrightshire there were on the rolls eighty-seven dissolute women, with 207 children, of whom only three women with eight children were in the poorhouse. The remaining 283 persons, 1 in 147·9 of the population, receive outdoor relief. "And this is not the only means of estimating the laxity of administration which has produced the high rate of pauperism in this county, for sixty-five other cases are noted as doubtful." In one parish in Kirkcudbrightshire the single women with their children on outdoor relief are 1 in 50·9 of the population!

Mr. Alexander Campbell, superintendent of one of the northern districts, reports that by the use of the poorhouse test "in one parish in Aberdeenshire the roll was speedily reduced one-fourth. In another parish in Perthshire the number of women-paupers receiving relief on account of illegitimate children was in a few weeks reduced from sixteen to one."

Mr. Adamson, the able inspector of the City Parish, Glasgow—an immense parish, with a population of 181,741—states:—

"Except in some very rare cases, we never give outdoor relief,

"1. To deserted wives.

"2. To women with illegitimate children.

"3. To persons of dissipated habits.

"4. To persons attempting to deceive the board by false statements.

"5. To persons of immoral character.

"6. To persons whose children ought to support them.

"The argument of persons ignorant of the practical working of the Poor Laws, and whose benevolent feelings overcome their judgment, is that it costs more to take these persons into the poorhouse than to give them a small aliment out. In some cases it would, but as a general rule these persons only remain in (if they come in at all) a few days; but admit them to the outdoor roll, and they will remain for years."

The rule as to deserted wives seems harsh; but experience shows that facility of getting parish support for the children is a great encouragement to desertion, and also that many desertions are collusive with the very object of burdening the rates.

Mr. Adamson's observation, that the classes who could maintain themselves generally stay a very short time in the poorhouse, is strikingly confirmed by the returns both of his own and other city parishes. Thus his parish, with accommodation for 1,500, was enabled to admit 4,206 to the poorhouse during the half-year ending 30th June, 1873. The Barony Parish, with accommodation for 1,348, admitted 2,162. Edinburgh, with 939 berths, admitted 2,041. And St. Cuthbert's and Canongate, with 538 berths, admitted 1,182. Many berths had obviously been vacated almost as soon as they were filled. In the rural districts the proportions are very different. Thurso Combination, with accommodation for 149, sent only 11 to the poorhouse. Wigtownshire, with accommodation for 352, sent only 92. Upper Nithsdale, with 126, sent 48. Kirkpatrick-Fleming Combination, with 120, sent 22. Latheron Combination, with 50, sent 6. And Kirkcudbright, with 250 berths, made use of only 68. The poorhouses, as a whole, are usually half empty. Thus, on 1st January, 1873, their whole inmates were 8,172, and on 1st July, 1873, only 7,371, though there was accommodation for 14,375.

In 1852, when the population of the City Parish (Glasgow) was 148,116, the registered poor were 14,117. And such was the effect of the system pursued, as explained by Mr. Adamson, that in 1872, when the population had increased to 181,741, the registered poor were only 5,487, and the casual poor had diminished from 3,767 in the former year to 362 in the latter.

The progress of the system pursued in the Parish of Glasgow appears thus:—

In 1854 the proportion of registered poor on indoor relief was about	8½ per cent.
And the total number of registered poor was	11,501

In 1864 (ten years later), under the system pursued, the proportion on indoor relief (averaging the numbers for two half-years) was	64 per cent.	
And the total number of registered poor had been reduced to . .		6,513
In 1873 (we have not yet the returns for 1874) the proportion on indoor relief was	71 per cent.	
And the total registered poor had been reduced to		5,452

In 1854 there was 1 pauper on the register for nearly every 13 of the population. In 1864 the proportion had fallen to 1 in 24, and in 1873 it was 1 in 33.—In 1852 the poor-rate was 2s. 6d. per pound. In 1862 it was 1s. 6d. In 1872 it was 1s. 4d.; and in 1874 it was 1s. 2d. per pound. If ever figures spoke, they do it in this case.

The Parochial Board of the City Parish has twenty-five members elected by the ratepayers. The ecclesiastical members are proportionately too few to sway its policy.

In the Barony Parish of Glasgow—another immense parish—the poorhouse test has not been so stringently applied, but its influence is quite discernible.

In 1868 the proportion of registered poor on indoor relief was	25½ per cent.	
And their total number was . .		9,866
In 1872 the proportion on indoor relief had been increased to	31⅝ per cent.	
And the total number fell to . .		6,646
In 1873 the proportion on indoor relief was increased to	34 per cent.	
And the total number diminished to .		5,865

In this case, also, the reduction was effected in the face of a vast increase of population—from 177,527 at the first date to 222,927 at the two last. In 1868 the proportion of registered poor to population was about 1 in 18. In 1872 it was under 1 in 35, and in 1873 it was close to 1 in 38. In this parish, also, the ratepayers have the chief voice in the management, the Board of Supervision having allowed them to elect twenty-one members of the Parochial Board.

On the average over all Ireland the proportion of indoor relief is about 61 per cent., considerably higher

than the Barony parish, and not quite so high as Glasgow. That is the secret of the amount of poor-rate in Ireland being less than in Scotland.

IX.—Poor—*continued.*

DEATHS AND EDUCATION.

The proportion of *deaths among the poor* cannot be discovered from the reports of the Board of Supervision. But the Board gives two columns which call for explanation and inquiry.

Of the registered poor, numbering .		95,271
"Died or ceased to receive relief .	23,734"	...
Of their dependants, numbering . .	..	58,156
Died or ceased to receive relief .	17,697*	
Total supported by poor-rates .		153,427
Total died or ceased to receive relief	41,431	

Of 153,427 persons supported by the rates, we thus learn that 41,431, more than a fourth, "died or ceased to receive relief" during the year ending May, 1873. And it was not an exceptional year. In the year ending May, 1872, the numbers were:—

Registered poor		99,329
Died or ceased to receive relief .	24,577	. .
Dependants	...	62,846
Died or ceased to receive relief .	19,987	
Total supported by the rates . .		162,175
Total died or ceased to receive relief	44,564	

Again more than a fourth. And on the average of ten years ending May, 1872, the numbers were:—

Supported by poor-rates—		
Registered poor		101,567
Dependants		63,614
Total		165,181
Died or ceased to receive relief—		
Registered poor	23,524	
Dependants	18,872	
Total . .	42,396	

* *Twenty-eighth Report*, p. 191.

Very nearly a fourth. On the figures it might almost seem, at first sight, as if the whole poor die or cease to receive relief, and are reproduced, every four years. It is not obvious why the deaths are mixed up in this way with less serious changes, as if it were of no interest to the public whether they died or what became of them. But taking the figures as they are given, it would seem that either the registered poor must be a singularly changing body for a country in which the able-bodied have no claim, or that the proportion of deaths is very great. As none except the disabled are entitled to relief, it might be expected, indeed, that there should be a high proportion of deaths among the registered poor, rather than that their number should fluctuate greatly by their ceasing to be relieved from other causes than death. From the persistence of the proportion over so many years, it is probable that, if the deaths were separated from other causes of cessation to receive relief, some *law* of change might be disclosed affecting the number of recipients of relief from time to time. The season of the year, for instance, may occasion it, for deaths are likely to be more frequent in winter; and other causes of discontinued relief in summer. It is certainly desirable that a return should be moved in Parliament, to show the number of deaths separately from other causes of their ceasing to be chargeable.

The Poor Law Act* made provision for the education of "poor children who are themselves, or whose parents are objects of parochial relief." I have in vain searched the annual reports of the Board for any statement of what has been done on this important subject. Even the accounts are silent as to expenditure for education. Yet it is the only reproductive expenditure under the supervision of the Board—the one hope of training up pauper children to become useful members of society. In the English reports for 1873 no fewer than 207 closely-printed pages are devoted to this subject. The Education Act, by its compulsory provisions for the education of all poor children, whether

* 8 and 9 Vict., c. 83, s. 69.

paupers or not, will, it is to be hoped, make it impossible for the Board of Supervision to continue this reticence.

In Scotland there has never been any extension, beyond the parish, of the area of chargeability or settlement. Two large city parishes in Edinburgh, and two in Glasgow, have accomplished unions for all purposes connected with the poor. Others have joined for the sole purpose of building poor-houses, but remain as separate as before for settlements and everything else. With these exceptions, every parish in Scotland "hangs by its own head;" each with its separate staff of officers, and its isolated method of dealing with pauperism. On an average, an eighth of the whole expenditure consists of costs of management.

The inequalities of taxation, and other evils which arise out of these narrow areas of rating and settlement, will be more conveniently considered after I have treated of the school-rate, which has for the first time brought out in an authentic shape the proportions in which parish taxation falls on different districts.

The following tabular view shows, triennially, the steady growth of the cost of maintaining the poor in Scotland, from 1852 till 1870, when it reached its highest point. It also shows that the cost of management has more than doubled since 1852.

Year ending	Management £	s.	d.	Total Expended. £	s.	d.
May, 1852	51,644	18	10½	514,288	14	6½
May, 1855	58,767	9	10½	584,823	14	
May, 1858	66,307	0	10½	622,634	9	
May, 1861	67,717	3	10¾	657,953	15	
May, 1864	81,738	2	2½	740,743	6	
May, 1867	90,328	6	10½	807,631	5	
May, 1870	98,770	18	10½	905,045	18	8¾†
May, 1873	108,577	0	6¾	873,075	10	10½‡

The sum expended for lunatic poor in the year ending May, 1873, was £136,685 2s. 1¾d. It is included in the total above given. There were 7,936 lunatics relieved during the year, at an average cost of £17 4s. 5d. The number of insane receiving relief in England on 1st January, 1873, was 51,253.

* Includes £50,419 for buildings. † Includes £86,656 3s. 2¼d. for ditto.
‡ Includes £71,180 7s. 10d. for ditto.

The poor-rate for the year ending May, 1873, equally apportioned on the annual value of all lands and heritages in Scotland, as returned by the inspectors of the poor, would come to £4 14s. 8¾d. per cent., or 11¼d. per pound, half payable by owners and half by occupiers. But the estimates of value reported by the inspectors cannot be relied on.

Besides their principal duties in connection with the poor, the Parochial Boards, in the year ending May, 1873, levied and administered assessments under the Public Health Act to the amount of £35,522 4s. 3d., the rates for this purpose also being equally divided between landlord and tenant; and there was distributed among them a Parliamentary grant of £10,000 in aid of medical relief to the poor.

X.—Parishes (*continued*). Burghs.

II.—*School-rates.—Area of Rating and Settlement.*

In 1872 Parliament placed the management of Public Schools in the hands of Parish and Burgh Boards. There is one for every parish and burgh. They are elected by the owners and occupiers of lands and heritages of the annual value of not less than £4. The election is (as nearly as possible) to be triennial; and every voter is entitled to a number of votes equal to the number of the members of the School Board to be elected, and may give all such votes to one candidate, or may distribute them among the candidates as he sees fit. The assessment is payable half by owners and half by occupiers, and is a "precept-rate," which the Parochial Board for Relief of the Poor are bound to collect with the poor assessment, and to pay over to the School Board. The maximum number of a School Board is fifteen, the minimum five: the Board of Education fixing the precise number for each parish. In the election of the School Board, owners and occupiers stand on an equality as in the assessment, and there are no members admitted except by election of the ratepayers—a strong contrast to the constitution of the Parochial Boards.

The first rate required by the School Boards has exhibited extraordinary inequalities in the burdens laid on different parts of the country, frequently in parishes separated by a mere imaginary line. At Lanark, for example, a ratepayer on one side of a boundary-line pays on eightpence per pound, while his neighbour on the other side escapes with three-farthings. It was previously known, though not to be discovered in the reports of the Board of Supervision, that there were considerable inequalities in the poor-rate. The inequalities of poor-rate, however, were supposed to arise from peculiarities of the various parishes in their relation to the poor. There was at least this theory and excuse for them, that those whose poor-rate was heavy might in some way or other have produced or aggravated the burden, or might by its pressure be constrained to search for a remedy. But inequalities of school-rate, a tax and a management newly brought into action, and having no more special connection with paupers than with other classes of the community, seem to indicate that they are mainly a consequence of the limited area adopted for taxation. If that be so, they are unjust.

The school-rate through the whole country varies, according to the parochial limit, from a halfpenny to eighteenpence per pound: that means that one man has to pay for public education on a scale say of three hundred, six hundred, twelve hundred, even thirty-six hundred per cent. compared with what another pays, both charged on the rental of the lands or houses which they own or occupy.

We have not yet the means of ascertaining the full extent of the inequalities in the poor-rate; but as the charges of the poor are in the aggregate much heavier than those of the schools, the inequalities of poor-rate are likely to be practically more severe on those who have to bear them.

The area for rating being also the area for parish settlement, the Poor Boards are in perpetual antagonism on questions of liability, each struggling to throw it off

on its neighbours. The chief discussions at every Board are directed to that end. Their own time and energies, and the time and energies of their officers, are occupied in constant efforts to shift the burden—an amazing waste of power, even when they escape litigation. In one large parish there are commonly between two and three thousand undetermined cases of settlement. That alone represents a frightful chronic mass of correspondence, inquiries, and discussions, not in that parish only, but in every other parish against which it has claims, or which has claims against it. The birthplace and dwellings of the foremost peer, the birthplace and dwellings of Newton, Shakespeare, Milton, or Burns, were never investigated with half the eagerness, or a tenth of the expense, that is freely spent as to the birth and residence of a pauper, to find out whether he first saw the light on one side of a parish-line or the other, or what parishes successively he has made his home. Verily, if the deaths of paupers are passed by in official reports as of little account, the law gives an artificial but very practical interest to their birth and history while they live; unfortunately the interest they thus excite is of no benefit to themselves. If we take ten members to a Board, we have thus nearly nine thousand unpaid men and nine hundred paid officers, besides other employés, busying themselves to a large extent in beating the air.

A case of a different nature may be mentioned by way of illustration. A poor man who had no settlement was seized with small-pox. He applied to the inspector of the parish in which he became destitute, whose duty it was by law to provide for him. The inspector passed him to another parish. He applied to the inspector there. He was put into a cart and taken to the outskirts of a village in a third parish. He applied to the inspector of that parish, and he was passed on again. He was found by the police, in the fourth parish, in a frightful state, propagating the poison of small-pox wherever he went. Each inspector was trying to save his own parish. If these parishes

had been united altogether, as they were united to maintain a common poorhouse, they would all have had the same interest, and the unfortunate man would probably have been sent to hospital at first.

In a case between parishes in which I was arbitrator, it was proved before me that the man whose settlement was in dispute, and who had received much kindness from the family on whose estate he lived, was, nevertheless, under the policy of the estate, turned out of his house in feeble health, when about to gain a settlement, and, being unable to get a house, had to live with his family eight weeks in the woods; and I had to determine that by law his acquisition of a settlement was thus successfully prevented.

It seems strange, too, in a country with a seventh of the population of England, to have such a multitude of petty parish Boards (numbering, between poor and school, nearly 1,800), each armed with the fullest powers of taxing and spending, and each limiting its views to its own diminutive bounds.

Nearly every third parish in Scotland has fewer than 1,000 inhabitants; nearly every tenth parish fewer than 500. Yet these Liliputian communities have their organised Boards, their salaried officials, their Parliamentary powers to tax their neighbours and spend the money.

Lord Cockburn tells of his having been at a meeting of heritors where four were present. Dreghorn was voted into what was called the chair. Redhall moved a vote of £5; but "Comiston moved the previous question, a deep stroke, which he and I carried, and so the meeting ended." "Society," he adds, "is all spotted and bubbling with these little senates."

But other evils are small, compared to the crushing influence on the labouring classes of the perpetual struggle to prevent settlements. The natural distribution of labour is thus seriously hindered.

It operates mainly in the country districts, driving them into the towns. In towns, where proprietors are numerous, the letting of houses is usually governed by

the ordinary rules of supply and demand, and thus the labourers who cannot find dwellings in the country are forced to crowd together in the towns. But even in a town I have seen exhibited in a court of law a mutual bond or agreement among the proprietors, put into the shape of a formal deed, to exclude poor people from getting houses in the parish, in order to avoid liabilities under the law of settlement.

In rural parishes, where a few large proprietors regulate the policy to be pursued on this subject, and not unfrequently enforce it on their tenants by stipulations in leases, this law works with special severity on the industrious poor. I have heard one of the most kind-hearted of men boast that in his parish matters were so arranged that no outsider could get a house in it. He had not the remotest suspicion that it could produce hardship. Let us take the case of a poor man who hires his labour in a country parish, but cannot get a house in it, because this law gives a fictitious interest to every owner and occupier to hinder the acquisition of settlements by residence. He has thus a heavy addition to his daily toil. His energies are overtaxed by travelling miles before he begins his work, and miles after it is done. In bad weather he has far to go for shelter. His mid-day meals must always be eaten cold. His hours of rest are diminished. If, again, he is so fortunate as to get a house in the parish, the whole parish has an unnatural interest that he should not remain for the five years which would settle him there. And if there is any failure of health, any appearance or prospect of distress in his family, that unhappy kind of interest is too easily awakened against him. Would it be wonderful if the sinews of the country were to leave it, to seek in other lands the freedom of labour which such an ill-conceived law denies them in this?

As soon as the pressure of the rates under the new Poor Law of 1845 was seriously felt, there was a general effort in some districts to relieve the pressure by emptying, unroofing, and pulling down cottages. This is illustrated by the descending scale of house accommodation.

	Wigtownshire.	Argyllshire.	Kinross.	Kincardine.
Inhabited Houses—				
Census, 1841 . .	7,440	18,552	1,812	7,304
Do. 1851 . .	6,902	15,039	1,662	6,636
Do. 1861 . .	6,868	13,923	1,644	6,697
Do. 1871 . .	6,739	13,497	1,517	6,661

Yet in Wigtownshire there were, in 1871, five families to every four inhabited houses, in Argyllshire and Kinross the same, and in Kincardine about six to five.

During the Census period ending in 1851, which was that in which the pressure of the poor-rates began, the reduction of house accommodation was much the greatest, and yet it was made, in three of these counties, in the face of an increasing population, which, at first, it failed to stop. The population of Wigtownshire in 1851 was a tenth more than in 1841, notwithstanding the diminution of house accommodation, and the population increased also in Kinross and Kincardine, though not at so high a rate.—In Perthshire the inhabited houses were 28,993 in 1841. They were reduced to 22,528 in the Census returns of 1851, in the face of an enlarged population. —In Forfarshire the population was 170,453 in 1841, living in 36,184 houses. In 1871 the population had increased to 237,567, but the inhabited houses had been reduced, in the Census returns of 1871, to 25,663. I do not wish to rely too much on the Census in this branch, for its returns have been confused by the use (under ill-considered orders from London, notwithstanding known objections) of an imperfect definition of a "House," and one which is unsuitable in Scotland. But this confusion does not touch the facts which I have to add. In Forfarshire there are now no fewer than 16,784 families (consisting of more than 70,000 persons) crowded into houses of single rooms. There are large parishes in that county in which every third family, and in one large parish more than half the population, live in that state. But this is not the worst. Over the whole thirteen southern counties of Scotland, containing 1,862,502 people, more than every third family on the average

of town and country now lives in a house of one room. The actual proportion is 1 family pent in 1 room to every 1⅔ who are better. In Linlithgowshire it is 1 to 1⅗; in the great county of Ayr it is 1 to 1½. What an epitome of silent suffering is recorded in these figures, born of this remorseless law!

The Royal Commission on the employment of women children in agriculture report, as to one of these counties, Ayrshire:—"In no county can the wants and "comfort of the rural population in respect to house 'accommodation be more disregarded." "Not only 'are cottages not built, but the old ones are permitted 'to fall into decay or ruin. In some extensive parishes 'the cottages are not sufficient for one-tenth of the 'labouring population."

I have still to add a fact of terrible significance, which those who are responsible for the future of the country have need to take to heart. It is proved by the figures of the Registrar General's returns that, in the ten years ending 1870, nearly 90,000 persons died in these thirteen southern counties, *beyond their due proportion according to the average rate of death in the rest of Scotland.* And in Forfarshire, which resembled their condition as to houses, the ten years' death rate was almost equally high. So appalling are the results of artificial interference with the natural action of supply and demand in regard to the dwellings of the people.

A tenth of the cold-hearted zeal which has been evoked by the law of settlement, and employed in efforts thus to turn over the burden of the poor from one parish to another, would have sufficed, if it had been directed to vigilant management, to prevent the abuses which have so increased the burden on all.

Before the Poor Law Act passed there was a decennial increase of population all over Scotland of ten per cent. That arose mainly from the excess of births over deathsl The returns show that there is no diminution in that natural growth of population. Yet, in the first decennia. period after the new law was in full action, the increase of population dropped from ten to six per cent. A

number equal to the difference must have gone. In the next decennial period, ending 1870 (for which the returns, under the admirable management of Dr. Stark, are much more complete and satisfactory), we are enabled to trace the movement of the population with great certainty. No fewer than 219,224 persons,* one for every nine who remained, abandoned the rural districts of Scotland. And if the small towns are left out of the calculation the proportion rises to one for every seven who remained.† This has arisen, no doubt, from a variety of causes, some of them natural and healthy, and operating also in some degree in England—such as the search for higher wages, or greater independence, or better prospects of rising in the world. But it is obvious that a law which harasses the industrious in their homes has a powerful tendency to contribute unnaturally and hurtfully to that result, and therefore calls for the attention of the legislator.

Notwithstanding the constant recruitment of population by the excess of births beyond deaths (which in the same ten years amounted to 277,212 in the rural districts), there has been an actual diminution of the population in each of 530 of the 887 parishes in Scotland. This has occurred in the following number of parishes in each county:

Aberdeen	32	Forfar	37	Orkney and Shetland . .	15
Argyll .	26	Haddington	15	Peebles. .	7
Ayr .	28	Inverness	25	Perth . .	57
Banff .	12	Kincardine	9	Renfrew .	6
Berwick	17	Kinross	4	Ross & Cromarty	22
Bute .	3	Kirkcudbright	24	Roxburgh .	23
Caithness	8	Lanark .	20	Selkirk . .	1
Dumbarton		Linlithgow	6	Stirling. .	12
Dumfries		Moray .	10	Sutherland .	10
Edinburgh		Nairn .	3	Wigtown .	15
Fife .					

Except the little shire of Clackmannan there is not a single county in Scotland in which this depopulation has not manifested itself in the rural parishes.

In particular districts in Scotland the depopulation has been much more severe. Thus, besides a number

* Eighth Census, vol. ii., page 50. † Eighth Census, vol. ii., page 17.

equal to the natural increase from excess of births beyond deaths, one has gone for about, or nearly, every three who remain in Barr (Ayrshire); Lethendy, Aberfoyle, Weem, and Glendevon (Perthshire); Lethnot (Forfarshire); Morham (Haddingtonshire); Eaglesham (Renfrewshire); Glassford (Lanarkshire); Culsalmond (Aberdeenshire); Fintray (Stirlingshire); Kirkton (Roxburghshire); and Newton (Edinburghshire).

One has gone for nearly every four who remain in Kirkurd (Peeblesshire); Glasserton (Wigtownshire); Kirkpatrick Fleming (Dumfriesshire); Kirkmichael (Ayrshire); Kilninian and Kilmore (Argyllshire); Kettins, Essie and Nevy, and Dunnichen (Forfarshire); and Saline and Arngask (Fifeshire).

All this has occurred in the face of increased demand for agricultural labour. It is ascertained by a comparison of the agricultural statistics of 1856 and 1873 that, without any diminution of corn tillage, the production of meat and dairy produce in Scotland has greatly increased.

Such reduction of population could not happen without its consequences being felt. In some districts there were times at which agricultural labour could not be had *at any price;* and the crops must have rotted on the ground for want of hands to reap them, but for the introduction of the reaping machine, which did not precede the scarcity of farm labour, indeed was no more than in time to relieve it.

In England, of 627 Registrar's districts there was a decrease of population in only 163; from which it is reasonable to infer that in Scotland there are causes intensifying this remarkable movement of population, in addition to those which exist in England. One of these, no doubt, is the narrow area for parish settlement which still prevails in Scotland, and the consequences to which it leads.

Enlarged areas for rating, management, and settlement, would spread the burden of the rates more equally, introduce a higher class of officers, save much expense, wider views into action, prevent a mass of inter-

parochial disputes, and mitigate the pressure of the law of settlement on the labouring classes. The plague-spots which shame the country would speedily disappear, if adjoining districts were interested and enabled to amend their management.

BURGHS.

In burghs the poor and schools are managed by Boards of the same description as in country parishes; and in many towns trusts have been created by local Acts of Parliament for water, light, harbours, and other public purposes. Except in such cases, the magistrates and Town Councils administer local affairs, and in most burghs levy petty customs, market-dues, &c., on goods and traffic. I have obtained a statement of these customs and dues, which I annex in an Appendix, No. III. The annual income which they yield to the burghs, according to that statement, is £10,652 7s. 2½d.; and making allowance for a few in the minor burghs which have not been ascertained, the total net produce of these customs and dues to all the burghs probably does not exceed £11,000 or £12,000, of which £10,098 17s. 10d. is levied in twenty of the burghs, the small balance being taken among the remaining sixty-one. But these figures by no means represent the real extent of this taxation. The customs and dues are almost invariably let by auction, and the tacksman gets as much out of them as he can. On the average he must have what will pay for his trouble in collecting the dues, with a sufficient margin of profit for his risk and capital. Hence the cost of collection, in some cases, absorbs nearly the whole that is levied. There are four of the burghs in which the united net returns, actually coming into the revenue from this source, amount among them to £13 11s. 6d.

These customs and dues are of a very obnoxious character. They are levied for the benefit of the towns, chiefly on the country people bringing their goods for sale. In some burghs they are charged for mere passage through the town. Burgesses do not usually

pay. This kind of taxation obstructs trade in much the same way as if every burgh where they are levied was a little state set down in the heart of the country, and maintaining a hostile tariff against everybody else.

An Act was passed in 1870* to enable the town councils of burghs to abolish these customs and duties, and to levy an equivalent assessment on the inhabitants. But this Act did not recognise the peculiarity of these dues: that they are levied not so much from inhabitants as from strangers—unfreemen; and the invitation to the inhabitants to tax themselves, in order to relieve strangers, has hitherto produced little result. Considering this peculiarity in the character of these dues, their vexatious nature, and the limited return which they yield to the town revenues compared with the exaction which they make on the country, it would probably be a beneficial use of the small sum which would be necessary from the national revenue to effect their total abolition. Or if that should be thought inexpedient, the Commissioners of Supply might be authorised to redeem them for the average net yield; the annual redemption money to be levied along with the prison-rate on the counties and burghs alike. A few of these dues, however, are paid for the use of market-stalls, weighing-machines, &c., which do not require to be interfered with.

XI.—Amount and Incidence of Local Taxation—Treasury Subventions.

The amount of local taxation in Scotland is a problem which has hitherto been unsolved. There are no published data for ascertaining it; but Mr. Goschen estimated the rates roughly at a million and a half.

By the kindness of the Lord-Advocate, I have had access to the papers collected at the Crown Office on the subject; and by the use of these, with information derived from other sources, I hope to be now able to present, for the first time, a tolerable approximation to the amount.

* 33 & 34 Vict., c. 42.

	£	s.	d.	£	s.	d.	£	s.	d.
1. PAROCHIAL ASSESSMENTS:									
Poor-rate levied year ending May, 1873*		..		790,370	12	3			
Public Health Act†		..		35,522	4	3			
School-rate — First levy not completed—*Estimated* . .		...		280,000	0	0			
Payable (with minor exceptions)—half by Landlords, and half by Occupiers . .		.					1,105,892	16	6
2. ASSESSMENTS LEVIED BY COMMISSIONERS OF SUPPLY IN COUNTIES:									
Payable by Landowners, per Appendix II.	158,728	12	3½						
Add Estimate for Caithness and Shetland	1,250	0	0						
Total payable by Landowners				159,978	12	3½			
Payable by Occupiers, per Appendix II.				2,657	1	4½			
Total Assessments by Commissioners of Supply . . .		.					162,635	13	8
3. BURGH ASSESSMENTS:									
Payable by Landlords (49 Burghs), per Appendix III.	65,393	8	9						
Add Estimate for remaining 32 Burghs‡	18,000	0	0						
Landlords' Assessments . .				83,393	8	9			
Payable by Occupiers (49 Burghs), per Appendix III.	444,117	16	4½						
Add Estimate for 32 Burghs‡	115,000	0	0						
Payable by Occupiers . . .				559,117	16	4			
Burgh Customs and other Dues, Appendix III. . . .		...		10,652	7	2			
Total Burgh Assessments . .		...					653,163	12	3
4. LOCOMOTION:									
Roads — Turnpike Tolls, § Whitsunday, 1873, per *Parliamentary Returns* . . .		...		177,222	0	0			
Roads—not Turnpike, stated in Appendix IV.—									
Landlords	42,245	10	11						
Occupiers	32,626	1	5						
Rest estimated (information vague), say	150,000	0	0						
				224,871	12	4			
							402,093	12	4
				In all. . .			2,323,785	14	9

* *Twenty-eighth Report*, Board of Supervision, p. 134.

† *Twenty-eighth Report*, Board of Supervision, p. 282.

‡ These Estimates are made nearly according to the ratio between the valuation of these burghs, and the valuation of the forty-nine, as to whose assessments the information obtained is given in Appendix III.

§ There are no turnpikes in the following counties: Aberdeen, Argyll, Bute, Caithness, Haddington, Inverness, Kirkcudbright, Nairn, Orkney, Peebles, Ross & Cromarty, Selkirk, Sutherland, and Wigtown. The bonded or mortgage debts on the other counties for turnpike roads amounted to £1,072,741; floating debts, £32,662; unpaid interest, £653,605.

In the present state of public information I cannot guarantee the accuracy of these figures, and I present them subject to such corrections as may be necessary when fuller returns are obtained. So far as they afford means of comparing county and burghal assessments I expect that they will be substantially verified; and they offer some remarkable features.

The Local Taxation imposed by Commissioners of Supply is levied by owners, and almost wholly laid on owners.

The Local Taxation in towns is laid on occupiers in the proportion of about six to one of that on owners in the same communities.

The Burghal Taxation borne by occupiers is more than three times as great, in absolute amount, as the whole assessments levied on landowners by the Commissioners of Supply.

The turnpike roads, of course, are maintained by tolls, levied on those who use them. Such tolls add to the cost of goods and traffic, and ultimately fall mainly on consumers. Of the other roads, though the information is far from complete or satisfactory, there is reason to believe that the principal part of their maintenance, being commutation for statute labour, is paid by occupiers.

The Parochial Taxation, in the main, is equally divided between owners and occupiers.

The division of rates between landed proprietors and agricultural tenants, though it existed previously on a small scale, was first felt as a substantial burden under the Poor Law of 1845. The older system, still continued in the assessments of the Commissioners of Supply, recognised the principle that the ultimate incidence of rates in agricultural tenancies is on the rent. Under the new system the rent ultimately bears, not merely the rates, but also, though the landlord may not perceive it, a margin to meet any possible increase of rates. The introduction of the new system operated unfairly on those tenants who had taken leases without anticipating the change. But things have since had time to adjust themselves. Agricultural

tenancies in Scotland are now so entirely settled on commercial principles, that at every renewal of lease the new taxes are taken into account by both parties in settling the rent. It is an inherent condition of the existence of such tenancies, that, on the average of years, they shall clear all charges, and remunerate the tenant for his labour, skill, and capital, before anything can go to the landlord as rent. Rates so oppressive as to exhaust the free produce, without remunerating the cultivator, would stop cultivation, and even disperse the flocks and herds, as happened in Ireland in 1847–49. There could, in that case, be no rent. Since rates levied on the producer are necessarily a prior charge on the produce, they just as necessarily diminish or destroy the surplus out of which alone rent can come. It is an economical law from which there is no escape where agricultural rents are settled on commercial principles; and where they are not settled on commercial principles, it is of little practical use to discuss the incidence of rating. If land is let below its fair market value, the landlord obviously bears, not only the rates, but also a kindly margin, broader or narrower as the patriarchal system prevails or yields, but always broad enough to meet the rates, with their accidental variations, and something more.

When there is competition for farms, one man may estimate the expected produce higher than another, or see his way to increase it, or to reduce the expenses, or he may look for a higher range of markets, or be content to accept a smaller share of the returns as the remuneration for himself and his capital. His object is to get a living from the business, and he must see his way to get what he considers a fair return for his capital and work, otherwise he may be driven out of the business, and so diminish the competition, and consequently the rent. Men's opinions vary on all these points. Hence one man is willing to give more than another; and this, in practice, causes uncertainty in the amount of rent which a farm will yield. The offering tenant may make a miscalculation, or he may be pressed to find a home for his family, or unwilling to break up the stock which he has on the farm he is leaving, or he

may be a needy man who cares less for risk than for the chances of a fresh start where he is little known, and admitted into the competition under the delusive assurance of safety held out to landlords by the laws of hypothec or distress. In any of these cases he may be led to promise more than the produce can give, and when he does so any means he has is responsible. To the landlord such cases generally have their Nemesis at hand, for the perennial loss of an over-rented farm soon exhausts a tenant of ordinary means, and the farm is sure to suffer in the struggle. At bottom, and in the long run, the rent of a farm must come from the produce, and cannot come till every other charge and cost of production, including rates exigible from the tenant, has been paid. Rent will always be ruled in the main by supply and demand, but with this limit in agricultural subjects, that the demand must inevitably be checked as the costs approach the market value of the produce, and must cease if they ever come so near as not to leave, on the average, what the cultivator is willing to accept as a reasonable return for his capital, and for his risks and work.

But a tenant holding a lease, and chargeable with the rates, has the same interest as the proprietor to keep down the rates while his lease lasts, and will not be one whit less vigilant in that service though he knows that at the next adjustment of rent the amount of rates will affect the new rent he is to undertake. The big blunder which has spread the leprosy of pauperism in Scotland, is that this class of men, practised and vigilant in small economies, have been shut out of their just share in controlling the expenditure of the poor-rates, half of which is exigible from them.

Dwelling-houses, on the other hand, are not instruments of production, but necessaries of life. Demand and supply, in each locality, determine their rent; but the question of its amount is not embarrassed by any consideration, on the tenant's part, of produce to be raised or profit to be made by their use. When the demand exceeds the supply, the builder comes in to restore the balance, and it is he, not the tenant, who has to consider whether

the operations which he contemplates will pay him. The average and prospective rates influence his decision in so far as he conceives that they will affect the demand —that is, the rent-paying power of the public. His decision again influences the proportions between supply and demand. But the house tenant, as a rule, does not calculate on paying the rent of the house out of its produce. Its rent must be paid from income derived from some other source. Therefore, the ultimate incidence of rates on dwelling-houses is not necessarily the same as on farms hired for production. High rates may restrict demand, and so tend to keep down rents; and when that occurs the incidence of tenants' rating will be to some extent on the landlord. That is not always distinctly traceable in practice. It often happens that in dense populations, where rates are high, there are some countervailing advantages, such as vicinity to places of business, which constrain men to live there, and so overcome and conceal the action of the rates upon rents. But if tenants' rates are oppressive in amount, or obnoxious in character, they tend to drive tenants away, and to reduce rents. Under the Scottish Poor Law of 1845 several modes of taxation were authorised, and among others the assessment might be imposed as an equal percentage on the annual value of heritages and on the annual income of the inhabitants. In the first instance this gave great apparent relief to house-owners, the weight of taxation falling on other incomes. In one parish I saw the working of this system from beginning to end. It was a very vexatious mode of levying a tax, leading to warm discussions as to men's means in Board Meetings of their neighbours, and it was unduly severe on precarious incomes. Some who were free to remove took up their residence outside of the parish bounds, and their escape raised the house-owners' share of the burden. House rents outside went up. Within the parish, houses began to stand empty, and rents to come down. And at last, between the vexations of the levy and the discovery of house-owners that they lost in rent though they saved in tax, the system was put an end to with their own concurrence. It has since been alto-

gether abolished by law. Therefore, although the owners, under the Burghal Taxation in Scotland, pay directly only £83,393, while the occupiers pay more than half a million, there can be little doubt that a considerable part of the half million ultimately comes out of the owners' rents, by diminishing them, according to the fluctuations of supply and demand. If the burden of paying that half million were transferred to the house-owners, the tenants could afford and would probably submit to pay more rent. Those who had been kept out by the high rates would attempt to come in, and the increased demand would send up rents. How far they would go up would depend on the relations between supply and the stimulated demand in each locality. But whatever it would come to in the contingency supposed, would be simply an index to the share of occupiers' rates which now falls on house-owners through the present diminution of rents caused by rates.

It results from all this that in a community which is prosperous and increasing in population, and the demand for houses consequently great, the house-rates as a rule, however levied, will fall ultimately on the tenant. In a community which is depressed and diminishing, and the demand for houses consequently small, the rates will fall ultimately on the landlord. Between the extremes the demand will fluctuate, and the rates be ultimately divided between landlord and tenant in every variety of degree.

The whole *subventions* or payments made from the Exchequer in aid or in substitution of Local Rates in Scotland for the year ending 31st March, 1873, are detailed in a recent Parliamentary Return* as amounting to £126,786; but this includes £58,841 for Sheriffs' accounts, Procurators-Fiscal, and expenses in the Sheriff Courts, the greater part of which were never in the memory of man a charge on local rates, and ought not to be so stated. About £12,000 of this sum (formerly paid out of the Rogue-money assessments) was assumed by the Treasury a quarter of a century since. The rest

* No. 402 of 1873.

was an ancient charge on the hereditary revenues of the Crown, and is now paid by the Exchequer, not in substitution of local rates, but in fulfilment of the obligation contracted by Parliament, on Her Majesty's accession to the throne, in consideration of the transfer then made to the consolidated fund of the hereditary revenues of the Crown during Her Majesty's life. The real amount of such subventions in aid of rates in Scotland is therefore only £80,145.

The same return details subventions or payments from Exchequer in aid or in substitution of local rates in England to the amount of . . .	£1,195,495
And in the estimates for the year ending March, 1874, there was farther included, in aid of the salaries of Sanitary Officers in England . .	£100,000
	£1,295,495

London receives such subventions from the Treasury to the amount of £233,562 for its police and fire establishments, besides large contributions to its poor rates. Glasgow, with a population including its suburbs nearly a fifth of London, and loaded with burghal and parochial taxation to the amount of £370,111 3s. 8d. is mocked by imperial aid to the extent of £13,292 5s. to the former and £1,015 4s. 2d. in aid of medical relief to the latter.

The city of Edinburgh has, on the average of the last four years, received Treasury subventions in aid of its rates to the amount of £5,167 10s. At the same rate, in proportion to population, London should have received £77,512 10s. instead of £233,562.

Under the new arrangements by which the Treasury contributions to police expenses are to be doubled, the subventions to Glasgow and Edinburgh will be increased, but they will still be very far below what they ought to be on the ratio of their population to London.

The inequality of these distributions of imperial funds requires to be examined by Parliament.

APPENDIX I.

County Assessments Levied by Commissioners of Supply. Year ending in 1874.

County	Object.	Valuation for Assessment. £ s. d.	Rate per £. d	Total Payable by Landlords. £ s d	Paid by Tenants. £ s. d.
1. *Aberdeen*—					
Landward .	Police . . .	777,000 0 0	1·190	3,853 11 0½	—
Aberdeen District. .	Police . . .	38,000 0 0	2·519	397 14 9½	—
Peterhead District. .	Police . . .	24,000 0 0	4·646	470 15 1	—
Turriff District . . .	Police . . .	5,000 0 0	3·190	67 3 2	—
				4,789 4 1	
	Prisons . . .	782,000 0 0	·367	1,195 18 5	—
	Registration of Voters .	782,000 0 0	·064	208 11 1	—
	Court-houses .	—	·225	733 3 10	—
	Contagious Diseases—				
	Animals . .	797,000 0 0	·500	830 9 1¾	830 9 1¾
	Militia Depot	782,000 0 0	·235	765 15 7	—
	General Assessment.	833,000 0 0	·325	1,128 8 1½	—
	County Buildings . . .	—	·083	288 10 2½	—
			—	9,940 0 5¾	830 9 1¾
2. *Argyll*—					
	Police . . .	386,814 2 4			
Burgh of Oban . .	Police . . .	10,768 10 4	—	3,235 16 1	—
Inveraray .	Police . . .	2,977 7 6			
	Prisons . . .	384,814 2 4	—	741 2 0	—
	Lunacy . . .	—	—	2,014 13 2	—
	General Assessment.	386,814 2 4	—	940 3 6	—
Oban . . .	Ditto . . .	10,768 10 4	—	26 3 5	—
			—	6,957 18 2	—

County.	Object.	Valuation for Assessment.	Rate per £.	Total Payable by Landlords.	Paid by Tenants
		£ s d	d.	£ s. d	£ s. d.
3. *Ayr*	Police . . .	1,029,140 6 2	1¾	7,504 3 0	—
	Prisons . . .	1,035,547 10 2	⅛	539 7 0	—
	Lunacy . . .	—	⅝	2,696 14 9	—
	Registration of Voters .	—	⅛	539 7 0	—
	Contagious Diseases— Animals . .	—	⅛	539 7 0	—
	General Assessment.	—	¼	1,078 13 11	—
			3	12,897 12 8	—
4. *Banff*	Police . . .	197,360 0 0	1½	1,241 5 3	—
	Prisons . .	211,676 0 0	½	436 15 8	—
	Lunacy . .	197,360 0 0	1½	1,220 18 3	—
	Registration of Voters .	197,360 0 0	¼	203 9 8	—
	Court-houses.	—	1	813 8 10	—
	Contagious Diseases— Animals . .	—	¼	101 14 10	101 14 10
	General Assessment.	—	¼	203 9 8	—
			5¼	4,221 2 2	101 14 10
5. *Berwick* . . .	Police . . .	379,414 3 7½	1½	2,371 7 0	—
	Prisons. . .			254 8 10	—
	Lunacy. . .	—		1,114 12 0	—
	Registration of Voters .	—		110 9 5	—
	Court-house .	—	1½	223 3 5	—
	Contagious Diseases—				—
	Animals . .	—		218 3 10	
	General Assessment.	—		450 9 6	—
			3	4,742 14 0	—
6. *Bute*	Police . . .	52,130 0 0	3¼	705 18 5¾	—
	Prisons. . .	—	1¼	271 10 7¾	—
	Lunacy. . .	—	2½	543 0 11½	—
	Registration of Voters .	—	¼	54 5 8	—
	Court-houses.	—	nil	—	—
	Contagious Diseases— Animals . .	—	¼	27 2 10	27 2 10
	General Assessment.	—	1½	325 16 2½	—
			9	1,927 14 9½	27 2 10

County.	Object.	Valuation for Assessment. £ s. d.	Rate per £. d.	Total Payable by Landlords. £ s. d.	Paid by Tenants. £ s. d.
7. *Caithness* (No information)	—	—	—	—	—
8. *Clackmannan* .	Police . . .	58,689 0 0	1½	366 16 2	—
	Prisons . . .	77,158 0 0	1¼	401 13 6	—
			½	160 14 11	
	Lunacy . . .	—	1	321 9 11	—
	Registration of Voters .	—	—	48 10 6	—
	Court-house .	77,158 0 0	1½	482 0 5	—
	Contagious Diseases— Animals . .	—	—	27 2 1	27 2 1
	General Assessment.	—	1	218 15 4	—
			—	2,027 2 10	27 2 1
9. *Cromarty* . . (*See* Ross.)	Police . . .	9,694 7 0	2	80 15 7	—
	Registration of Voters .	—	—	9 0 0	9 0 0*
	General Assessment.	—	10/12	33 12 7	—
			2 10/12	114 8 2	9 0 0
10. *Dumbarton*— Country District . . .	Police . . .	241,661 18 9	1½	1,510 8 1	—
Kirkintilloch District .	Police . . .	16,168 3 4	5	336 17 1	—
	Prisons . . .	296,059 4 4	½	616 16 3½	—
	Lunacy . . .	—	1	1,233 11 9½	—
	Registration of Voters .	—	⅛	154 4 1¼	—
	Court-houses, included in General Assessment.	—	—	—	—
	General Assessment.	—	⅜	462 12 2	—
	Contagious Diseases— Animals . .	—	½	616 16 3½	—
	General Purposes . . .	Old valued rent.	—	78 18 2½	—
			—	5,010 4 0½	—

* Collected by Inspectors of Parishes from landlords and tenants equally.

County.	Object.	Valuation for Assessment.	Rate per £	Total Payable by Landlords.	Paid by Tenants.
		£ s. d.	d	£ s. d.	£ s. d.
11. *Dumfries* . .	Police . . .	536,710 10 8	$1\frac{21}{48}$	3,209 2 11	—
	Prisons . .	—	$\frac{11}{48}$	511 12 1	—
	Registration of Voters .	—	$\frac{3}{48}$	139 10 6	—
	General . .	—	$\frac{10}{48}$	465 1 11	—
			$1\frac{45}{48}$	4,325 7 5	—
12. *Edinburgh*— (Including Railways and Canals. Excluding Burghs of Edinburgh Leith, Portobello, and Musselburgh) . .	Police . . .	588,933 11 3	$1\frac{3}{10}$	2,913 15 0	—
	Prisons . .	590,715 15 0	$\frac{3}{4}$	1,845 10 0	—
	Lunacy . .	530,492 11 2	$\frac{13}{24}$	1,197 2 4	—
	Registration of Voters .	590,715 15 0	$\frac{1}{24}$	102 10 0	—
	Court-houses.	—	nil	—	—
	General Assessment.	590,715 15 0	$\frac{3}{8}$	922 15 0	—
	County Valuation . . .	—	—	284 19 4	—
	Contagious Diseases— Animals . .	—	$\frac{22}{48}$	743 10 0	743 10 0
			$3\frac{1}{2}$	8,010 1 8	743 10 0
13. *Elgin* . . .		170,334 0 0	$1\frac{1}{2}$	1,064 11 10	—
	Police . . .	—	$\frac{3}{4}$	530 19 5	—
	Prisons. . .	—	$\frac{3}{4}$	530 19 5	—
	Lunacy. . .				
	General, including Registration of	159,438 0 0	$\frac{1}{4}$	177 8 8	—
	Voters . .	—	$\frac{1}{2}$	353 19 7	—
	Court-houses.		$3\frac{3}{4}$	2,657 18 11	—
14. *Fife*. . . .	Police . . .	770,848 0 0	1·188	3,818 12 4	—
	Prisons. . .	714,410 0 0	·309	1,168 7 0	—
	Lunacy. . .	—	·710	2,113 9 1	—
	Registration of Voters .	723,861 0 0	·003	98 0 9	—
	Court-houses.	714,410 0 0	·120	357 4 1	—
	General Assessment.	— 714,580 0 0	·110	327 10 3	—
	Weights, &c..	714,410 0 0	·022	66 19 6	—
	Militia Store.	—	·015	44 13 0	—
	Valuation . .	663,619 0 0	·125	345 12 8	—
	Contagious Diseases— Animals . .	756,173 0 0	·219	689 12 0	—
			2·821	9,030 0 8	—

County.	Object.	Valuation for Assessment. £ s. d.	Rate per £. d.	Total Payable by Landlords. £ s. d.	Paid by Tenants. £ s. d.
15. *Forfar* . . .	Police . . .	584,660 17 6	·95	2,314 0 2½	—
	Prisons . .	622,304 15 6	·60	1,555 11 7	—
	Registration of Voters .	—	·06	155 11 2	—
	Contagious Diseases— Animals . .	—	·35	907 8 5	—
	General Assessment.	—	·13	319 4 9	—
	Valuation of County . .	—	·03	67 10 4	—
			2·12	5,319 6 5½	—
16. *Haddington* . (Two districts for Police.)	Police . . .	243,443 6 6	1¼ / 1¾	1,242 9 3¾	—
	Prisons. . .	245,977 7 0	4/12	322 1 3½	—
	Lunacy. . .	—	9/12	724 0 2½	—
	Registration of Voters .	—	2/12	161 1 10¼	—
	Contagious Diseases— Animals . .	—	2/12	161 1 10¼	—
	General County Rate	—	3/12	246 11 8¾	—
			—	2,857 6 3¼	—
17. *Inverness* . .	Police . . .	306,898 14 4	1¾	2,237 14 8	—
	General. . .	—	½	639 7 2	—
	Prisons. . Lunacy. . Registration of Voters Militia Buildings	305,898 14 4	1 10/12	2,336 13 5	—
			4 1/12	5,213 15 3	—
18. *Kincardine* .	Police . . .	247,248 14 10	15/16	965 17 0	—
	Prisons. . .	—	4/16	257 10 11	—
	Registration of Voters .	244,776 3 0	1/16	63 14 10	—
	Court-houses.	247,248 14 10	8/8	515 2 4	—
	Contagious Diseases— Animals . .	244,776 3 0	8/16	509 19 0	—
	General Assessment.	—	4/16	254 19 5	—
			2½	2,567 3 6	—

County.	Object.	Valuation for Assessment. £ s. d.	Rate per £. d.	Total Payable by Landlords. £ s. d.	Paid by Tenants. £ s. d.
19. *Kinross* . .	Police . . .	65,677 3 0	$1\frac{1}{50}$	279 1 $9\frac{3}{4}$	—
	Prisons. . .	—	$\frac{33}{50}$	180 11 $10\frac{1}{4}$	—
	Lunacy. .	—	$\frac{33}{50}$	180 11 $10\frac{1}{4}$	—
	Registration of Voters .	—	$\frac{1}{50}$	27 7 $2\frac{3}{4}$	—
	Contagious Diseases— Animals . .	—	$\frac{10}{50}$	27 7 $2\frac{3}{4}$	—
	General Assessment.	—	$\frac{17}{50}$	93 0 $7\frac{1}{4}$	—
			$2\frac{40}{50}$	788 0 7	—
20. *Kirkcudbright*	Police . . .	350 230 9 5	1	1,459 5 10	—
	Prisons. . .	360,624 2 0	$\frac{4}{16}$	375 13 0	—
	Registration of Voters .	350,230 9 5	$\frac{1}{10}$	91 4 2	—
	General Assessment.	360,624 2 0	$\frac{5}{16}$	469 11 3	—
			$1\frac{10}{16}$	2,395 14 3	—
21. *Lanark*—					
Hamilton .	Police . . .	461,398 1 0	2		
Lanark . .	Police . . .	339,823 2 0	$1\frac{6}{13}$		
Airdrie . .	Police . . .	215,511 12 10	$2\frac{4}{12}$	12,626 18 $1\frac{6}{12}$	—
Coatbridge .	Police . . .	76,775 4 1	4		
Lower Ward	Police . . .	175,309 13 1	$2\frac{6}{12}$		
Hillhead. .	Police . . .	69,894 2 11	$4\frac{6}{12}$		
		1,338,711 15 11			
Northern District .	Prisons. . .	507,539 11 7	$1\frac{3}{16}$	6,859 18 9	—
Southern District .	Prisons. . .	1,115,219 3 5	$\frac{15}{16}$		
		1,622,758 15 0			
	Registration of Voters .	1,622,758 15 0	$\frac{1}{16}$	421 11 1	—
			—	19,902 7 $11\frac{6}{12}$	—
22. *Linlithgow* .	Police . . .	220,016 18 0	2	1,833 9 4	—
	Prisons. . .	—	$\frac{3}{4}$*	428 19 9	—
	Lunacy. . .	—	$\frac{1}{2}$	458 2 0	—
	General Assessment.	—	$\frac{3}{4}$	687 3 0	—
	Contagious Diseases—	—	$\frac{1}{2}$†	—	—
			$4\frac{1}{2}$	3,407 14 1	—

* But this covered expense of more than one year.
† Imposed Oct, 1872, sufficed for that and following ye

County.	Object.	Valuation for Assessment. £ s. d.	Rate per £. d.	Total Payable by Landlords. £ s. d.	Paid by Tenants. £ s. d.
23. *Nairn* . . .	Police . . .	31,602 0 0	2½	328 0 0	—
	Prisons, Lunacy, and Registration of Voters .	32,602 0 0	2	271 0 0	—
	Court-houses .	—	1	135 0 0	—
	Contagious Diseases— Animals. .	—	1	67 10 0	—
	General Assessment.	28,618 0 0	1	116 0 0	—
			7½	917 10 0	—
24. *Orkney* . . .	Prisons . .	55,523 0 0	¾	165 16 3	—
	General Assessment.	—	2⅛	468 2 9	—
			2⅞	633 19 0	—
25. *Peebles* . . .	Police . . .	142,910 17 4	1¼	744 5 4	—
	Prisons . . .	134,723 0 9	⅝	210 10 1	—
	Registration of Voters .	142,782 8 8	⅛	74 7 3	—
	General . .	134,851 9 5	¼	140 8 10	—
	Contagious Diseases— Animals . .	142,782 8 8	¼	74 7 3	74 7 3
			2¼	1,243 18 9	74 7 3
26. *Perth* . . .	Police . . .	928,246 0 0	per £100 10/6	4,873 0 0	—
	Prisons . .	933,043 0 0	3/6	1,632 0 0	—
	Lunacy . .	—	4/0	1,866 0 0	—
	Valuation & Registration of Voters .	815,880 0 0	-/7	237 0 0	—
	Court-houses .	933,043 0 0	3/0	1,399 0 0	—
	General Assessment.	863,663 0 0	-/10	359 0 0	—
	Contagious Diseases— Animals . .	933,043 0 0	1/4	311 0 0	311 0 0
			23/9	10,677 0 0	311 0 0

County.	Object.	Valuation for Assessment.	Rate per £.	Total Payable by Landlords.	Paid by Tenants.
		£ s. d.	d.	£ s. d.	£ s. d.
7. *Renfrew* . .	Police . . .	509,826 18 0	$1\frac{1}{4}$	3,717 5 $5\frac{1}{2}$	—
	Prisons. . .	539,104 15 0	$\frac{3}{4}$	1,684 11 0	—
	Contagious Diseases— Animals . .	—	$\frac{1}{4}$	280 15 $3\frac{1}{2}$	280 15 3
	General Assessment.	—	$\frac{1}{3}$	1,123 2 $3\frac{1}{2}$	—
			$3\frac{1}{4}$	6,805 14 $0\frac{1}{2}$	280 15 $3\frac{1}{2}$
28. *Ross* . . .	Police . . .	260,544 19 2	$1\frac{9}{12}$	1,899 19 3	—
Ross and Cromarty .	Prisons. . .	263,074 13 5	$\frac{5}{12}$	730 15 7	—
Do. . .	Lunacy. . .	—	1	1,096 3 7	—
Ross . . .	Court-houses.	217,118 1 11	$\frac{4}{12}$	371 0 11	—
Do. . .	Contagious Diseases— Animals . .	253,344 13 5	$\frac{1}{12}$	87 19 5	—
Do. . .	General Assessment.	—	$\frac{6}{12}$	527 16 4	—
Do . . .	Police Buildings . . .	260,544 19 2	$\frac{2}{12}$	180 19 0	—
(*See* Cromarty.)			—	4,894 14 1	—
29. *Roxburgh* . .	Police . . .	386,578 2 9	$1\frac{7}{10}$	2,738 5 0	—
	Prisons. . .	403,179 12 3	$\frac{3}{10}$	503 19 10	—
	Lunacy. . .	—	$\frac{7}{10}$	1,175 18 8	—
	Registration of Voters .	—	$\frac{1}{10}$	167 19 9	—
	General Assessment.	386,578 2 9	$\frac{3}{10}$	483 4 5	—
	Contagious Diseases— Animals . .	403,179 12 3	$\frac{3}{10}$	251 19 11	251 19 11
			$3\frac{4}{10}$	5,321 7 7	251 19 11
30. *Selkirk* . . .	Police . . .	67,731 16 1	$2\frac{1}{8}$	599 14 2	—
	Prisons. . .	70,030 11 6	$\frac{4}{4}$	218 16 10	—
	Lunacy. . .	—	$\frac{3}{4}$	218 16 10	—
	Registration of Voters .	—	$\frac{1}{12}$	24 6 3	—
	Court-houses.	—	$1\frac{1}{4}$	364 14 10	—
	Contagious Diseases— Animals . .	—	$\frac{1}{12}$	24 6 3	—
	General Assessment.	67,731 16 1	$\frac{1}{8}$	141 2 2	—
			$5\frac{13}{24}$	1,591 17 4	—

County.	Object.	Valuation for Assessment. £ s. d.	Rate per £. d.	Total Payable by Landlords. £ s. d.	Paid by Tenants. £ s. d.
31. *Shetland* (No information)	—	—	—	—	—
32. *Stirling*—					
Western . .	Police . . .	438,883 0 0	1	1,828 13 7	—
Eastern . .	Police . . .	25,237 11 0	3½	368 0 11	—
	Prisons . . .	438,883 0 0	½	914 6 9	—
	Lunacy . . .	—	1	1,828 13 7	—
	Court-houses.	—	1	1,828 13 7	—
	General County Rate	464,120 11 0	½	966 18 4	—
			—	7,735 6 9	—
33. *Sutherland* .	Police . . .	72,130 1 0	—	800 0 0	—
	Prisons . . .	—	—	280 0 0	—
	Lunacy . . .	—	—	304 1 4	—
	Registration of Voters .	—	—	15 9 11	—
	General Assessment.	—	—	234 10 1	—
			—	1,634 1 4	—
34. *Wigtown*—					
Landward .	Police . . .	211,758 12 6	1½	1,323 9 1	—
Burgh of Wigtown .	Police . . .	5,037 17 7		31 9 9	—
Burgh of Whithorn .	Police . . .	2,945 8 6		18 8 1	—
	Prisons . .	211,758 12 6	¾	661 14 0	—
	Court-house Valuation,	219,741 18 7	½	455 5 1	—
	as above, and Stranr.	14,147 17 0		28 0 0	—
	General Assessmcnt.	211,758 0 0	½	441 3 1	—
			3¼	2,959 9 1	—

APPENDIX II.

Abstract of County Assessments by Commissioners of Supply.

(For details see Appendix I.)

County.	Rate per £.	Total Payable by Landlords £ s d	Payable by Tenants. £ s d
	d.		
1. Aberdeen	*	9,940 0 5¾	830 9 1¼
2. Argyll	*	6,957 18 2	—
3. Ayr	-/3	12,897 12 8	—
4. Banff	-/5¼	4,221 2 2	101 14 10
5. Berwick	-/3	4,742 14 0	—
6. Bute	-/9	1,927 14 9½	27 2 10
7. Caithness (*No information*)	—	—	—
8. Clackmannan	*	2,027 2 10	27 2 1
9. Cromarty	-/2 10/12	114 8 2	9 0 0
10. Dumbarton	*	5,010 4 0½	—
11. Dumfries	-/1 15/16	4,325 7 5	—
12. Edinburgh	-/3½	8,010 1 8	743 10 0
13. Elgin	-/3¾	2,657 18 11	—
14. Fife	-/2·821	9,030 0 8	—
15. Forfar	-/2·12	5,319 6 5½	—
16. Haddington	*	2,857 6 3¼	—
17. Inverness	-/4 1/12	5,213 15 3	—
18. Kincardine	-/2¼	2,567 3 6	—
19. Kinross	-/2 19/20	788 0 7	—
20. Kirkcudbright	-/1 10/16	2,395 14 3	—
21. Lanark	*	19,902 7 11 6/12	—
22. Linlithgow	-/4½	3,407 14 1	—
23. Nairn	-/7½	917 10 0	—
24. Orkney	-/2 7/8	633 19 0	—
25. Peebles	-/2¼	1,243 18 9	74 7 3
26. Perth	23/9 p. £100	10,677 0 0	311 0 0
27. Renfrew	-/3¼	6,805 14 0½	280 15 3½
28. Ross	*	4,894 14 1	—
29. Roxburgh	-/3 4/10	5,321 7 7	251 19 11
30. Selkirk	-/5 13/24	1,591 17 4	—
31. Shetland (*No information*)	—	—	—
32. Stirling	*	7,735 6 9	—
33. Sutherland	—	1,634 1 4	—
34. Wigtown	-/3¼	2,959 9 1	—
		158,728 12 3½	2,657 1 4¼

* Poundage rate varies in different districts of County.

APPENDIX III.

ASSESSMENTS LEVIED BY MAGISTRATES AND TOWN COUNCILS OF BURGHS IN SCOTLAND, SHOWING DISTRIBUTION BETWEEN OWNERS AND OCCUPIERS; AND THE REVENUE DERIVED FROM BURGH CUSTOMS AND MARKET DUES, 1874.

Burgh.	Assessible Rental (Highest*)	Total Rates per £.	Payable by Landlords.	Payable by Occupiers.	Revenue from Petty Customs and Market Dues.
	£ s d		£ s d	£ s. d	£ s. d.
1. Aberdeen .	326,302 0 0	—	—	—	1,160 0 0
2. Airdrie . .	26,673 0 0	—	—	—	59 12 4
3. Annan . .	9,149 0 0	—	—	—	—
4. Anstruther Easter . .	4,385 0 0	—	—	—	not exacted
5. Anstruther Wester . .	1,844 0 0	—	—	—	not exacted
6. Arbroath . .	57,721 13 2	1/11½	755 6 4	4,229 17 3	55 0 0
7. Ayr . . .	65,714 0 0	—	584 8 1	333 15 9	505 0 0
8. Banff . . .	15,543 8 5	2/1½	502 0 0	672 15 11	90 16 2½
9. Bervie or Inverbervie .	2,468 0 0	—	—	—	nil
10. Brechin . .	20,328 17 7	1/6⅝	53 2 2½	1,368 13 10	136 0 0
11. Burntisland.	14,522 0 0	—	—	—	not ascertained
12. Campbeltown	17,810 0 0	2/1	495 19 8	791 8 8½	98 0 0
13. Crail . . .	3,037 0 0	—	—	—	1 14 0
14. Cromarty .	2,985 0 0	2/6¼	30 11 10½	162 11 0	nil
15. Cullen. . .	3,020 9 7	1/10	84 19 9	169 10 3	4 3 0
16. Culross . .	1,465 0 0	-/3	18 8 2	18 8 2	nil
17. Cupar . . .	16,395 17 11	-/6	83 6 8	876 18 1	91 0 0
18. Dingwall. .	7,250 10 9	1/11¼	241 1 8	577 13 5	nil
19. Dornoch . .	710 0 0	—	—	—	nil
20. Dumbarton .	32,077 0 0	1/7¼	183 15 8	2,117 19 5	nil
21. Dumfries. .	46,659 6 3	1/3¹⁹⁄₂₀	1,235 18 4½	1,539 1 0½	nil
22. Dunbar . .	11,132 0 0	-/11½	232 14 2	232 14 2	not ascertained
23. Dundee . .	523,204 0 0	—	—	—	466 9 5
24. Dunfermline†	40,791 12 3	—	1,107 0 8	—	50 0 0
25. Dysart . .	13,113 0 0	—	—	—	nil
26. Edinburgh .	1,247,931 0 0	2/1	16,430 0 0	112,364 0 0	3,230 0 1½
27. Elgin . . .	23,523 0 0	—	—	—	64 0 0
28. Falkirk . .	22,965 0 0	1/5¼	665 5 0	665 5 0	133 0 0
29. Forfar . .	25,868 0 0	—	939 0 0	1,870 0 0	144 11 0
30. Forres. . .	11,126 0 0	-/6½	44 0 0	362 16 5	19 0 0
31. Fortrose . .	—	nil	—	—	7 0 0
32. Galashiels .	35,716 0 0	—	—	—	nil
33. Glasgow . .	2,377,340 0 0	2/7	24,720 0 0	236,366 0 0	abolished
34. Greenock. .	302,914 0 0	—	4,035 8 10	22,543 1 7	nil
35. Haddington.	13,782 0 0	—	—	—	not ascertained
36. Hamilton .	32,756 0 0	—	—	—	—
Carried forward	5,358,222 15 11	—	52,442 7 1½	387,262 10 0	6,315 6 1

* The assessible value varies according to the provisions of the Act under which each assessment is levied. There are also varying areas of assessment for different objects. The highest only is stated here, and the poundage rates stated do not necessarily produce the sums levied, when applied to that valuation.

† Police expenses, £2,786, provided for out of "common good," under Local Act, 1 11.

APPENDIX III. (*continued*).

BURGH.	Assessible Rental (Highest*).	Total Rates per £.	Payable by Landlords.	Payable by Occupiers.	Revenue from Petty Customs and Market Dues.
	£ s. d.		£ s. d.	£ s. d.	£ s. d.
Brt. forward .	5,358,222 15 11	—	52,442 7 1½	387,262 10 0	6,315 6 1
37. Hawick . .	36,467 5 9	1/10	253 10 3	2,326 1 11½	nil
38. Inverary . .	3,000 0 0	-/6½	11 10 0	63 10 0	167 0 0
39. Inverkeithing	3,651 0 0	—	—	—	—
40. Inverness .	56,709 0 0	—	—	—	1,297 17 6
41. Inverurie .	7,956 0 0	—	—	—	26 0 7½
42. Irvine . . .	23,921 13 2	-/1½	68 7 5	81 6 6	21 15 0
43. Jedburgh. .	11,106 0 0	—	199 8 0	1,252 17 1	3 10 6
44. Kilmarnock .	63,202 19 0	1/9	534 13 10	4,118 5 1	200 5 0
45. Kilrenny . .	4,147 0 0	—	—	—	not ascertained
46. Kinghorn .	—	nil	—	—	nil
47. Kintore . .	2,277 0 0	—	—	—	nil
48. Kirkcaldy .	37,424 12 0	—	575 6 11	1,995 19 3	not ascertained
49. Kirkcudbright	858 9 5	-/5½	—	19 13 7	nil
50. Kirkwall . .	6,972 15 3	various	426 4 7	616 17 5	4 4 0
51. Lanark . .	11,454 0 0	—	—	—	102 0 0
52. Lauder . .	2,314 4 6	-/6	21 10 10½	21 10 10½	7 0 0
53. Leith . . .	200,475 0 0	1/6	1,644 8 9½	13,338 16 3½	500 0 0
54. Linlithgow .	8,635 0 0	1/5	118 12 6½	442 1 8½	372 0 0
55. Lochmaben .	2,298 0 0	1/1½	73 10 6	59 10 6	nil
56. Montrose. .	34,106 0 0	1/6	nil	2,577 0 0	not ascertained
57. Musselburgh	20,226 0 0	1/5	181 2 1½	1,251 11 3½	370 0 0
58. Nairn . . .	9,374 18 2	2/9½	139 2 10	1,180 13 4	nil
59. New Galloway . . .	878 0 0	—	—	—	nil
60. N. Berwick .	7,210 13 6	-/11½	22 6 7½	318 4 1½	not ascertained
61. Oban . . .	11,763 0 0	—	—	—	nil
62. Paisley . .	143,194 0 0	—	2,314 10 0	10,310 10 0	325 0 0
63. Peebles . .	7,544 0 0	—	—	—	nil
64. Perth . . .	84,000 0 0	3/8½	2,288 0 0	7,650 0 0	666 3 7
65. Peterhead .	24,636 19 5	—	205 14 11	1,748 10 0	nil
66. Pittenweem .	5,114 0 0	—	—	—	15 0 0
67. Port-Glasgow	32,897 6 0	3/-	457 0 10½	3,365 8 6½	nil
68. Portobello .	35,730 0 0	—	—	—	nil
69. S. Queensferry . .	3,127 0 0	—	—	—	not ascertained
70. Renfrew . .	9,416 0 0	-/1	14 14 2¾	12 11 5	nil
71. Rothesay. .	35,528 5 10	1/2	{ 880 7 10½ / 137 10 5½ }	880 7 10½	49 18 6
72. Rutherglen .	31,211 0 0	-/9	539 0 0	530 0 0	44 10 0
73. St. Andrews.	27,939 12 0	1/9¼	812 11 6	1,610 1 1	19 16 5
74. Sanquhar .	5,458 0 0	-/1⅓	11 13 0½	11 13 0½	not ascertained
75. Selkirk . .	17,027 3 11	2/10 1/16	727 2 2	78 16 9	not ascertained
76. Stirling . .	52,331 0 0	—	—	—	not ascertained
77. Stranraer .	14,653 4 0	1/10½	182 2 4½	947 10 5½	135 0 0
78. Tain . . .	4,942 11 6	-/8 13/24	110 18 11½	45 18 2¾	10 0 0
79. Whithorn .	2,945 8 6	nil	—	—	nil
80. Wigtown. .	5,479 0 0	—	—	—	not ascertained
	6,467,825 17 10	—	65,393 8 9¾	444,117 16 4½	10,652 7 2½

* The assessible value varies according to the provisions of the Act under which each assessment is levied. There are also varying areas of assessment for different objects. The highest only is stated here, and the poundage rates stated do not necessarily produce the sums levied, when applied to that valuation.

APPENDIX IV.

ASSESSMENTS FOR ROADS AND BRIDGES, YEAR ENDING 1874.

COUNTY.	Valuation for Assessment.	Total Payable by Landlords.	Payable by Tenants.	
	£ s d.	£ s d.	£ s d	
1. Aberdeen	829,000 0 0	14,187 2 0¼	10,356 9 6¾	Aberdeenshire Roads Act.
2. Argyll	119,185 0 6	2,184 2 8	2,184 2 8	Special Act of Parliament.
3. Banff	183,343 0 0	3,776 18 10	2,266 3 5	£6,043 2s. 3d. 5d. per £ by Landlords; 3d. per £ by Tenants.
4. Clackmannan	30,130 0 0	162 5 10	162 5 10	£324 11s. 8d. Collected from Landlords, who recover from Tenants.
5. Dumfries	536,710 10 8	279 1 2	—	Does not include District Roads.
6. Elgin	159,438 0 0	2,881 6 8	2,241 0 9	£5,122 7s. 5d. Of which 4½d. paid by Landlords; 3½d. by Tenants.
7. Forfar	622,304 15 6	4,064 13 0½	6,646 5 3	Includes Voluntary Contribution by Proprietors of 2d. per £.
8. Inverness	302,284 10 1	5,667 14 8	—	Does not include District or Statute Labour Assessment. Highland Roads and Bridges Act, 25 & 26 Vict., c. 37.
9. Nairn	34,450 0 0	718 0 0	573 0 0	
10. Peebles	134,642 14 0	1,262 5 6	1,262 5 6	
	—	486 18 4	—	2d. Assessment on Old Valuation, £51,937 13s. 10d. Scots.
11. Perth	873,101 0 0	436 0 0	—	Local Act, 1811. Does not include District Roads.
12. Ross	250,130 0 4	2,345 4 2	2,345 4 2	Ross and Cromarty Roads Act, 1866.
13. Roxburgh	403,179 12 3	167 19 9	—	1669, c. 37. Does not include District Roads.
14. Selkirk	70,030 11 6	433 3 8	1,487 15 6	Selkirkshire Road Act, 1869.
15. Sutherland	75,002 0 0	1,092 4 6½	1,092 4 6½	Levied from Landlords; half recoverable from Tenants.
16. Wigtown	219,741 18 7	2,100 10 1	2,009 4 3	Wigtownshire Roads Act, 1865.
	4,842,673 13 5	42,245 10 11¼	32,626 1 5¼	

LOCAL GOVERNMENT AND TAXATION, IRELAND.

Local Government.

The local authorities in Ireland may be divided into five classes. Those connected with Poor Law Unions, counties, towns, and harbours respectively, with a class of minor authorities. The county authorities include baronial presentment sessions, grand juries, governors of lunatic asylums, trustees of inland navigation, and arterial drainage authorities.

I.—Poor Law Authorities.

The class which includes the greatest number of local authorities is that connected with the administration of the Poor Laws.

There are 719 dispensary committees, and 163 boards of guardians of the poor. The whole of Ireland is divided into 163 Poor Law Unions, varying in size from 41,000 acres in the North Dublin Union to 257,000 acres in the Glenties Union, in the county of Donegal, with an average of 125,000 acres. The unions, vary in population from 6,000 inhabitants in Corofin Union, in the county of Clare, to 202,000 inhabitants in the Belfast Union, with an average of 33,000 inhabitants to a union. Each union is divided into a number of districts with separate rating in each as to certain charges. These are called electoral divisions, and are 3,438 in number, and the much discussed question of union rating is, in its largest sense, the proposal to abolish the separate rating

of these 3,438 electoral divisions, and have distinct rating for all Poor Law purposes, on the area of each of the 163 unions alone. Modified union rating is the proposal to transfer a greater or lesser number of the charges from the electoral divisions to the union.

The Poor Law arrangements in Ireland present a most interesting study in the science of Local Government. They were established so recently as 1838. Though the English Poor Law dates from 1601 (43rd of Queen Elizabeth), the Irish Parliament made no attempt at introducing a Poor Law into Ireland until 1771. By a statute of that year, power was given to county authorities to expend in counties at large £400 a year, and in counties of cities and towns £200 a year. As only 11 houses of industry supported by county authorities were ever erected, 8 in Munster, 3 in Leinster, and none in Ulster or Connaught, the provisions for the poor by houses of industry under the Irish Parliament from 1771 to the union did not probably exceed £4,000 a year, and could not, if the act had been carried into complete operation have exceeded £14,400 a year; thus presenting a contrast to the care taken of the poor under the Imperial Parliament as shown by the Poor Law expenditure of 1838, which was in 1873 £790,000 a year.

The Imperial Parliament in 1806 (46 Geo. III. c. 95) and in 1818 (58 Geo. III. c. 47) extended the powers of county authorities, but still the houses of industry supported by them were reported by the select committee of the House of Commons on the state of the Irish poor, 1830, p. 30, to be on the decline as already noticed.

This long neglect by county authorities made out a clear case for their being superseded in 1838, in all that related to the direct relief of the poor. The plan organised in 1838 exhibits a great deal of careful statesmanship. The statesmen of that day had the whole subject of local government brought very fully before them. They had first the celebrated report of 1834 of the royal commission on the administration and practical operation of the Poor Laws in England and Wales

(in which Mr. Senior, the political economist, took such a leading part), and the Poor Law Amendment Act of 1834 founded upon that report. They had, at the same time, the inquiries and the discussions which preceded the passing of the Municipal Corporation Reform Act of 1835 for England and Wales. As to Irish local institutions, they had the very complete and able reports of the commission on municipal corporations in Ireland, presided over by Mr. Serjeant (afterwards Mr. Justice) Perrin, presented in 1836, and upon which the municipal corporation reform legislation was based, which, after being before Parliament for several years was passed in 1840. They had also the inquiries and discussions which resulted in the passing of the Acts to amend the Irish grand jury laws, especially the important Act of 1836, under which the county authorities in Ireland are chiefly constituted.

The plan of Irish Poor Law arrangements rested on three fundamental principles of organisation. First, a popular element of representation on a wide basis of rated occupiers franchise; secondly, a three-fold protection of the proprietors of land and the wealthier classes, (*a*), by giving highly-rated occupiers multiple votes up to six (*b*), by giving lessors votes in respect of the moiety of the rates charged on them with multiple votes up to six, and a right of voting by proxy, and (*c*), by giving justices of the peace residing within the union a right of being ex-officio guardians up to one-third of the elected guardians, with choice amongst themselves if they exceeded that number. Thirdly, a very active and efficient central control in the Poor Law Commissioners aided by a staff of inspectors.

The plan contained two other principles of effective administration of great importance. The Act of Parliament in the main laid down great principles only, and the details were left to be worked out by orders of the Poor Law Commissioners. Again, as the Poor Law of the Irish Parliament had failed from its having been left optional with the county authorities to bring it into operation or not, the Poor Law of 1838, contained the

important provision, that the Poor Law Commissioners, if any local authority failed to carry the law into effect, might dissolve the board of guardians and appoint paid vice-guardians. This power turned out of great value at the time of the famine, as no less that 33 boards of guardians, being one-fourth of the then number of boards (130), sought to escape the burden of poor rates so alarmingly large at that time. These boards were dissolved, and 33 sets of vice-guardians appointed, and, to facilitate their proceedings, the Vice-guardians Act of 1849 was passed.

As an illustration of the practical nature of this power, even at the present time, the details of the latest appointments of vice-guardians are interesting. So recently as in October, 1871, the guardians of the Mill Street Union, in the county of Cork, were dissolved "in consequence of the regular administration of relief having been interfered with by the non-attendance of guardians, and the state of the workhouse being in many respects unsatisfactory from the failure of the board to exercise the necessary supervision of the officers, and superintend the general management of the institution." The vice-guardians appointed in October, 1871, continued in office until March, 1873, and while in office secured to the inhabitants of the town of Mill Street, 1,500 in number, a supply of water at the cost of £800.

The system of Poor Law introduced in 1838 has been in operation now for thirty-six years, and the alterations introduced in that time have not changed the main outlines of the system, but have only altered the relative proportion of some of the parts.

In 1843 the power of the property votes, as compared with occupiers' votes, was increased by the immediate lessors of tenements, under £4 valuation, being rated instead of the occupiers, thus diminishing the number of occupiers entitled to vote. In 1862 proprietors so rated were allowed to vote as occupiers. In 1847 it was provided that the ex officio guardians, instead of being chosen by election amongst the magistrates, should be taken from the highest rated justices, and instead of

being limited to one-third, they were allowed to be equal to the elected guardians in number.

At the same time the central authority was strengthened by being transferred from the English Poor Law Commissioners, at that time a temporary independent authority, without any of the ministers of the day being members of it, to an Irish Board, of which the chief secretary and the under secretary of the Lord Lieutenant of Ireland were constituted ex-officio members. This Irish Board, after being temporary for some years, was, in 1872, changed into the Irish Local Government Board, and the chief secretary constituted as president, the previous chief commissioner of Poor Laws being appointed vice-president.

The Poor Law arrangements being modern and convenient under active local bodies meeting frequently, and under active central control, have been adopted on nearly all occasions where a new local function was created or an old one modified. In 1840, when a large number of municipal corporations in Ireland were dissolved, their property, in all towns in which town councils or commissioners had not or should not be constituted, was vested in the board of guardians of the union, for the benefit, however, of the inhabitants of the town. In 1844, when an Act was passed for the Registration of Marriages, the Poor Law Unions were taken as the marriage registration districts. In 1848 and 1849 the guardians of the poor appear in the Nuisance Removal and Disease Prevention Acts of these years as concurrent health authorities, with old officers of health selected by vestries under the Acts for Ireland of 1818 and 1819. In 1865 they were, under the Sewage Utilisation Act, constituted the sewer authorities in all places outside the boundaries of towns under councils or commissioners. In 1866 they entirely replaced the old officers of health as sole nuisance as well as sewer authorities in all rural districts, and in 1874 they were constituted the rural sanitary authorities, and their jurisdiction was extended over towns, under commissioners, other than those constituted by local acts, where the population did

not exceed 6,000 inhabitants. The town authorities, thus superseded as Public Health authorities, are upwards of fifty in number.

In 1850 the clerks of the Poor Law Unions and the Poor Rates collectors were selected as the officers to prepare the Parliamentary voters' lists, under Earl Russell's Parliamentary Voters Act of that year, by which the franchise was based on rating. The precedent thus created was followed in Lord O'Hagan's Jury Act of 1871, and the preparation of the jurors' lists (based on the same principle of rating) was in like manner given to the clerks of the unions and Poor Rate collectors. The high constables of baronies, who collected the grand jury cess under the county authorities, being superseded in this duty.

In 1851, by the Medical Charities Act of that year, the old system of dispensaries supported by aid from the county rates (grand jury cess) to an amount equal to local subscriptions, was superseded by the complete system of medical relief through 1071 dispensaries by 801 medical officers, under the 719 dispensary committees of the districts into which the 163 Poor Law Unions have been divided. Each committee consists of the elected guardians of the divisions included in the dispensary districts, the ex-officio guardians who reside and have property therein, with a sufficient number of resident ratepayers (valued at £30 and upwards) annually selected by the Board of Guardians to complete the number of the committee prescribed by the Local Government Board.

It is unnecessary to notice in detail the Common Lodging Houses Acts, 1851—1860; Bakehouses Regulations Act, 1863; and Workshops Regulation Act, 1867; in all which the guardians of the poor appear as one of the local authorities. In 1856 the guardians of the poor were constituted the Burial Board in all parts of unions not within the limits of towns, under town authorities as defined by the Act. In the Irish Church Act of 1869 the burial grounds were transferred from the church authorities, and were all vested in the

guardians of the poor alone. There were no doubt few burial grounds in the districts of town burial boards not annexed to or adjacent to churches; still for this possible case the guardians of the poor were preferred to the town authorities. In 1866 the machinery of the Poor Law was used for providing the fund for defraying the expenses of the Cattle Disease Act for Ireland of that year.

In the matter of audit the Poor Law system has been preferred, first, to the system provided by statute for county authorities, and secondly, to that provided by statute for town authorities. For instance, the lunatic asylums are supported entirely out of the county rates (grand jury cess), but each asylum is under the administration of a Board of governors appointed by the Lord Lieutenant. When it was decided that the accounts of the governors should be subject to audit under the Lunatic Asylum Accounts Audit Act, 1869 (31 and 32 Vic., c. 97), the Poor Law auditor system of local audit (by an officer under the Poor Law Commissioners) was selected instead of the Receiver Master in Chancery, who had charge of the audit of the accounts of grand jury cess, from which the asylums were supported.

For the audit of the accounts of municipal corporations in Ireland a most elaborate system was provided by the Municipal Corporations Reform Act of 1840. The Lord Lieutenant was to direct how the accounts were to be kept: the accounts were to be sent to Dublin Castle, and if anything was wrong the Attorney-General for Ireland might take proceedings for having the matter set right by filing an information in the Court of Chancery. From the Castle the accounts were to be sent to the Home Office in London, and from thence to the audit commissioners, whose manner of auditing them was to be directed by the Lords Commissioners of Her Majesty's Treasury.

This system entirely broke down in practice. It appeared, in 1858, that of the annual accounts of forty-seven boroughs for seventeen years (or 779 accounts in all) only three had been examined and stated by the

audit commissioners to the Treasury. In the meantime the Town Council of Belfast, one of the largest towns in Ireland, got involved in chancery litigation as to their accounts, which lasted from 1855 till it was referred, about 1860, to the arbitration of Mr. (now Viscount) Cardwell, then Chief Secretary for Ireland.

The Belfast chancery litigation led the Town Council of Londonderry to apply to the Chief Secretary of Ireland, in 1864, for an improved system of audit. A plan was proposed for the consideration of the Chief Secretary, which was submitted to the Irish town authorities for applying the system of audit used for county rates (grand jury cess) to the town rates. The plan did not meet with sufficient support from the town authorities. In 1866 the Lords Commissioners of the Treasury were authorised to make other provision for auditing the accounts than sending them to the Board of Audit in London, and in 1871 the Poor Law system of audit was adopted by Parliament, as to the accounts of the receipts and expenditure of the governing bodies of every town in Ireland, except the Town Councils of Cork, Kilkenny, and Waterford, which were specially exempted. By the Act of 1871 the system of independent official audit was, for the first time, extended to commissioners for lighting and cleaning towns acting under the Act of 1829, to town improvement commissioners acting under the Act of 1854, and to town authorities acting under local acts. The town and township authorities in the county of Dublin, however, obtained an exemption from the audit until the Act of 1871 was adopted by a *plebiscitum* of the persons qualified to elect commissioners.

This simple history of the legislation and proceedings as to audit, shows how completely the Local Government Board arrangements (of an auditor visiting the place where the accounts are kept, but acting under centralised directions) has prevailed over the centralised system of having the accounts as to county rates transmitted to Dublin to be audited by the Receiver Master in Chancery, and over the still more centralised system,

so long tried in the municipal corporation accounts, of requiring them to be sent to London for audit.

The growth of the Poor Law system of government is further shown by the transfer of power to the Local Government Board from other executive authorities in Ireland. By the Town Improvement Act of 1854, as in the previous Lighting and Cleansing Act of 1829, the power of constituting town authorities was given to the Lord Lieutenant of Ireland. In 1872 this power was transferred to the Irish Local Government Board. By the Sanitary Act in 1866 certain powers were conferred on the Lord Lieutenant in Council. In 1872 these were transferred to the Irish Local Government Board.

In 1871 the power of preparing provisional orders for certain purposes of town government in Ireland, to be afterwards ratified by general statute, was given to the chief secretary of the Lord Lieutenant. In 1872, when he was changed from being an ex-officio subordinate member to be chairman of the Local Government Board, these powers were transferred to that board. In 1874 provision was made enabling the Lord Lieutenant in Council, if he should think fit, to transfer the powers and duties of the Board of Trade, under the "Alkali Act, 1863," to the Irish Local Government Board.

The progress which each branch of the Poor Law system of government has made has strengthened the rest. Increased duties cast on boards of guardians give increased powers of control to the central board. Increased powers given to the central board add increased prestige and influence to the local authorities, and subordinate executive officers connected with them.

Whilst the Poor Law system, introduced in 1838, has, in the short space of thirty-six years, developed a great and efficient machinery of Local Government in Ireland, the Imperial Parliament has on some points departed from the principles on which the success of the system really rests. The Poor Law was introduced into Ireland in 1838 as an Imperial measure, on which Irish opinion was greatly divided, supported by some proprietors, opposed by others; supported by Bishop Doyle,

opposed by O'Connell. It was introduced on the principle that the relation of the labourer to the State should be the same in all parts of the United Kingdom.

There was no part of the Poor Law introduced into Ireland which the framers did not expect in a few years to carry for England and Wales. The great reform of substituting union for electoral division rating, advocated by the Poor Law Reformers in England in 1834, was proposed for Ireland by the Statesmen who introduced the Irish Poor Law in 1838, but unfortunately defeated by the influence of the Irish proprietors, supported by the Duke of Wellington in the House of Lords. This great reform was carried for England and Wales in 1865, but in Ireland is still in the position of a measure that there is some prospect of seeing carried in a limited form in 1875, although it is more urgently required in Ireland now than it was in England in 1865, to prevent the decreased tillage, which is produced by the tendency of electoral division rating to force labourers to live so far from their work.

The second great principle on which the success of the Poor Law and Local Government system, so far as it has been successful in Ireland rests, is that of Parliament dealing with large questions and principles, and leaving details or minor principles to be settled by general orders of the Irish Local Government Board or under their control by the local authorities.

Some of the cases where the principle has been departed from illustrate the loss of credit that Parliament is likely to incur when legislation is carried into local details.

The Poor Law of 1838 sanctioned the principle of an emigration rate, but the original Act prohibited assistance being given to emigrants going to other than British Colonies, thus excluding emigration to the United States. When the pressure of the famine came, the most munificent contributions to alleviate the distress came from the United States, and Parliament repealed the restriction in 1849, and it was found afterwards that of the Irish agricultural classes eighty-four per cent. usually emigrated to the United States.

By the Act of 1838 emigration rates were only to be levied when the majority in value of ratepayers of an electoral division voted for the rate. In 1843 the guardians were allowed to impose emigration rates not exceeding in one year sixpence in the pound, but these were only to be applied to relieve persons who had been three months in the Workhouse. In 1847, after only four years existence, both these restrictions were abolished. In 1849 provision was made for borrowing money for emigration, but Parliament thought it necessary to impose a limit. The entire sum borrowed to assist emigration was not to exceed eleven shillings and fourpence in the pound in the electoral division, and two shillings and eightpence on the union at large, or fourteen shillings in the pound; this would, at the then valuation of Ireland, have amounted to about £9,000,000. All the guardians did expend on emigration in twenty years after 1849 was only £119,280, or about £6,000 (or half a farthing in the pound) in the year.

It thus appears that all the attempts of Parliament to regulate what persons were to emigrate, where they were to go to, or how much was to be spent on them, eventuated in restrictions that had either to be promptly repealed, or were so wide of the mark as to be practically inoperative.

Parliament was not more successful in putting restrictions on boarding out orphans and deserted children. This plan, adopted for thirty years by the Poor Law authorities in Scotland, was proposed to be tried in England in 1870. The English guardians were informed that they had power to board children out without restriction within the limits of their own unions. The English Local Government Board at once allowed them to try the plan of boarding out beyond their unions up to ten years of age. The English and Scotch philanthropists based the plan on moral as well as sanitary grounds, and this double aspect of the question was recognised by the English and Scotch Poor Law authorities.

When the Irish guardians were allowed to try the

experiment at an earlier period, in 1862, the intervention of Parliament was necessary for this exercise of their duties as to the mode of rearing the children of which they were guardians. The clause of the Act of 1862 only allowed the child to be placed at nurse till *five* years of age, and then *from year to year* with the consent of the Poor Law Commissioners until the child should attain the age of *eight* years, "should the guardians consider the extension of out-door relief to be necessary for the preservation of the child's health."

In 1869, before the extreme limit thus fixed by Parliament had begun to operate on the children placed out in 1862, an Act was passed to repeal the restriction and the above clause of the Act of 1862 altogether, and to substitute the limit of ten years for children placed out to nurse. The Irish limit, however, still rests on statutable provision as compared with no limit or a limit modifiable by order in England. There is, besides, under the Irish Act of 1847 an old statutable prohibition against boarding out the "only child of a widow" with its mother, which does not exist in England.

The danger of the Imperial Parliament allowing itself to be involved in these details is shown by the fact that, after boarding out had been sanctioned both in England and Scotland as a moral as well as a sanitary experiment, the old Act of 1862 was referred to, after it had been repealed, as the opinion of Parliament that sanitary reasons alone rendered boarding out necessary. When the interests of property are so well protected as they are in the Irish Poor Law system, and the rates for poor relief are on an average only one shilling and twopence farthing in the pound on a moderate valuation, it is inconsistent with the policy of Parliament, confining itself to large general principles in dealing with local questions, to attempt to regulate the boarding out of children in Ireland by statute.

Those blots on the Irish Poor Law system which it was necessary to notice are also inconsistent with the great principle of uniform administration of poor relief throughout the United Kingdom, the thorough adoption

of which is essential to the lasting contentment of the poor of the Irish native race, the aggregate of which in English and Scotch towns is now as great as in the towns of Ireland.

II.—COUNTY AUTHORITIES.

The county authorities in Ireland connected with local taxation are the Baronial Presentment Sessions, 326 in number, and the grand juries at the assizes in the several counties at large (except Dublin), 31 in number, and the grand juries at the assizes in the several counties of cities and of towns (except Dublin, Cork, and Limerick), five in number.

In the County of Dublin the chief county authority is the Easter-term grand jury in Court of Queen's Bench, and in the cities of Dublin, Cork, and Limerick the fiscal jurisdiction, formerly exercised by grand juries and baronial ratepayers, has, since 1850, been transferred to the town councils of these cities. A slight exception to this transfer exists in the City of Dublin, where the term grand jury for the city in the Court of Queen's Bench still retains a portion of its old jurisdiction—viz., the appointment of prison officers.

The districts for distinct rating for all charges on the rates affecting a whole county are forty in number, thirty-two counties at large, and eight counties of cities and of towns. The sub-districts with separate charges, like those for roads, which are baronial charges, are, as above noticed, 326 in number. As the county and baronial rates are both levied on the final authority of the grand jury's presentment, fiated by the judge of assize, both are called grand jury cess.*

In the case of some towns which have been separated for some purposes from the counties in which they are situated, there is a further sub-division of the area of rating to be noticed in connection with the towns.

The counties at large in Ireland are thirty-two in number; they vary in size, from Louth, with 201,000

* Cess is an old Irish term for local assessments.

acres, to Cork, with 1,802,000 acres, with an average size of 648,000 acres. They vary in population, from Carlow, with 51,000 inhabitants, to Cork, with 438,000, with an average population of 150,000.

The County of Tipperary is divided into two ridings, and has two distinct grand juries, and distinct county rates. It has, however, only one system of quarter session and one chairman of quarter session. The County of Cork, on the other hand, is divided into two ridings for quarter sessions' purposes, with two chairmen of quarter sessions, whilst it is a single county for fiscal purposes with a single grand jury.

Eight of the ancient cities and towns of Ireland have a distinct criminal jurisdiction from that of the adjoining counties, and are called counties of cities or towns. They are the cities of Dublin, Cork, Limerick, Waterford, and Kilkenny, and the towns of Galway, Drogheda, and Carrickfergus: they have distinct magistrates and distinct grand juries. The town of Belfast and the city of Londonderry have also distinct magistrates, but no distinct grand jury for assize purposes. They are not counties of cities or of towns, but boroughs with a separate court of sessions of the peace.

(*a*) *Baronial Presentment Sessions.*

The Baronial Presentment Sessions are for baronies or half baronies, and in the case of counties of cities or of towns for the whole city or town. The number of the baronial presentment sessions in all Ireland is 326, so the baronial districts of district rating are, on an average, half the size of a Poor Law Union, as these are 163 in number. The baronies correspond to the ancient Irish territories or sub-kingdoms, inhabited by distinct tribes or families. They represent consequently very ancient boundaries, not coinciding with the modern distribution of population. The counties represent boundaries introduced by successive English monarchs from King John to King James I.

The constitution of the baronial presentment sessions is regulated by an Act passed in 1836, William IV.,

c. 116. In 1819 special sessions of magistrates only with high property qualifications were constituted by statute 59, George III., c. 84. Associated ratepayers were first added in 1833 by statute 3 and 4, William, c. 78. The idea on which these sessions are constituted is somewhat similar to that worked out in the Poor Law Act of 1838, passed five years afterwards, that of having property represented by justices of the peace sitting ex-officio, and the ratepayers by a number of ratepayers associated with them. In the case of the Poor Laws the number of guardians in each union and the number elected for each electoral division is appointed by the central authority, the Irish Local Government Board. In the case of baronial presentment sessions it is the grand jury of each county which fixes the number of ratepayers (called cess-payers, from the name of the Irish county rates) to be associated with the justices at the baronial presentment sessions.

The number must not be less than five nor more than twelve; the selection of these is by a complicated system. The grand jury prepare for each barony a list of double the number of associated ratepayers fixed to serve out of a return made to them of 100 of the highest ratepayers in each barony (exclusive of persons in holy orders, ministers of religion, and justices of the peace). In making the list they must strike off all those who have served at the preceding baronial sessions, and if the prescribed number did not attend and serve, others must be struck off till half the previous list has been struck off.

From the list so prepared by the grand jury the ratepayers to serve are chosen by ballot, and if all attend only one half can serve. From this constitution it appears that the associated ratepayers are greatly weakened as an element of control. In the first place, no ratepayer, however efficient, can serve at any two baronial sessions for his barony in succession; again, by the effect of the ballot, no matter how attentive he may be in attending when summoned, he may be thrown out from serving from session to session; but, lastly, he is not selected by

the ratepayers, but chosen from a list of the highest ratepayers by the grand jury. Whilst the ratepayer element of the baronial sessions is thus weakened, the ex-officio, or property element, is under no limitation, as justices of the county, whether connected with the barony by residence or property, or not so connected, may attend. The baronial sessions are, again, only the preliminary stage of the proceedings, all they do has to come before the grand jury at the assizes for ratification, a body practically composed almost exclusively of proprietors or their representatives.

The ratepayer element of these baronial sessions was conceded as an admission of the principle that ratepayers ought to have some control in the disposal of the rates which are levied on their holdings. The principle is, as we have seen, very imperfectly carried out, and the system, as settled in 1836, had scarcely got under way when the much more perfect solution of the representation of ratepayers was introduced by the Poor Law of 1838. The result has been that the baronial presentment sessions have never had the position of confidence that boards of guardians have acquired. Various plans and expedients have been proposed in reports of commissioners and committees of the House of Commons and in bills to secure a more adequate representation of the ratepayers.

It is to baronial sessions thus imperfectly constituted that the primary decision of all questions as to roads is, under the Act of 1836, now vested, which the grand jury had, up to 1819, under their sole control. The important place this jurisdiction on roads and bridges occupies, appears, from the classification of the gross amount of grand jury presentments, according to the latest return, £1,219,000. If the cost of the maintenance of lunatic asylums, salaries of county officers fixed by statute, repayment of debt, and charge for extra police and for valuation be deducted, the portion of the presentments over which the county authorities have control does not exceed £880,000, and of this amount £637,000 is for roads and bridges, as to nearly the whole of which

the primary jurisdiction rests with the baronial sessions, as the applications must be made there first. If the baronial sessions should, on two occasions, refuse an application, there is an appeal to the judge of assize and a common jury to try whether the work is proper to be executed. If the common jury find that it is so, and the judge, upon that finding, directs the grand jury to consider the application, then only have they the power to consider and present either the sum stated by the common jury to be sufficient for the execution of the work, or such lesser sum as they think proper, or to refuse altogether to make the presentment.

The relative position of the baronial sessions and grand juries in all matters relating to roads appeared at the time of the famine when the making of roads with half the cost granted from the Imperial taxes was so much used as a mode of relief. For the imposition on the county rates of the other half cost of such roads, that was a local charge, special baronial sessions were held, and if they approved of the application it became an imperative presentment, so that the grand juries, as to these urgent presentments, were practically superseded. As, in the case of poor relief, the power passed in 1838 from the forty grand juries to the more local authority of the 163 boards of guardians, so in the case of roads the power to a large extent passed, in 1819, 1833, and 1836, from the grand juries to the still more local bodies represented by the 326 baronial sessions.

The real question of reform as to the bulk of the charge on county rates for roads, turns not upon any reconstruction of the grand jury, but upon the much simpler problem of a reconstruction of the baronial sessions. As these sessions, with the ex-officio justices and associated ratepayers, are really the rude type out of which the board of guardians with its elected guardians and ex-officio guardians was developed in 1838, and as the system of Poor Law guardians has worked satisfactorily, the question arises, would it be wise to have separate boards of road guardians for half a union, or would it not be simpler to merge the baronial sessions

in the board of guardians, and give the latter body complete charge of all roads in the Union outside the boundaries under town authorities? No change in the division of charge between landlord and tenant need be involved. The road rate might continue to be divided between owner and occupier only as to future lettings. As roads are so uniformly distributed over the country, the difference of charging construction and repairs to a union instead of a barony would produce a very slight effect on the general incidence of the charge.

(*b*) *Grand Juries.*

The authority which, in all Irish counties at large, except the metropolitan county, actually imposes county rates in Ireland (including all the classes of cases where justices impose county rates in England), is the assize grand jury. This difference between the Irish and English practice appears to have arisen from the policy explained by Sir John Davis, which was pursued in the reign of King James I., when the whole of Ireland was at length reduced into shire ground, of strengthening the half yearly assizes as much as possible. In the next reign we find an Act passed by the Irish Parliament, 10, car. 1, c. 26, s. 2, by which justices of assize and of the peace were directed to inquire what bridges in the county were broken down or out of repair, and to award process or presentment against such persons as were chargeable with the repairs; if the persons liable were unknown, the expense was to be borne by the inhabitants of the county or barony where the bridge was situated, and the justices were directed *to tax the inhabitants* reasonably for that purpose, *with the assent of the grand jury*. This sanction by the grand jury to the taxation of the justices of assize is peculiar to Ireland. The earlier corresponding English Act of Henry VIII. requires the consent of the constables or the inhabitants of the city, town, or parish. The presentment for bridges was followed at the commencement of George III.'s reign by a series of enactments, originating with a Mr. Arthur French, member for Roscommon, enabling the

grand juries to make presentments first on the county and afterwards on the barony rates for roads. Arthur Young, who visited Ireland about seventeen years after the first of these acts was passed, thus describes their effects:—

"For a country so very far behind us as Ireland, to have got suddenly so much the start of us in the article of roads, is a spectacle that cannot fail to strike the English traveller exceedingly."

The start Ireland then got in roads she has ever since maintained. After the rebellion of 1798 the State completed what the counties had begun, by making military roads, and at subsequent times making roads in backward districts. This early development of a complete system of making and maintaining roads out of rates on land on the simple economic principle of applying part of the increased value of land which the road creates to its construction, led to the complete abolition of turnpikes in Ireland so early as 1857, whilst the turnpike tolls still form such a large part of the local taxes in England as £866,173, or five per cent. in 1871 of the total amount, and the mode of dealing with these tolls formed a question in Scotland in 1874 which required the presence of the Home Secretary to endeavour to adjust.

This explains, too, the favour that has been so markedly shown in Ireland to the making of railways out of local taxation. The system of guarantees charged on baronial rates having been applied in the case of the line from Mullingar to Galway constructed by the Midland Great Western Railway Company. Guarantees having been granted in the cases of the Dunmanway and Skibbereen lines in Cork. Limerick, Castle Island and Gortatlea line in Kerry, Clara and Meelick line in King's County, and Tuam and Claremorris line (extension of the Athenry and Tuam) in the counties of Galway and Mayo and other lines. Again, the county of Waterford, and the county of the city of Waterford having consented to one of these guarantees, the shareholders of the company for supplying these counties with railways

have arranged that the grand juries of the county and city may name the board of directors.

If the presentment sessions had been framed as carefully as the boards of guardians, or if the grand jury were a representative body like them, meeting as frequently and under as efficient a central authority as the local government board, the county authorities would most likely have tried the experiment of making branch lines of railways entirely out of county rates, and might by this time have got the length of local state purchase of some of the existing lines.

The county authorities have, as already explained, been superseded by boards of guardians for Poor Laws and dispensaries, and have had the initiatory proceedings as to roads transferred to the Baronial Presentment Sessions.

The county authorities were, in 1806, entrusted with some slight power for making provision for lunatics from which a local system might have developed under them, but in 1817 the care of lunatics was transferred to appointees of the Executive Government; the commencement of the system of governors of district lunatic asylums (to be noticed hereafter) over whose management and expenditure the county authorities have no control. There are also other items of expenditure paid out of county rates over which the county authorities have no control, such as charges for extra police and for valuation.

Under the head of county officers there is, perhaps, the greatest contrast with Poor Law arrangements. Under the Poor Law the officers are paid by salaries fixed or approved by the local government board and capable of being changed from time to time by the same authority, there is provision for superannuation, and whilst the appointment of officers (except in the case of chaplains) is left to the guardians, their appointment is subject to the approval of the Irish local government board. The officers, if negligent in their duties, are liable to be dismissed by the central authority. The two most important offices paid out of the county

rates (the clerks of the peace and clerks of the Crown) present a contrast to these arrangements, the salaries are fixed by statute as far back as 1836, and the grand jury have no power to increase them. The officers receive also, under various enactments, fees and allowances which have never been converted into stamps. So far from being removable for non-performance of duties, they are allowed by an old statute to discharge their duties by permanent deputies, and there is no provision for their superannuation. The clerk of the peace corresponds in some of his duties to the registrar of the county court in England, who must be a solicitor by profession, and the patronage of which office is under the check of requiring the approval of the Lord Chancellor. In Ireland no qualification is required for a clerk of the peace, nor is there any check on the patronage of the office. The arrangement as to these offices was condemned years ago by a commission, it was more recently condemned by a select committee of the House of Commons.

Bills have been introduced to remedy it, but as there is no central authority charged with the supervision of these important local officers, like the Registrar of petty sessions clerks in the case of the petty sessions courts, or like the Irish Local Government Board in the case of Poor Law Officers, these offices have remained so many years unreformed. Upon the satisfactory arrangement of a permanent and efficient professional officer for the Irish county court, with an office created out of the consolidated offices of the clerk of the peace and the clerk of the Crown, depends the satisfactory working of all the extensions of jurisdiction required in the Irish county court to make it like those of England and Scotland. Without such an officer it is not capable of dealing with the cases of equity and property arising amongst the humbler classes of an amount too small in each case to bear the cost of central adjudication.

The urgency of this reform has been increased by the number of peasant proprietors created by the sales

to tenants of their interest in church lands and also the sales to them under the Land Act. In addition to these properties some £70,000,000 of tenants' interests have been brought within the domain of Law by the Land Act of 1870. For dealing with the family and private contracts affecting a large part of this property, the county courts have entirely inadequate jurisdiction. The denial of justice to the poor, arising from the limited jurisdiction of the Irish local courts, is a frequent and a constant source of discontent amongst the people, and is the greatest opprobrium now existing on the administration of the law in Ireland.

The plan of fiscal administration of counties by grand juries presents some other contrasts to the modern completely organised Poor Law arrangements. It is, in the first place, very ancient, arising from the plan of Sir John Davis in the reign of King James the First, already noticed of using the judges on circuit as a species of crown administrators. When the judges were made independent of the crown and confined to strictly judicial duties in 1782, one part of the plan was weakened.

Again, when in the process of time the crown took more and more the charge of all prosecutions in Ireland by assize and sessional crown solicitors, stipendiary magistrates, and constabulary, the ancient function of the grand jury of acting as a check on the malice of private prosecutors gradually ceased, and the finding of bills, except in special cases, by degrees sunk in importance. In Scotland, where the system of charging the public prosecutor with the duty of conducting all prosecutions has prevailed for a much longer time than in Ireland, no bills of indictment are submitted to grand juries except in cases of treason. Since 1836 the grand juries have been selected with reference not to their criminal but to their fiscal duties. The sheriff is bound to select one £50 freeholder or £100 leaseholder for each barony.

The grand jury, though technically at the nomination of the sheriff, subject to these restrictions, is practi-

cally an assembly of the principal proprietors or the agents of peers (who are excluded on account of the indictments, as peers can only be tried in parliament, and so are never included in jury trials). The accidental mixture of criminal and fiscal business in grand juries, has thus the effect of excluding peers from the most important assembly of county gentry for business purposes. Under the Poor Law, on the other hand, peers can be, and often are, chairmen of the boards of guardians. As only twenty-eight of the Irish representative peers are allowed to sit in the Imperial Parliament, and as they are excluded from being returned to the House of Commons for an Irish constituency, this additional and accidental exclusion has a tendency to increase absenteeism, and to discourage peers from active local political life.

The grand jury presents another contrast to Poor Law arrangements, in the want of executive force arising from a distinct jury, though largely consisting of the same persons, being empanelled each half year, and then all power ceasing until the ensuing assizes. In the case of the grand juries' superintendence of prisons, this difficulty is got over by appointing a permanent board of superintendence. In the Grand Jury Act for the County of Dublin, passed some few years after the Poor Law Act of 1838 had attracted attention to the superiority of the Poor Law arrangements in this respect, provision was made for a permanent Finance Committee of the grand jury; but this has not been extended to any other county.

Authorities for Groups of Counties.

These authorities are of two classes—the Governors of District Lunatic Asylums, and the Trustees of Inland Navigations.

Both these authorities present features of contrast to the Poor Law system. In the governors of lunatic asylums, there is a total absence of representation of either ratepayers or proprietors. There is no exclusion of clergymen as in boards of guardians, and in the

ratepayers' part of the baronial sessions; and several dignitaries of both the Protestant and Roman Catholic churches are on the boards of governors.

(*c*) *Governors of District Lunatic Asylums.*

The district lunatic asylums in Ireland have been increased in recent years; they are now twenty-two in number for the thirty-two counties at large, and eight counties of cities and towns, with a separate board of governors for each. The governors are all nominated by the Lord-Lieutenant. There are inspectors of lunatic asylums also appointed by the same authority; and there is a board of commissioners for general control and correspondence, and for superintending the erection, establishment, and regulation of asylums for the lunatic poor of Ireland. The number of pauper lunatics maintained in the twenty-two asylums, is 7,140; being less than the 7,547 pauper lunatics in asylums in a portion of the population of England and Wales equal to that of Ireland. It is, however, not so much less, as the number (3,123) maintained out of poor-rates in Ireland is less than 5,009, the proportionate number of those in workhouses or with relatives maintained out of poor-rates in England and Wales. This contrast, however, in which the Irish Poor Law arrangements for a class most deserving of kind and charitable treatment appear less favourable than the lunatic asylum arrangements, is not a question of local administration, but of Imperial restriction in local administration. The Poor Law guardians in Ireland are prohibited by statute from granting out-door relief to able-bodied persons in case of "mental infirmity affecting any member of their family;" whilst guardians in England and Wales have that power, under general order since 1844.

The relief of lunatics was, in the first instance, entrusted to county authorities in Ireland. In 1806, under Statute 46, Geo. III., c. 95, the grand juries were enabled to make some provision for lunatics, by adding wards to houses of industry, and presenting sums not

exceeding £100 a year, for each county, county of city, or county of a town, or making up a possible expenditure of £4,000 a year for all Ireland. So few houses of industry were erected, as already noticed—never apparently more than eleven—that this scanty provision could not in practice have ever exceeded £1,100 a year.

In 1817, after the serious distress and fever which prevailed in 1816, this most urgent class of relief to the poor was taken out of the hands of the county authorities, by the 57, Geo. III., c. 106, and placed in that of the Lord-Lieutenant, and persons appointed by the Irish executive to discharge the duty.

This was the origin of the present system of governors of lunatic asylums. The persons originally appointed were very much in the position of vice-guardians under the Poor Laws, appointed to discharge a duty which the county authorities had failed to discharge; the difference being that the governors have been perpetual, while the vice-guardians were only temporary. Since the plan of asylum governors was created, the Poor Law authorities have been established and grown to the position which has been already described, so that the grounds on which the governors were originally created no longer exist. The analogy of the dispensaries and hospitals appears to point to the Poor Law authorities as the ultimate local representative body to have charge of district lunatic asylums.

There are two difficulties, however, in the way of any such change. There being no restriction in the appointment of governors of lunatic asylums, the dignitaries of the respective churches have been placed on some of their boards, whilst under the Poor Law they have been excluded from serving on the boards of guardians; therefore, in any amalgamation of the two authorities a decision would have to be come to from the experience of the two systems, as to which principle should prevail.

Again, the area of charge and incidence of taxation is different where a lunatic is maintained under the Poor Law Guardians or by the governors of lunatic

asylums. In a poor-house the charge is divided between occupier and proprietor, and falls usually on one of the 3,438 electoral divisions, or in some cases on one of the 163 unions. In an asylum the charge, so far as it is not provided for by the four shillings per week allowed out of the Imperial taxes, falls on the occupiers only of one of the thirty-two counties at large, and eight counties of cities or of towns in Ireland, except so far as the county or city rates (grand jury cess) are in cases of contracts, since the Land Act of 1870, divided between landlord and tenant. Now that so much of the charge of lunatics in asylums is defrayed from the general taxes, union rating for all local charge for lunatics would be a reasonable compromise on this question of conflict of charge. The uniform charge would facilitate the transfer of pauper lunatics requiring treatment from workhouses to asylums, and the transfer of harmless and incurable cases of lunacy from asylums to workhouses.

Whilst lunatic asylums have been so amply provided for, and the lunatics so carefully cared for by the governors under the administration of the Irish executive, the legislation as to lunatics in Ireland presents some retrograde characteristics least of all to be expected where the practical administration is so good, the defect no doubt arising to a large extent from the want of the expurgated and revised statutes which are now being published for the English and Imperial statutes down to the commencement of Her Majesty's reign. The Irish law as to the power justices have to commit lunatics to asylums has not, from the time the first governors were appointed in 1817, to the present time, ever been the same as the English law.

In England, under an Act passed before the Union in 1800, justices had power to send lunatics having a purpose to commit a crime, and who were dangerous, to *gaols*. The Irish justices did not get a similar power until 1838, after the panic created by a leading merchant of Dublin being killed by a madman in a most central thoroughfare, opposite the Bank of Ireland. In the same session, however, and before the Irish Act passed

allowing lunatics who were dangerous or intending to commit crime to be sent to *gaols* in Ireland, the experience of 38 years had convinced the legislature that in England they should not be sent to *gaols*, but only to asylums, and the Act of 1800 was repealed for England and Wales, shortly before the leading principle of its provisions were extended to Ireland.

At the end of twenty-eight years, when the criminal statistics of Ireland and England came to be compared, the difference of the law was shown by the number of lunatics in gaols in Ireland. On inquiry it was found that it was just as objectionable to have them in *gaols* in Ireland as it had been formerly to have them in *gaols* in England. The principle of the English Act of 1838 was in 1867 extended to Ireland, but not in the same words. In the meantime, however, in England the power of justices had been extended by the provisions of the Lunatic Asylums Act of 1853, allowing them to send lunatics to asylums without waiting till an intent to commit a crime could be proved. This enlightened principle has not yet been extended to Ireland.

The Irish law is in some respects the same as the English law before 1853, and in others as the English law before 1838, so that in the mode of dealing with lunatics, a social question independent of nationality or locality, religion or race, the Irish law is in some respects twenty years, and in others thirty-six, behind the English law. Defects of this kind, which injure the prestige of Imperial legislation, will be brought into that prominence that will ensure the termination of their existence by Lord Cairns' great work for the revision and publication of a revised edition of the statutes. Even in this work, however, the Imperial Parliament has allowed the Irish part to be neglected, except as to the inevitable adoption in Ireland of the revision of the English statutes up to 10 Henry VII., which were extended *in globo* to Ireland by Poyning's Act of that year. Whilst the Ante-Union English statutes have all been revised and expurgated, and a revised edition of the statutes published in three volumes, the edition of the

Irish Ante-Union statutes now in use is that prepared by direction of the Irish Parliament, in twelve volumes, revised only up to the Union, but omitting necessarily all the changes in Irish law made by the Imperial Parliament.

(*d*) *Trustees of Inland Navigation.*

There were four navigations in Ireland constructed in connection with arterial drainage under Statute 5 and 6 Vic., c. 89. 1st, the Lower Bann Navigation District, extending from Coleraine, along the course of the Lower Bann, through Lough Beg and Lough Neagh, to the entrance of the navigation which connects Lough Neagh with Belfast (called the Lagan Navigation), fifty-one and a quarter miles in length. 2nd, the Upper Bann Navigation, extending from the end of the Ulster Canal at Moy on the Blackwater River, through that river and Lough Neagh to the same entrance of the Lagan Navigation into the Lough, twenty-one and a quarter miles. 3rd, the Lough Corrib Navigation, from Galway through Lough Corrib to Cong, twenty-three and a quarter miles, but now partly sold to Sir Arthur Guinness; and, 4th, the Ballinamore and Ballyconnel Navigation, connecting the Shannon near its source with Lough Erne.

These navigations were all executed at the time of the famine in Ireland, partly to develop the resources of the country, and partly to give employment. Half the cost was paid for out of the Imperial taxes by way of grants, and half charged to the county rates by annual payments of principal and interest spread over a number of years. The trustees to manage these were named by Act of Parliament, and the power of choosing new trustees as vacancies occur is vested in county authorities (grand juries), the qualifications for the office being leasehold or freehold property worth £100 a year, or being agent for an estate of £2,000 a year. The trustees may be removed by the county authorities they represent.

At the time the works were originally executed, the half grant for the Imperial taxes was made a reason for the other half being levied as an imperative presentment

without the ratepayers being consulted in the matter. The cost of maintenance is also levied without their having any voice in the matter. The system thus introduced has not been recognised as a success, or admitting of extension, for when the Lagan Navigation, originally made partly out of local taxation, and which adjoins both the Upper and Lower Bann Navigation, already referred to, fell into the hands of the central government, it was leased again within the last two years to a public company consisting of the debenture-holders and creditors of the original company which made the navigation.

Again, the Ulster Canal, forty-four miles long, which joins two of the navigation districts (the Upper Bann and Ballymore and Ballyconnell), fell into the hands of the central government from the company failing to repay the government advances for its construction, and now the imperial taxes have had to be applied to put the canal in order, and it is still on the hands of the central government, and they have not succeeded in getting either a company or a local authority to take charge of it. The central government have also on their hands a canal of four and a half miles long from Coal Island to the Upper Bann Navigation, the Maigue Navigation of eight miles from the town of Adare to the Shannon, and a part of the Boyne River twelve and a half miles in length, between the part under the Harbour Commissioners of Drogheda and the part under the Boyne Navigation Commissioners. They have also the Shannon River, 158 miles in length. When all the roads in Ireland executed by the Commissioners of Public Works or by turnpike trustees, have been transferred completely to local authorities, it ought to be possible to devise a plan for transferring the navigations in the hands of commissioners of public works or of navigation trustees to local authorities constituted like the Poor Law Boards, so as to contain representatives of all the interests affected, and relieve the central government of responsibilities such as they have been involved in, as in the case of the Ulster Canal and the river Shannon.

The Public Health Act of 1874 makes provision for the union of sanitary districts that are interested in a common supply of water. Here we have a simple machinery for creating, without trouble or complication, navigation districts and joint boards for managing them, which would represent both proprietors and ratepayers. The legislative machinery is so simple that it would amount to little more than an interpretation clause "that interested in a supply of water" shall mean "interested in inland navigation," and a provision placing all matters relating to inland navigation under the Commissioners of Public Works to the same extent as the supply of water is under the Local Government Board.

Yet how important it would be if all the navigations in Ireland, which have since the development of railways long ceased to have any imperial or even general Irish interest, were handed over to local joint boards which would be really interested in them, and quite capable of undertaking their management; the Commissioners of Public Works being employed in the truly central duty of directing, inspecting, and controlling the management. In this way Parliament would be relieved from questions like the management of the Shannon, where little credit can be gained by central officers, and the cost of mismanagement falls on imperial taxation.

(*e*) *Arterial Drainage Authorities.*

The expenditure on works of arterial drainage in Ireland since 1842 has been nearly £2,500,000, an important fact commonly overlooked by those who speak of the amount of waste lands of Ireland, referring to statements and returns made about the year 1842, before this large expenditure was incurred. The greatest part of this expenditure was made by the Commissioners of Public Works in Ireland, under the Irish Arterial Drainage Act of 1842 (5 and 6 Vic., c. 89). These works were pushed forward with great activity during the famine of 1846-47, as a mode of relief. The attempt of the central government to take charge of such a number

of local drainages turned out most unsatisfactorily, the defects being no doubt aggravated by the pressure under which the works were executed. The result was, however, that a large part of the expenditure could not be charged to the proprietors, but had to be defrayed from the imperial taxes, and the entire system of execution of the works by the central board was abandoned. Of the original expenditure of £2,390,000, no less than £1,336,000 was made a free grant out of the imperial taxes.

In 1863 an Act was passed allowing arterial drainage districts to be constituted by provisional order to be confirmed by Act of Parliament, just as in England. The works were to be executed by the local drainage board. In this Act, provision was made for securing the maintenance of the drainage works, falling, however, far short of the powers in similar cases under the Poor Law. If a board of guardians wilfully neglects to obey the orders of the Local Government Board, they can be removed, and vice-guardians appointed to do the work. If a drainage board wilfully disobeys the orders of the Commissioners of Public Works, a person who has advanced money for the works at whose complaint an order has been made has to proceed to enforce it by injunction in Chancery.

If trustees for drainage or a drainage board make default in executing adequate works of maintenance, there must be a complaint from a person injured, and inspection under the Commissioners of Public Works, and an order to do the work. If this order be disobeyed, the Commissioners of Public Works have liberty to take charge of the execution of the works (29 and 30 Vic., c. 49, s. 5 and 6).

As the returns of local taxation in Ireland show a large number out of the 121 arterial drainage districts under the Act of 1843, if not some of the 25 under the Act of 1868, levying no maintenance rates, it would appear a matter of state policy to allow rural sanitary authorities to make complaints to the Commissioners of Public Works of neglect of maintenance of arterial drainage works in which they have such an interest,

from the effect of the neglected drainage on the health and well-being of their district. When the trustees disobeyed the orders of the Commissioners of Public Works, the Commissioners should have power to put the rural sanitary authority, or, where necessary, a joint board of such authorities, in charge of the arterial drainage district to execute the necessary works of maintenance, the costs to be charged, however, like the drainage rates.

III.—Town Authorities.

The town authorities of every kind present a marked contrast to those hitherto considered under the Poor Law which have, as we have seen, a representation of both proprietors and rate-paying occupiers on a fixed basis and no limit of rating. In the grand juries, governors of lunatic asylums, and trustees of inland navigation, the ratepaying occupiers are unrepresented, and there is no limit of rating. In baronial sessions there is an apparent but not a real representation of the ratepaying occupiers, and there is no limit to the ex-officio or property element.

In the towns, on the other hand, the property element is not represented, and protection of property is sought indirectly by limits of rating like the two shillings in the pound in towns under the Town Improvement (Ireland) Act, 1854, as amended by the Public Health Act of 1874, and the one shilling, ninepence, and sixpence in the pound limits still in force for different classes of houses in the towns, still under the old Lighting and Cleaning Act of 1829, and like the limit on part of the taxation of Dublin city called the improvement rate.

The protection of property was further cared for by having a peculiar municipal franchise which has now become higher than the Parliamentary franchise. It was also sought to be attained by a rearrangement of the wards of the city of Dublin in 1849. Proposals are made on the popular side to assimilate the municipal to the

Parliamentary franchise. This has been met by returns moved to show the small amount of rates paid by the classes proposed to be added. The discussions connected with the main drainage of Dublin have disclosed an opposition of the owners of property to the town council, notwithstanding the great success of that body in supplying the city with water. Just as there is a strong feeling on the part of the county occupiers, that in all county authorities they are too much ignored, so there is a similar feeling that in town arrangements the owners of property are too much ignored.

The origin of this overthrow of property influence in towns may be traced to the failure of the Irish Parliament to solve the question of town government. In 1793 all the town authorities were close corporations, with exclusive privileges of trading, and in many cases exclusive exemption from tolls, and to these corporations Roman Catholics were not admitted. When the Irish Parliament passed an Act of partial emancipation of the Roman Catholics in 1793, it did compel the corporations to be opened to Roman Catholics and enabled them to trade on equal terms, the exemption from tolls was not abolished. The exclusive bodies were only allowed to admit the Roman Catholics to a position from which they might be selected on the governing body of the town. In 1835 the Irish Municipal Corporation Commissioners reported "that the Roman Catholics had up to that year derived little advantage from the Act of 1793. In the close boroughs they were almost universally excluded from all corporate privileges. In the more considerable towns they had rarely been admitted even as freemen, and, with few exceptions, they were altogether excluded from the government body. In some, and among them is the most important corporation to Ireland, that of Dublin, their admission was still restricted on avowed principles of sectarian distinction."

When the Imperial Parliament passed a more complete Act of Emancipation in 1829, the towns were allowed by the Irish Lighting and Cleansing

Commissioners Act of 1829 to adopt the popular English constitution of town authorities, and the owners of property suffered for the long exclusion they had maintained against others by being themselves excluded, and they were left to depend on the limits of rating already referred to which have only tended to weaken instead of strengthening the utility of town government.

The limit of rating is founded on a mistake in measuring the burden created by the amount of the rates which is far from being the case, as so much of the expenditure of rates when wisely made is really reproductive expenditure, increasing the value out of which the rate is paid.

The report of the Commissioners on Municipal Corporations in Ireland in 1835 attracting prominent attention to the exclusiveness and mismanagement of the old corporations, weakened the power of the owners of property for securing any terms for themselves. They were further weakened by the very inadequate and unsatisfactory representation they had given the rated occupiers in the baronial sessions, the final settlement as to which, in 1836, preceded the Municipal Corporation Reform Act of 1840. The result was that, notwithstanding the precedent afforded by the arrangement of the Poor Law authorities in 1838, the owners of property secured no representation in the Municipal Corporation Reform Act of 1840. When the Town Council of Dublin sought to have the powers of city grand jury transferred to them, they consented, in 1849, to a redistribution of the city into new wards, so as to provide an indirect representation of property.

Besides these fundamental differences, the legislation for the government of Irish towns presents many contrasts to that of the Poor Law legislation. The main cause of this is the want of any central guidance or control like that secured for the Poor Law administration by the Irish Local Government Board.

Some such central control was contemplated in the powers given to the Lord-Lieutenant, to order how the acccunts of municipal corporations were to be kept, and

in the centralised audit by the Board of Audit in London, under the direction of the Lords Commissioners of Her Majesty's Treasury; but all this centralised machinery broke down. The Lord-Lieutenant gave no directions how the accounts should be kept; the Board of Audit after a few accounts ceased to audit, and, notwithstanding the state of the accounts of the Belfast Town Council, disclosed in the Chancery litigation relating to that borough, no substitute was provided until 1871, when audit by the Poor Law auditors was extended to towns. Neither that Act, however, nor the Act of 1872, transferred to the Local Government Board the power of directing how the accounts of municipal councils are to be kept, which had been conferred on the Lord-Lieutenant in 1840.

The town authorities in Ireland with complete jurisdiction are one hundred and twelve in number; eleven town councils; thirteen lighting and cleansing commissioners, under Act of 1829. Seventy-six town commissioners, under the Towns Improvement (Ireland) Act of 1854, and twelve authorities under special acts. There are, besides, six authorities with limited jurisdiction over towns, viz., the Belfast Water Commissioners, and five Commissioners of Squares in Dublin. The inhabitants of towns in Ireland have evinced the most active desire to adopt the various plans of town government that Parliament has from time to time sanctioned. In 1829 the Irish Lighting and Cleansing Act was passed. It embodied the provisions usual in English local acts up to that date, for paving, lighting, cleansing, and watching towns in Ireland; and enabled the inhabitants of a town to obtain these powers either in whole or in part, according to the decision of a meeting of qualified ratepayers, convened under the authority of the Lord Lieutenant. The town councils constituted under the Municipal Corporation Reform Act of 1840, were enabled to adopt the provisions of the Act of 1829, so far as lighting was concerned. Besides these, in no less than sixty-five other towns, the inhabitants availed themselves of the facilities afforded by Parliament for

providing for the lighting, cleansing, paving, and watching the town.

In 1854 the Towns Improvement (Ireland) Act was passed, for making "better provision for the paving, lighting, draining, cleansing, supplying with water, and regulation of towns in Ireland." It was on the same plan as the earlier Act of 1829. It enabled the inhabitants of towns in Ireland, by the votes of certain specified classes of ratepayers, at a public meeting convened by order of the Lord Lieutenant of Ireland, to adopt the objects of the Act in whole or in part. The adoption of the Act gives the Irish town authorities, by this cheap local procedure, nearly all the powers usually obtained up to that date by towns in both countries by local acts, such as those set out in the Towns Improvement Clauses Act, 1847, and Commissioners Clauses Act, 1847, and the Public Libraries Acts of 1850 and 1853. The Act of 1854 contained besides some special modifications and provisions appropriate to Ireland. The inhabitants of Irish towns showed great activity in availing themselves of the opportunity of improved town government thus afforded to them. Of the sixty-five towns which had been under the Lighting and Cleansing Act of 1829 no less than fifty-two have adopted the new provisions. The number would have been larger if the provisions of the English Local Government Act, enabling town authorities to adopt improved powers by resolution, had been extended to Ireland, instead of requiring the commissioners to resort to a town meeting. Without counting some towns, under town councils, and some towns under special Acts, no less than twenty-four towns, not previously under town government, have also adopted the provisions of the Act of 1854, in whole or in part, making seventy-six towns governed by that Act.

The inhabitants of the larger towns have also exhibited the most active desire to adopt the latest improvements proposed or thought of in local government. So far back as 1849, a complete system for the consolidated collection of rates was introduced into Dublin

by statute (12 & 13 Vic. c. 91). Thus a reform recommended in England for general adoption by the Select Committee of the House of Commons, on poor-rate assessment in 1868, was adopted in one jurisdiction in Ireland nearly twenty years previously. Steps towards consolidation of rates, and simplification of local proceedings, have taken place in other towns. Thus, of the three local rates, Poor Rate, County Rate (Grand Jury Cess), and Town Rate, the County Rate has been got rid of within the town boundaries of the counties of the cities of Cork and Limerick; in the towns of Belfast, Newry, Sligo and Enniskillen; and in the townships of Rathmines, Pembroke, Blackrock, New Kilmainham, Clontarf, Kingstown, Dalkey and Bray. Until 1871, this simplification, or any other of local administration, could only be obtained by a separate local act for each town. The cost of one of these Acts was very considerable, and there was always a risk of its amounting, if there were any opposition, to a very large figure. Thus, the Rathmines and Rathgar Township Act, 1866, cost £469; the Pembroke Township Act, 1863, £1,245; the Bray Township Act, 1866, £1,950; the Kingstown Township Act, 1869, £5,989; and the Sligo Borough Improvement Act, £14,000.

Provision was made in the Local Government, Ireland, Act, 1871, to enable towns to be separated from the adjoining counties for the management of roads by provisional order to be afterwards ratified by Act of Parliament. The town council of Wexford took proceedings under this Act, and, the matter being unopposed, obtained sole charge of its roads at a cost of £40. Petitions for similar orders were presented from Newtownards, Westford, Belturbet, and Ballina, but the Act of Parliament intrusted the grand jury of the county with an absolute veto upon such petitions when opposed to it. In all these cases the grand juries of the respective counties interposed their veto, and the Irish Local Government Board, in their report presented in 1874, state that there is no likelihood, in the present state of the law, that any such application will again

be made; and add "the question is asked why the consent of the grand jury was made a necessary preliminary, as it was most natural that the body which it was proposed to deprive of its jurisdiction, and its power of taxation, should object to the proposal, however beneficial it might be to the parties residing in the district which petitioned to be disannexed."

Where Parliament has in so many, if not in every case, when the town authorities have made the application, sanctioned the separation of the town from the county for road purposes, the veto thus introduced has the effect of enabling a local authority having an interest in the matter to defeat the policy of Parliament, of terminating the divided authority of county and town authorities over roads within the town boundary. As a result of the defect thus pointed out by the Irish Local Government Board, the town of Ballina, with only 5,551 inhabitants, and an income from rates of £375 a year, is applying for a Local Act to be passed in the Session of 1875.

The town authorities have effected some other simplifications and consolidations of local authorities. Thus, of the eight counties of cities and towns, the three largest, Dublin, Cork, and Limerick, have, by local acts, had the entire fiscal powers of the grand juries transferred to the town councils. The want of a similar transfer appeared, from some evidence given before the Committee on the Municipal Privilege Bill, 1874, to the effect shown in the following table:—

Counties of Cities and of Towns	Population.	Annual Expenditure Administered by Town Grand Juries.	Annual Expenditure Administered by Town Councils or Town Commissioners
		£	£
Carrickfergus . . .	9,452	2,598	1,125
Kilkenny . . .	12,662	1,967	3,694
Galway	13,184	5,378	1,422
Drogheda. . . .	14,389	2,464	3,795
Waterford . . .	23,337	3,397	15,037

One of the impediments to these towns following the example of Dublin, Cork, and Limerick, and abolishing

the double fiscal government and double rates, is, no doubt, the cost of the local acts, with the risk of such cost being swelled to a considerable amount by opposition. When Parliament has sanctioned the principle in the three most important counties of cities, and has sanctioned a transfer of the charge of roads from counties at large to towns by provisional order, a strong case is made out for allowing the five smaller counties of cities to adopt this obvious simplification of local government by provisional order. The present complicated arrangement should not be perpetuated by Parliament insisting on having this most local of matters disposed of in London, when the precedents laid down in the case of the larger cities by Parliament itself are there to guide the Local Government Board, and when the provisional orders have to come before Parliament for confirmation.

Some of the complications of town government admit of removal by a very slight amount of legislation. In the numerous Acts relating to public health and town authorities, there are four classes of commissioners referred to; one of them is described, with great exactness, as "Municipal Commissioners under the Irish Municipal Corporation Reform Act, 3 and 4 Vic., c. 108." These commissioners were intended by the Act to be a temporary body for each town until it was decided whether to apply for a Charter of Incorporation, so as to have a town council, or to apply for commissioners under the Act of 1829. There is only one town which has adopted neither course, and so Carrickfergus remains as the sole representative of a class of commissioners that was intended to have a short temporary existence.

It would, however, be perfectly consistent with the spirit of the original Act to authorise the Irish Local Government Board to require the Municipal Commissioners of Carrickfergus to make their choice within a limited time; and to enable them to do so they should have conferred on them the powers that town authorities have in England, of adopting, by resolution, provisions sanctioned by Parliament, without the necessity of resorting to a town meeting. In default of making a

choice, the Local Government Board should be authorised to declare either the Towns Improvement Act of 1854, or the Municipal Corporation Reform Act of 1840, whichever they should think most appropriate, to be in force in the town. By this simple means a whole class of town authorities would at once and for ever disappear from all future Acts as to Irish towns.

Another class of thirteen towns is in a somewhat similar position. Many years ago the inhabitants adopted the Lighting and Cleansing Act of 1829, along with some fifty-two other towns. These towns have gradually all substituted the more recent, and much more complete, powers obtained by Irish towns under the Towns Improvement Act, 1854; some of the thirteen towns have not followed the rest for want of the principle of the English Local Government Act, already referred to, allowing the Commissioners of Towns to adopt new powers by resolution. The Irish Act of 1854, passed before the English Local Government Act of 1858, requires, for the adoption of new powers under it, a town meeting. In other cases, the reason for the towns not adopting the improved powers arises from some local circumstances, such as the possession of corporate property or tolls. It would appear, however, when the improved legislation of 1854 has been voluntarily adopted by so many towns, that it is in accordance with public policy to now extend the substituted provisions of the Act of 1854 for those of 1829 to the remaining thirteen towns, especially as towns have been prohibited from adopting the antiquated provisions of the Act of 1829 since 1854. This simple provision would get rid of another class of town authorities (the Lighting and Cleansing Commissioners under the Act of 1829), and town commissioners would be reduced to two classes, those under the General Town Act of 1854, and those under special local acts. The difference in the powers and duties of these two classes might be further simplified by amending the General Town Act of 1854, so as to give the towns under it the benefit of any later improvements sanctioned by Parlia-

ment in any of the more recent local acts. The only third class of town authorities would then be those under town councils. They should be allowed to adopt, by resolution, any powers sanctioned for Irish towns in the Towns Improvement Act of 1854, when amended.

In like manner, any town under the General Town Act of 1854, should, if of sufficient size, be enabled to adopt part of the other provisions of the Municipal Corporation Reform Act of 1840, as to division into wards, and town councillors, aldermen and Mayor, without necessarily adopting the parts of that Act of 1840 really inconsistent with the provisions of the General Town Act. As the complication of town law in Ireland has arisen from slight accidental causes, and from the voluntary and unguided way it has been, to a large extent, allowed to grow up, and as there are few vested interests affected by the diversities, the complications could be readily removed, and the whole reduced to a tolerably uniform code, if full powers were given, to the Irish Local Government Board for dealing with this important assimilation, by provisional orders.

IV.—HARBOUR AUTHORITIES.

The harbour authorities are thirty-one in number, and they manage about one-tenth of the local taxes. Some of the harbours, executed out of the Imperial taxes, for the purposes of steamboat traffic, and of carrying the mails, are still under the charge of the Commissioners of Public Works.

In the cities the harbour boards are distinct from the town authorities, and are governed by special Acts. Few questions have arisen as to their government or management since the reform of the Dublin harbour authority in 1867. In that year a new port and docks board was created, to consist of one ex-officio member, three representatives chosen from the Dublin Town Council, seven members chosen from the Commissioners of Irish Lights, and fourteen elected members chosen by

electors with high and special qualifications. In the Commissioners of Irish Lights, the old self-elective principle is still retained as to seventeen of the twenty-two members of the board.

V.—Minor Local Authorities and Burial Boards.

The Burial Boards in Ireland are either the town authorities, or, in rural districts, the Poor Law Guardians. The amount received in Ireland by these authorities in 1872 was £18,650, as compared with £53,787 in a portion of the population of England and Wales equal to that of Ireland. The amount in Ireland increased from £10,191 in 1871 to £18,650 in 1872—no doubt from the burial grounds not attached to churches transferred to the Poor Law guardians under the operation of the Irish Church Act of 1869.

(*l*) *Court Leet.*

There is only one Court Leet ascertained to be still in operation in Ireland, that of the Manor of Killultagh, including the town of Lisburn in the County of Antrim, the property of Sir Richard Wallace, M.P. The court deals with town fountains and fire-engines, fairs and markets, and with the repair of manor roads not on the county rates. Lisburn has lately adopted the Town Improvement Act of 1854. It has thus acquired the power of providing town fountains and fire-engines out of town rates. By the Local Government Act of 1871 the town has acquired powers of dealing with fairs and markets. The provision as to manor roads is one that might be advantageously extended throughout Ireland, and in any change involving a more local care of roads it would be important to have a provision for securing the repairs of bye-roads, not on barony or county rates, by the parties really interested in them, by sub-district rates like to those on the constablewicks of the Manor of Killultagh. In the greater division of properties that is taking place in Ireland through the sales in the Landed

Estates Court, this provision will become of more and more importance, as the bye-roads will cease to belong entirely to the same proprietor.

LOCAL TAXATION.

I.—EXCEPTIONAL LOCAL TAXES.

(*a*) *Toll Thorough in Galway.*

This tax granted to Galway, by King Richard II., in 1395, still survives, after being discontinued in all the other once fortified towns in Ireland. It is a tax collected at the entrance of towns on every saleable article passing through the gates, whether sold or not. It was reported, in 1853, as "exceedingly unpopular;" "in fact, a tax levied on agricultural produce of the surrounding country, for the purpose of defraying expenses which should, in justice, be borne by local taxation." It was converted in that year by the Galway Town Improvement Act, 1853, 18 and 13 Vic., c. 200, into a tariff of "ingate tolls," with about one hundred items, and "outgate tolls," with about forty items.

By a clause of the Public Health Act of last session, the Irish Local Government Board are enabled to repeal, alter, or amend local Acts by provisional orders. By a provisional order just obtained, it appears that the gas company have got a receiver over five-sixths of the tolls, and the commissioners' power of rating is increased from one shilling in the pound to two shillings, to provide for paving and cleaning, hitherto paid out of the tolls. The provisional order, however, holds out slight prospect of the tolls being abolished.

(*b*) *Exceptional Taxes in the Trade of Pawnbroking in Ireland.*

These are five in number, all under Acts of the Irish Parliament, still in force. The largest of these is a tax of £92 6s. 1¾d. a year (equal to £100 old Irish currency), upon all licensed pawnbrokers in the City of Dublin, or within three miles beyond the city. The

pawnbrokers pay besides the same licence duty of £7 10s. a year to the Imperial revenue, as other pawnbrokers throughout the United Kingdom outside London, making the total tax on each pawnbroker in Dublin, £99 16s. 1¾d. a year. The tax on pawnbrokers in London is £15, or double that in the Provinces, but is £84 16s. 1¾d. a year less than that imposed on pawnbrokers in the Irish metropolis. This high and exceptional tax, in Dublin, is applied to the support of the Dublin Metropolitan Police. It produced, in 1872, £6,462. The difficulty in the way of its abolition is in determining where the substitute is to come from. If from the Police rates on the Metropolitan Police District, it would raise them from 8d. to 10d. in the pound; if from the Imperial taxes, it would raise the contribution, in 1873, to Dublin from £82,148 to £88,610. The fairest substitute would be to give Dublin a share out of the free quota of the Royal Irish Constabulary granted to Ireland, in 1846, as compensation for free trade, of which Dublin has hitherto enjoyed no share. This would spread the £6,462 over Ireland, instead of concentrating it on the poorest class in Dublin.

Three of the special taxes, Fees on Pawnbrokers' Returns, Fees on Notices of Pawnbrokers' Sales, and Fees to Pawnbrokers' Auctioneers, are connected with a monopoly created by the Irish Parliament, as to the sale of pledges, in favour of two officers of the Town Council of Dublin, and two officers appointed by the Lord Lieutenant. The poor of Dublin are taxed to the extent of £7,000 a year under arrangements which have been officially condemned; and the system stands in the way of the assimilation of the pawnbroking laws of Ireland and of Great Britain, recommended by the Select Committee of the House in 1870, before the recent legislation on the subject for Great Britain.

The fifth special tax on the trade in pawnbroking in Ireland, is connected with the system of official appraisers still existing in some counties, under the antiquated system of regulation of the trade provided by the Irish Parliament. This small taxation, not

exceeding £1,000 a year, stands in the way of the important assimilation in favour of the poor in Ireland, of the laws relating to pawnbroking recommended by the latest official inquiries on the subject in Ireland and in Great Britain.

(*c*) *Exceptional Taxes on Job-Horses and on Stage-Carriages.*

Job-horses in Dublin are taxed at £2 a year, which goes to the Metropolitan Police. This is a small but real grievance now that the tax has been taken off horses in England. A smaller grievance in aggregate amount, but a heavier one to the poor people who have to pay it, is the £8 a year tax on *one*-horse stage cars plying to the suburbs of Dublin. It is exactly the same as the tax on a four-horse stage-coach, and four times the tax on a hackney-car.

II.—VALUATION ON WHICH LOCAL RATES ARE LEVIED.

In 1867, a Bill was introduced in the House of Commons to establish, in England and Wales, one uniform valuation roll of property, for all the purposes of Local Rating and Taxation. The Committee on Poor Rate Assessment, in 1868, recommended some such measure, as much required. What has been thus proposed, but not yet secured for England and Wales, has been long since carried out in Ireland by the Tenement Valuation, commenced by Sir Richard Griffiths, and now under his successor the present Commissioner of Valuation. The Official Valuation, in Ireland, commenced in 1827 for the more just levy of county-rates; the system then commenced ended in 1852, in what is called the General Tenement Valuation Act (15 & 16 Vic., c. 63), which provided "for one uniform valuation of lands and tenements in Ireland, which may be used for all public and local assessments, and other rating." It thus appears that on this important point of local administration, Ireland is nearly a quarter of a century in advance of Great Britain.

For the purpose of comparison of the pressure of taxation between the two countries, there are some differences as to the rules of valuation prescribed by statute to be borne in mind. The rules in the two countries are nearly alike. The English rule of valuation since 1837 has been "the annual profit made out of lands and buildings." This profit is ascertained by deducting from the rent at which the premises might reasonably be expected to be let from year to year, the probable annual cost of repairs, insurances, and other expenses, if any be necessary, to maintain the premises in a state to command such rent. This rent is to be free from all usual tenant's rates and taxes, and tithe-rent charge." In Ireland, so far as land distinct from buildings is concerned, instead of current letting value, a value in relation to certain fixed prices of several articles of agricultural produce is taken, whilst the prices are fixed, the proportion in which the several prices are to be used in determining value is left to the valuator. In England the valuation is subject to frequent revision. In Ireland the valuation of the land as distinct from buildings cannot be changed so as to affect the total of each town-land (about 200 acres, on an average), for fourteen years, or changed at all without the consent of the county authority (the grand jury already referred to); and no change as to the total of the land value in a town-land has been made in any valuation since 1852.

The buildings in Ireland are valued in a way more closely corresponding to the English rule, and the valuation of them is revised at short intervals. When Mr. Baxter proposed, in 1873, to raise the Irish valuation to the English scale, he estimated the effect as an increase from £13,300,000 to £16,700,000, or an increase of 25 per cent.

III.—DISTRIBUTION OF LOCAL TAXATION IN IRELAND, COMPARED WITH THAT IN ENGLAND AND WALES.

The local taxation of Ireland, exclusive of receipts from loans and from imperial taxes, in 1872, was £2,905,250, or 10s. 9d. per head of population, while the local taxation of England and Wales, calculated in the Irish returns on the same principle for comparison, is stated to be £24,836,000, or £1 1s. 10d. per head of population.

The Irish taxation was distributed into rates (direct taxes on real property), £2,344,446, or 81 per cent.; tolls, fees, stamps, and dues (indirect taxes), £442,796, or 15 per cent.; and receipts from property, &c., £118,008, or 4 per cent. In England and Wales the proportions were different. The rates were 70 per cent. (£17,406,000), tolls, &c., 16·8 per cent. (£4,174,000); and other receipts, 13·2 per cent (£3,256,000).

At the estimated revised Irish valuation of £16,700,000, the average rates would be only *two* shillings and *ten* pence in the pound,* while the English rates, at the English valuation of £107,866,000 are *three* shillings and *three* pence in the pound.

IV.—CLASSIFICATION OF RATES ON REAL PROPERTY.

The rates on real property in 1872 are distributed as follows amongst the authorities levying them:—

	£
Barony and County Rates (Grand Jury Cess), net amount to be levied	1,065,490
Poor Rates and Poor Law Burial Board Rates	752,373
Town Taxation under Town Authorities, including Metropolitan Police Rates	477,440
Arterial Drainage Rates	48,840
Court Leet	303

These figures give some measure of the relative importance of the different classes of authorities in the

* At the existing Irish valuation of £13,300,000, the rating would be 3s. 6d. in the pound.

mere pecuniary sense of their powers of taxation; but as there is about 27 per cent. of the county rates over which, as shown in connection with county authorities, these bodies have no control, in matters of direct control of local taxation the Poor Law authorities may be taken as now the most important in Ireland.

V.—Division of Rates between Owner and Occupier.

A select committee of the House of Commons in 1870 recommended the division of rates between owner and occupier. What was thus recommended but not yet adopted in England has, so far as poor rates are concerned, been the law of Ireland since 1838. This division is the basis of that balanced representation of occupation and property which has been described. By the Landlord and Tenant (Ireland) Act, 1870, this division has been applied to the barony and county rates (Grand Jury Cess), as to all new lettings of agricultural and pastoral holdings, if not of all holdings (as contended for by some) subject to these rates.

The extension of this principle to all town taxation is a matter of urgent policy, to discourage the numerous intermediate interests in town property, and promote the simplification of such interests by reducing them all to ownership in fee, subject to transferable incumbrance and occupation interests. This would be facilitated by extending the division of town rates to existing leases and contracts on the plan approved of by the Committee of 1870—viz., exempting the owners of property under lease from division of rates for three years, and then adding half the average rates for three years to the rent before the liability to half rates commenced. In this way the owners would not become liable till the end of three years, and then only to the future fluctuations above the average. This division would give the owners of property in towns a more direct interest in the administration of local rates, and would at the same time be an essential basis of any plan of having town property represented as such in town government.

VI.—LOCAL TAXATION FOR RELIGIOUS PURPOSES.

One main distinction between the systems of local taxation of Ireland, and that of England and Scotland is the complete cessation in Ireland of local taxation for religious purposes.

This policy was consummated by the Irish Church Act of 1869, converting the value of the tithe rent-charge, and other property of the Irish Church, after providing compensation for existing interests, into the Irish Church Surplus, "to be appropriated in such manner as Parliament shall thereafter direct, mainly to the relief of unavoidable calamity and suffering, yet not so as to cancel or impair the obligations then attached to property under the Acts for the relief of the Poor."

Whilst consummated in 1869, this policy was really commenced in 1833, when church-rates were completely abolished, without any provision for continuance in the form of a voluntary tax, as in England.

VII.—LOCAL TAXATION FOR EDUCATION IN IRELAND.

The Irish Church Act of 1869 brought to an end an effort of three centuries towards providing superior school education in Ireland out of local taxation. It abolished the contribution of bishops and clergy to the salaries of diocesan schoolmasters, and so relieved the county rates (grand jury cess) of the obligation of providing buildings and repairs for the diocesan school-houses. The original Act as to these schools was passed in 1570, and it contemplated a superior school in each county town in Ireland, and had it been carried into effective operation, there would have been thirty-two schools equal to the burgh schools of Scotland in the principal towns in Ireland. After legislation in 1694, 1725, 1755, 1781, 1813, 1830, after inquiries by commissioners in 1662, 1791, 1813, 1823, and 1854, and by a select committee of the House of Commons in 1838, the final result was that in 1857 there were only ten

diocesan free schools to which local taxation had been applied in building, only twelve schools in operation, and there were only 304 boys attending these schools, and only twenty-five of those were educated free on the foundation.

Deducting the diocesan school at Londonderry, in which the endowment and aid from buildings had been merged in the much larger private endowment of Foyle College, the outcome of 300 years' assistance to superior education from local taxation was, that there were two schools without any school buildings, two schools with trust funds from sale of former buildings worth £15 a year each. There were only seven school buildings in existence worth, including the land, £313 a year, or about £44 a year each. In the nine schools where there were buildings, or funds for building (one having the mastership vacant), there were only 143 pupils, of whom only twelve were free. The schools were legally open to all denominations, but there were only fifteen Roman Catholics, and sixteen Protestant Dissenters, attending them, the remaining 112 pupils belonging to the then Established Church.

As the masters who were appointed before 1869 die off, the schools will cease to be aided by local taxation, and even this slight assistance to intermediate education will be stopped. In 1874 a bill was passed to regulate the future of Foyle College, the school at Londonderry above referred to as not included, where the funds of the diocesan endowment had got mixed up with a much larger private endowment. For the £342 a year connected with the other nine school premises and trust funds no provision has been made by Parliament, nor, unless it devolves on the commissioners of charitable donations and bequests to deal with the matter on the *c'y près* doctrine, is there any local authority in Ireland empowered to deal with this small outcome of the assistance once allowed to be extended to superior education out of the local taxation of Ireland.

The obligation of the church funds to contribute to superior education by paying salaries to the masters of

these diocesan schools, which had existed for 300 years, and which was measured in 1858 by the warrants of the Lord Lieutenant and Privy Council at £1,671 a year, subject to the life-interest of existing masters, also came to an end in 1869, without any charge on this account on the church surplus.

The effort of the state to provide primary education in Ireland out of local taxation commenced in 1537, thirty-three years earlier than the Diocesan School Act. It consisted in the obligation on the clergy of the then Established Church to keep schools. The obligation came in process of time to be treated as satisfied if the incumbent contributed forty shillings a year to the master of a parochial school. Even this contribution, taking the incumbents at 1,500, would have been £3,000 a year. At the original obligation to keep the school for payment may be estimated at half the present salary of a schoolmaster, £20, or, for 1,500 incumbents, £30,000 a year. All this endowment or claim for endowment of primary schools out of local resources has been finally terminated by the Church Act in 1869; no charge on this account having been retained on the Irish Church surplus.

While the old charges on local taxation in Ireland for primary and superior education have all ceased, the difficulties of the Irish education question have prevented any attempt at the construction of school boards, or the imposition of school rates, and there is no compulsory education. The want of some machinery for securing the education of the neglected classes in Ireland is indicated by the statistics of the education of criminals. In England, of the number of men and boys committed to prison in 1871-72, 31·1 per cent. could neither read nor write. In Ireland, in 1873 the proportion was 34·5 per cent. In England the women and girls committed who could neither read nor write was 39·3 per cent, while in Ireland the proportion was 51·9 per cent. In the case of boys committed to reformatory schools, the proportion who could neither read nor write in Ireland reached 52 per cent. The want of any provision for compulsory

education, and the desire to meet the ignorance in which the neglected classes are being reared, have contributed in some degree to the great development of industrial schools in Ireland; the magistrates and charitable people in Ireland naturally using the one power the law entrusts them with to guard against the evils of children reared in ignorance, which the local authorities in England are enabled to meet by education rates, compulsory education, and education in connection with outdoor relief, as well as by industrial schools.

VIII.—Contribution from Imperial Taxes in aid of Local Rates.

In the desire to atone for the enforced ignorance of the Irish people under the Penal Laws, the Imperial Parliament was induced, after the Emancipation Act of 1829, to make great state efforts for the advancement of primary education, and these efforts were for some years in advance of what was done in Great Britain. Now, however, the aspect is changed. The Irish education question has got involved in the contest as to the state's duty in respect of united and denominational education, with the result of the adoption of each system being discussed with all the bitterness that the prejudices of race, of rival churches, and the historical reminiscences of three centuries of Irish and of European history can suggest. The result begins to tell on the figures. The proportion spent on the branches of education aided by the state in a portion of the population of Great Britain equal to that of Ireland is £704,000 a year, whilst in Ireland it is only £616,000. The contest, however, has a further effect in diminishing the value of this expenditure in the most vital point of making the tenure of office and prospects of increased pay of the schoolmasters insecure. The contest, too, makes it difficult for the state to enforce or secure any local taxation, or an adequate amount of local support for education in Ireland. Instead of the £389,000 contributed out of local sources in a portion of the population of Great Britain equal to that of Ireland,

there is only £69,000 contributed to State-aided schools in Ireland. Allowing for the lesser total by £88,000 (£616,000 instead of £704,000) spent on State-aided education in Ireland for the less satisfactory result, the Imperial ratepayers have to contribute £232,000 a year more to education in Ireland than is contributed in proportion to population in Great Britain.

The contest between united and denominational education in contributing its share to the Home Rule movement has some effect on the cost to the Imperial taxpayers of £493,000 a year for that half of the Irish police force which it is thought necessary to maintain above the proportion of police to population in England and Wales.

This sum added to the £181,000 by which the contribution of the other half of the cost of police exceeds the contribution to a like proportion of police in England and Wales, and added to the sum of £320,000 by the Irish local contribution to state-aided education is short of the proportion in Great Britain, makes £994,000 or nearly £1,000,000. While £906,000 of this sum (the extra contribution from Imperial taxes) is a boon to the Irish ratepayers, the whole sum affords a rough measure of the cost of the educational contest and its effects, and the other remaining causes of discontent in Ireland.

That contest has stopped in Ireland the intermediate school question since 1858, and now bids fair to unsettle the primary school question also. Meantime, the want of superior education such as the small capitalist class should get in intermediate schools is telling upon the agriculture of Ireland, land being converted from tillage into pasture, whilst the example of Scotland, where no similar change has taken place, indicates that there is nothing in the state of the markets, or in the result of foreign competition, to warrant the neglect of tillage that is taking place in Ireland.

For education in Ireland there are no local rates or local representative government. On the other hand, there is not direct central state government. The

endowed schools of royal foundation open to all, as to both pupils and masters, are still, for instance, under an independent Board of Commissioners constituted so far back as 1813, on the policy of that day of giving in such matters great weight to dignitaries of the Established Church. The policy inaugurated so far back as 1813, though objected to by the select committee of the House of Commons on foundation schools in 1838, and by the majority of the endowed schools Ireland commissioners in 1858, still prevails, and besides the ex-officio representatives of the Church of Ireland, the power of the Crown as exercised by the Lord Lieutenant in selecting other members of the Board is still in part limited by the old restrictions.

IX.—Summary of Conclusions.

In the short time that has elapsed since 1829 (but slightly exceeding a single active life period of forty-two years) the Poor Law Guardians, the Baronial Sessions with associated ratepayers, the Navigation and Arterial Drainage Trustees, and every class of town authority have been created.

The Poor Law system with the popular elective element, and ex-officio representation of property according to value, and centralised executive under the officers who represent the crown, is a small copy of the British constitution, and has been most successful. It has surpassed the Baronial Presentment Sessions, where the ex-officio element is unlimited and the ratepayers not elective, and where the central control is sub-divided and judicial. It has surpassed the various town constitutions where central control was until recently given up, and is only partially restored, and where the popular element is uncontrolled by any ex-officio or property representation.

The chief feature of Poor Law legislation, Parliament laying down general principles and leaving the details to be worked out by orders of the Local Government Board, has been successful so far as it has been

followed. It has surpassed the Grand Jury Acts, which contain a mass of minute details maintained for years after being officially condemned, and which provide no machinery ready to supply Parliament with means of making amendments required by time, change of circumstances, and the progress of improved legislation.

The Poor Law legislation has also surpassed the complicated legislation for towns, differing more or less for each larger town according to the advice of its private draftsman, and for each class of smaller towns according to the date of its adopting the provisions at the time approved of by Parliament for town government.

The Poor Law legislation has only failed where Parliament has in some cases, such as the regulation of the expenditure of emigration rates, or the boarding out of children, departed from the fundamental principle of not interfering with details; or where, as in the case of union rating, it has for a time ignored the principle that the relation of the labourer to the state should be the same in all parts of the United Kingdom.

The inhabitants of Ireland have shown the greatest aptitude for Local Government, and the administration of Local Taxation. In the last century the proprietors under the exclusive Grand Jury System of that period without any representation of ratepayers, developed a system of roads that won the admiration of Arthur Young, in his comparison of Ireland and England before 1782. In 1819 Baronial Sessions of magistrates were established In 1833 associated ratepayers were added on a plan improved on in 1836. The Grand Juries and the Baronial Sessions secured the abolition of turnpikes in Ireland as early as 1857, whilst £800,000 was still raised in 1871 by turnpikes in England and Wales, and the Home Secretary had to visit Scotland in 1874 to consider the proposition for abolition there.

The Grand Juries have had railways extended to backward districts in Ireland by baronial guarantees, and are in advance of the rest of the United Kingdom in the proposals for this practical mode of aiding the

development of branches and extensions out of local taxation, and laying the foundation of the possible ultimate solution of the railway question by local state purchase.

The larger towns in Ireland have spared no expense in obtaining local Acts according to the latest and most improved pattern of town government. The smaller towns that could not afford such expense adopted in numbers, first, the provisions of the General Town Act of 1829, and then the more improved provisions of the General Town Improvement Act of 1854.

The failure of the machinery devised for central guidance and control of town authorities rested not with them, and has been partially remedied by the extension of the Poor Law Audit and the Local Government Board Control over their proceedings as urban sanitary authorities.

The reforms required for securing complete popular representation in the administration of barony and county rates and property representation in the management of town affairs, and complete central guidance and power of regulating details by general order instead of by statute as to both county and town authorities, are matters on which the successful Poor Law arrangements afford complete precedents for adoption with more or less modification.

Many of the reforms in Local Government and Taxation proposed for England have been successfully carried out in Ireland :—

1. The division of rates between owner and occupier, recommended for England and Wales in 1870, has been carried out in Ireland, under the Poor Law, so far back as 1838, and for barony and county rates, as to future lettings of agricultural and pastoral holdings under the Land Act of 1870.

2. The uniform valuation for all purposes of local taxation proposed for England and Wales in 1867, has been provided for in Ireland so far back as 1852, by the statute regulating the tenement valuation.

3. The consolidated collection of rates, recommended in England in 1868, was provided for in Dublin so far back as 1849, and to a lesser extent in other cities and towns and townships that have been more or less separated from counties as regards roads, and for other purposes.

The care of lunatics is amply and effectually provided for under the authorities entrusted with this duty, though not of a representative character; but the law as to lunatics has been from the first efforts on the subject in 1817, and is still, far behind the corresponding English legislation.

The system of trustees of inland navigation is still on the basis of taxation without representation, and from the consequent weakness of local authorities to take charge of inland navigations, there is an unsatisfactory division of duties between local and central authorities as to inland navigation in Ireland.

The central control over arterial drainage authorities, in case of neglect to carry out proper works of maintenance, falls far short of the control of the Local Government Board over rural sanitary authorities. From the importance of such works of maintenance for the health and well-being of the people, the Commissioners of Public Works should, in case of default, have power to entrust the rural sanitary authorities with powers to execute necessary works of maintenance, in all cases where arterial drainage trustees make default.

The local taxation of Ireland (exclusive of receipts from loans and from Imperial taxes) was, in 1872, £2,905,250, or 10s. 9d. per head of population. In a portion of the population of England and Wales equal to that of Ireland, the corresponding figure is £5,914,000, or £1 1s. 10d. per head of population.

In Ireland the rates on real property are 82 per cent. of the whole, and amount to only 2s. 10d. in the pound, on the estimated valuation of Ireland if made on the English scale. The English rates on real property are only 70 per cent. of the whole local taxes, and

amount to 3s. 3d. in the pound. The Irish rates at the existing Irish valuation, estimated at 25 per cent. below the English scale, are 3s. 6d. in the pound.

The Local Taxation of Ireland contains some anomalies and exceptional taxes:—(1) Toll thorough in Galway—now "ingate" tolls and "outgate" tolls—"A tax levied on agricultural produce of the surrounding country, for the purpose of defraying expenses which should, in justice, be borne by local taxation." (2) The tax of £99 16s. 1¾d. a year upon each pawnbroker in Dublin; whilst the tax in London is only £15, and elsewhere in the United Kingdom £7 10s. (3) The tax of £2 on a job-horse in Dublin. (4) The tax of £8 a year on a one-horse stage-car plying to the suburbs of Dublin—same as on a four-horse stage-coach, and four times the tax on a hackney-car.

The local taxation for superior school education in Ireland of about £2,000 a year, under the Diocesan School Act of 1570, came to an end (beyond existing interests) with the passing of the Irish Church Act of 1869.

The provision for primary schools from obligation on incumbents to keep schools under the old Act of 28 Henry VIII., in 1537, creating a charge on local taxation which may be estimated at £30,000 a year for primary education, also came to an end in 1869.

There are in Ireland no school boards and no school rates. The sum spent on state-aided schools is £616,000, as compared with £704,000 in a portion of the population of Great Britain equal to that of Ireland. The local assistance to those schools is only £69,000 in Ireland, as compared with £389,000 in an equal portion of the population of Great Britain. This involves an increased contribution from the general taxes to education in Ireland, beyond the proportion in England and Wales, of £232,000.

The state-aided education in Ireland, which some years ago was in advance of the provision in England and Wales, has now fallen behind; and the contest

between united and denominational education impedes its development by the state by local resources, and prevents the formation of school boards. Meantime, the want of superior schools for the small capitalist class is an impediment to the development of agriculture, and to the general industrial advancement of Ireland.

LOCAL GOVERNMENT AND TAXATION IN THE AUSTRALIAN COLONIES AND NEW ZEALAND.

[This essay opens with some general information as to the Colonies of Australia and New Zealand collected by Sir Charles Dilke, who is indebted for it to the kindness of colonial agents, and others. He also received the special memorandum on Victoria which follows. It was prepared by Mr. Thomas Webb Ware, who is officiating as Under-Secretary for the Colony, with the assistance of Mr. W. H. Archer, the distinguished statistician, who now has charge of the Crown Lands Department in Victoria.—EDITOR'S NOTE.]

THE municipal law of the Colonies is simple, and almost uniform. Their county law requires statement in detail. South Australia has the earliest complete Act, dated 1858. It resembles the later Acts of Victoria and New South Wales, and its chief peculiarities are that the rates made have to be adopted at meetings, and that persons licensed to sell spirituous liquors are excluded from the councils.

The Victorian law dates from 1863, but was consolidated and amended in 1869, and forms a complete and very valuable code.

In general, it may be stated of Victoria that that colony stands almost at the very head of all countries in the world in the adaptation of scientific principles to government and legislation. Shires and road districts may be created by the governor upon petition, each district having a Board of six members, or, where divided into sub-divisions, then of nine members; and the experience of all countries would seem to show that six is a better number than sixty, or, in other words, that a small Board is better than a big one for Local Govern-

ment purposes. Provided sufficient publicity be obtained, there is a far more real sense of responsibility, and even a greater probability of enlightened choice, in cases where the number of members is kept small. In the case of united districts the Boards, of course, are larger. One-third of the Board retires every year, so that each election is for two persons only; and as, happily, politics do not greatly enter into the election of these Boards, there is no reason to regret that the number of persons elected at a time should be so small as two, and that no provision should be made for the representation of minorities; although, in the application of the Victorian system to older countries, it would be at least a matter for argument as to whether this should not be the case. The persons to be elected must have £20 rateable property within the district, and the law, as though to supply an argument to partisans of woman's suffrage, goes on to say, "*No female*, no uncertified or undischarged insolvent, no persons attainted of treason, or convicted of felony or perjury, or any infamous crime, and no person of unsound mind . . . shall be capable of being a Councillor of any shire." Each person who is the rated occupier, within the district, of property, has one vote at least. If the ratable value is between £25 and £50, he has two votes; if it is between £50 and £75, three votes; and if over £75, four votes. The election is by ballot.

The road Boards may make bye-laws for a variety of purposes, subject to disallowance by the governor, and subject also to a declaration of their illegality by the supreme court [in a special mode of trial appointed for this purpose, by the Act] where they conflict with the laws of Victoria. All roads, bridges, and ferries are under the control of the Board. The governor in Council has power to "appoint roads," and to compel the Boards to make them. They have power of entering upon private persons' land for certain purposes connected with the roads; also power to cut down trees obstructing or injuring roads; to impound cattle straying upon roads; also power to establish bridges, ferries, &c. Districts

which contain an area of not less than 100 square miles, and which, in respect to the last rate made, have actually paid a rate of not less than £1,000, may be constituted shires, and called upon to elect a shire Council. Shire Councils have far greater powers, but they are Boards of the same constitution as the road Boards which exist in the smaller districts, and are elected in the same way. They can borrow money, they have large powers as to impounding of cattle, as to slaughter-houses, as to docks, as to markets, as to entering upon lands for the purpose of destroying noxious weeds—this subject being of great importance in a pastoral country like Victoria. They receive fees and fines from publicans and brewers; they have considerable power over commons, lands, and so forth; under the amending Act they may create or aid hospitals, asylums, baths, wash-houses, museums, athenæums, libraries, and mechanics' institutes. The Act of 1869 consisting of 400 clauses and many schedules, it may well be imagined that it is difficult within the compass of a few lines to give an adequate impression of its elaboration.

The law of New South Wales upon the same subject is contained in an Act passed in 1867, called "An Act to establish Municipalities." It constitutes municipalities of two kinds — first, boroughs; and, secondly, municipal districts. With the latter we are alone concerned. A municipal district must not be greater than fifty square miles, of which area no point must be more than twenty miles distant from any other point. A municipal district is established wherever the majority of the householders desire it, and when created it may be divided upon a similar majority being favourable to a division. Every district may be divided into wards, and every district has a Council of from six to twelve aldermen, or, where the district is divided into wards, of three aldermen for each ward. The offices of mayor and alderman may be held by any person elected to fill them. One-third of the aldermen retire, in rotation, every year. The aldermen elect their mayor. The mayor may be paid if the

Council wish it. The electors are occupiers and owners of ratable property within the district, with a cumulative vote in proportion to wealth, as in Victoria. The election is by ballot. Each district Council has the care of public roads other than the main roads of the colony, of streets, ferries, wharves, jetties, parks, cemeteries, baths and wash-houses, water supply, lighting, drainage, and all the general powers which we describe in London as powers conferred by Streets Acts. In addition to the ordinary power to raise money by rates, they have the power to impose a tax upon all vehicles plying for hire within the district. They have the power to establish free libraries, and free infant-schools, and also to make bye-laws for a large number of various purposes, among which may be named the establishment, regulation, and maintenance of hospitals and asylums, gardens, common rights, places of amusement, public health, the prevention of fires, slaughter-houses, markets, sales, and the preservation of public order. The Act is a very perfect one.

The law of Queensland as to provincial Councils dates from 1864. It provides for a nominated body of from three to nine persons, who elect their own chairman. This body is mainly occupied with public works. On the other hand, the municipal law of Queensland is similar to that of the other colonies, with the rate-paying suffrage and election by ballot. But these municipalities include only boroughs, and not country districts as in New South Wales.

The rural municipalities of Tasmania are created and governed by an Act of 1865. The electors are all males, assessed at £10 a year as owner, or £15 a year as occupier; up to a value of £50 a year, one vote, and one vote additional for every £50 a year, up to ten votes. The election is by ballot. Every Council consists of seven members, two or three retiring, by seniority, each year. The municipalities may not only make rates, but also raise loans, but loans must be sanctioned by meetings of municipal electors specially convened. Half the rates are paid by the owner, and half by the occupier.

New Zealand differs greatly in the system of county

or district government from the other colonies. Not so in its municipal system for towns, which is contained in an Act of 390 clauses and fourteen schedules; one of the schedules having as many as ninety-five divisions! In district institutions New Zealand is behind the other self-governing colonies, being still a disturbed country, the centre of one-half of which is strongly occupied by a wild native population. Road districts are formed in the settled parts of the North Island, and Boards of Works nominated by the road Boards exist in some few united road districts. A "General Road District Bill" was thrown out in the Assembly through the opposition of the provincial governments which I shall now describe. New Zealand having been first settled round the coasts of two long islands, by very distinct sets of colonists, and on very different plans, a provincial system was the natural outcome of jealousies and vast distances combined. Each of the great provinces, Otago, Canterbury, Nelson, Wellington, Taranaki, Auckland, &c., elects a provisional superintendent. It also elects a small provincial Council. The superintendent selects ministers, and governs by playing at the farce of responsible ministries. "Superintendents and their tails" are also returned to the general Assembly at Wellington, where they are all-powerful, and thus upset, indeed, the ministry which introduced the "General Road District Bill." The provincial system is costly, cumbersome, and out of date, and a new system having been tried in the creation of the "county" of Portland, when Canterbury was divided, it may safely be affirmed that pure provincialism is not likely to last long.

COURSE OF MUNICIPAL LEGISLATION IN THE COLONY OF VICTORIA.

1. When the colony was founded, in the year 1851, the only Acts in operation conferring the power of local administration related exclusively to the formation of roads and bridges in what was then a remote province of the colony of New South Wales. In point of fact, no

public roads at all may be said to have existed in the district of Port Philip*, unless one or two leading for a short distance outside the boundaries of the city of Melbourne, constructed principally by grants received from the Sydney Treasury, were worthy of the name. The powers conferred by the existing laws include the election of Boards of Trustees by the proprietors of lands situated within three miles of the intended roads, and the imposition by that body of rates not exceeding sixpence an acre on the lands through which they did or were intended to pass, together with the usual right of appeal against excessive valuation. It is also made legal to erect toll-bars and to levy tolls thereat, as well as to borrow money upon their security. It does not appear that in that early period in the history of the colony the power to assess rates, or to borrow money, was ever put in force, it being found, in the few cases where Boards were elected, that the money derived from tolls, in addition to the subsidies granted by the Government, provided sufficient funds to meet whatever outlay was required.

2. These and the subsequent remarks, it should be mentioned, do not apply to the city of Melbourne, or the town of Geelong, both of which possessed by special enactments all the necessary powers usually held by the corporate bodies of large towns, to levy rates for the purpose of effecting all the works necessary for the health and security of their citizens.

3. The first Act tending towards local administration passed by the Legislature of Victoria, after an independent existence had been conferred upon it, was the 16 Vict., No. 40, for making and improving roads within its territory. It repealed the existing Acts referred to above, and provided for the appointment of a central Board, assisted by an efficient staff of engineers, to supervise the construction of all main roads and bridges in the colony, as well as of the parish or cross roads, until district Boards should be appointed for the management of them. These district Boards were to be

* The old name for what is now the Colony of Victoria.

annually elected by the ratepayers residing in a given district, and had power to levy rates assessed on the annual valuation of the property in the district; to establish tolls; to enter on private property for the purpose of making roads and bridges, and to pass bye-laws.

Under this Act immense sums of money were expended in constructing roads and bridges throughout the colony, under the supervision of both the central and district Boards; though there can be no question that these latter placed their chief dependence for funds upon Government subsidies, which were granted in the most liberal spirit, rather than on the levy of rates. This Act remained in operation until 1863.

4. Not long after the discovery of the gold-fields, the congregation of large bodies of persons at the principal centres of mining activity produced those evils which are inseparable from the assemblage of individuals for any lengthened period in any one locality. Thus the necessity for making due provision for drainage and other sanitary requirements led the Government, even at a very early period, to insist on the tents or huts in which the miners then dwelt being disposed with some regard to the preservation of health. The sale of land led to the erection, by the miners and storekeepers, of more permanent dwellings; and it soon became apparent that legislation was necessary to enable the inhabitants of what thus became towns to pass such local regulations as the peculiarities of each locality rendered essential. An Act was accordingly passed, in December, 1854, enabling the householders dwelling within any district of which the extreme points were not distant more than six miles from each other, to petition the governor to proclaim it a municipal district; the effect of which, when the petition was granted, was to place in the possession of a Council elected by the ratepayers full powers to make all such laws as should be deemed necessary for the convenience of the town. This Act produced the most beneficial results. A vast number of municipal districts sprang into existence over the length

and breadth of the colony; and such active measures were taken by the governing bodies, within their limits, as soon to testify to the wisdom of placing all matters of purely local concern in the hands of bodies primarily interested in carrying them out. The power of taxation conferred upon these municipal Councils was largely put in operation, while, concurrently with the development of their own resources, the subsidies from the public Treasury were reduced until these latter were withdrawn altogether, in the year 1866.

5. This Act, with some slight emendations, remained in force until 1863, when two further Acts were passed, one to amend and consolidate the existing laws relating to road districts, and another to amend the laws relating to municipal corporations. Under the former Act large territorial divisions were called into existence, under the name of Shires; while districts that were not more than forty square miles in extent were still denominated road districts, as before. As the main object of the Act was to encourage the formation of the larger bodies, with the view to introduce a more economical system in the expenditure of the Government grants and local funds, special inducements were held out to promote the amalgamation of the smaller with the larger bodies, both by giving the latter greater powers and by surrendering to them certain local sources of revenue previously possessed by the Government. The other Act dealt with the municipal districts, thenceforward called boroughs, determining the boundaries of those already in existence, enacting measures for facilitating the establishment of others, and adding considerably to their general powers in the matter of providing sewerage and water supply, establishing charitable institutions, markets, &c., &c.— This Act also fixed, as did the corresponding Act dealing with shires and road districts, the scale upon which the annual subsidy of the Goverment in aid of the local bodies should in future be distributed. Shires and road districts still receive grants from the Treasury for the formation of roads and bridges, but, as stated above, boroughs have had to depend upon their own resources exclusively since 1867.

The power of borrowing money, on the security of their revenues, by the issue of debentures, for effecting public improvements, was also enlarged by these two Acts. This power has been exercised to a very great extent, having, in addition to other results, led to the erection in all parts of the colony of large and commodious public halls and libraries.

6. In 1869 these Acts were followed by others, differing not much in principle, but introducing several improvements which experience had shown to be needed. These are in force at the present time, and though a Bill for the amendment and consolidation of these latter is now before the Legislature, the only essential point in which it will probably differ from its predecessors will be in conferring still greater authority on local bodies, and in relieving the central Government of many minor matters which experience shows can safely be entrusted to the management of local Councils.

7. It should moreover be stated that as yet the legislative and municipal systems have but little connection with each other. This will be apparent by reference to the appended Return. The territorial divisions, as a rule, are different; the franchise is placed on a different basis; indeed, almost the only feature common to the two is that the municipal rate rolls are incorporated in the Parliamentary electoral rolls, but from the want of a correspondence between the Parliamentary and local territorial divisions it can hardly be said that the local element is in any way a component part of the general electoral system.

PARLIAMENTARY AND LOCAL GOVERNMENT IN VICTORIA.

Showing where the two systems differ in principle.

	LEGISLATIVE SYSTEM.		MUNICIPAL SYSTEM.	
1. *Legislative and Municipal Bodies.*	Legislative Council.	Legislative Assembly.	Cities, Towns, and Boroughs	Shires and Road Districts.
No. of Members.	30	78	For each *single* borough not less than 6, or more than 9. For *united* boroughs not more than 18 in all. Within these limits governor is empowered on petition to increase or diminish number of councillors.	For each single shire of 3 ridings, 9 members. Of less than 3 ridings, 6 members. For *united* shires :— 2 shires, 12 members. 3 shires, 18 members. 4 shires, 24 members. Within these limits governor may vary number of councillors on petition.
			NOTE.—*United* shire or borough is where two or more adjoining local bodies become amalgamated under the "Local Government," or "Municipal Corporations Acts"	
How chosen .	Elected by qualified voters.		Elected by qualified voters.	
Mode of Voting .	By ballot.		By ballot.	
Constituencies .	Entire colony is divided into 6 provinces, each of which returns 5 members.	Entire colony is divided into 49 districts, each of which returns from 1 to 3 members, or 78 in all.	To suit local requirements of case.	
2. *Representatives.*				
Qualifications.— Age	At least 30 years.	At least 21 years.	None prescribed.	
Property. .	Freehold of value of (at least) £2,500, or of annual rateable value of £250.	None required.	Property assessed in local rate book, at annual value of at least £20.	
Nationality	British only.	British, or naturalised for 5 years.	No statutory restriction.	
Residence in Colony . ..	No specific statutory condition; but if a member be absent for an entire session without leave of the House, his seat becomes thereby vacated.	Must have resided in colony for 2 years prior to election.	No statutory restriction.	

	Legislative System.		Municipal System.	
2. *Representatives* (*continued*).	Legislative Council.	Legislative Assembly.	Cities, Towns, and Boroughs.	Shires and Road Districts.
Disabilities.	(1) Being a judge, minister of religion, University professor, Government officer, or Government contractor. (2) Having been attainted of treason, or convicted of felony, or any infamous offence. (3) Becoming insolvent. Females indirectly excluded.		Being a female, uncertificated insolvent, attainted or convicted person, lunatic, contractor, or municipal officer.	
Tenure of Seat	10 years.	3 years.	3 years.	3 years.
Mode of Retirement . ..	Six members in rotation every 2 years, one for each province.	Entire body by dissolution every three years, or earlier, if governor orders.	One third of entire body every year, in rotation.	
Capability for Re-election .	Eligible.	Eligible.	Eligible.	Eligible.
Payment	At rate of £300	per annum.	None.	None.
3. *Electors.*				
Qualifications :—				
Age	21 years.	21 years.	21 years.	21 years.
Sex	Male only.	Male only.	Male and female.	
Property . . .	Being on any municipal ratepayers roll, and rated at £50 at least.	Being on ratepayers' roll for any municipal district.	Being on municipal roll.	
Other qualification	Being a University graduate, [illegible] graduate, professional man, minister of religion, certificated teacher, naval or military officer, or retired officer of East India Company, and being on voters' roll by taking out an Elector's Right, fee for which is one shilling.	Being of full age (manhood [illegible]), able to write name, and possessed of an Elector's Right, fee for which is one shilling.	None but property or occupation of property recognised.	
Residence in Colony . .	For British subjects, 1 year; for naturalised subjects, 3 years.		Occupier primarily entitled; if no occupier, then owner, if resident in colony.	
No. of Votes	1 for each province in which property qualification exists.	1 for each district in which property qualification exists. For non-property qualification, 1 vote only for each individual.	According to the following scale :— For property rated at under £50, 1 vote. For properties rated at £50, less than £100, 2 votes. For properties rated at £100, and upwards, votes.	For property rated at under £25, 1 vote. For properties rated at £25, and less than £50, 2 votes. For properties rated at £50, and less than £75, 3 votes. For properties rated at £75, and upwards, 4 votes.
Disqualifications	Being an inmate of any eleemosynary, or charitable institution; non-payment of municipal rates; inability to write name.			

THE PROVINCIAL AND COMMUNAL INSTITUTIONS OF BELGIUM AND HOLLAND.

THE institutions which govern the provinces and communes of Belgium and Holland bear the double impress of the German and the Latin spirit. Whatever of autonomy they possess is owing to the free customs of the Germanic tribes who peopled the provinces of the Low Countries—customs modified indeed by the influence of feudalism in the Middle Ages, and by that of royalty from the 16th century onwards. Whatever of centralisation they possess is due to the French conquerors of 1792, who, both under the Republic and under the Empire, took as their ideal of government a complete uniformity imposed upon every locality by the central power.

In order thoroughly to understand the character of local institutions in Belgium and the Netherlands, it is necessary to take a rapid survey of the forms in which they were clothed in times past, because these institutions preserve to this day much of their ancient character.

Ancien Régime.—In the countries of German origin, as indeed everywhere at first, and even to-day among the people who still retain the primitive state of things, are to be found small groups of men united by tradition, by descent, and by the possession in common of a territory cultivated jointly as long as the pastoral system lasted, and in part divided periodically between families when the agricultural system began. This group is the original, or, so to speak, the typical commune. It is more than a political association, it is an economical

institution; for the communal stock furnishes the inhabitants with the means of living by labour. The commune, the extension of the family, is the primitive group, the elementary molecule; and it is the association of communes which forms the State. Communal interests are managed directly by the fathers of families meeting from time to time in general assembly. This assembly chooses certain delegates, ordinarily the wisest and the oldest, charged to enforce the laws and customs. Such is the local, and, so to speak, the natural organisation which is to be found everywhere, when not destroyed by royal despotism or by feudal usurpation. This system can be studied even to-day in Java and in India, amongst the Albanians and the Kabyles, in Serbia and in the cantons of Central Switzerland. Unterwalden* and the Republic of Andora offer a perfect sample of this type. Cæsar and Tacitus show us the same system in vigour amongst the Germans:—"De minoribus rebus principes consultant, de majoribus omnes. Licet apud consilium accusare quosque et discrimen capitis intendere. Eliguntur in iisdem consiliis et principes, qui jura, per pagos vicosque reddant. Nihil autem neque publicæ, neque privatæ, rei nisi armati agunt." Go to Switzerland, and be present at the meeting of the "Landsgemeinde" on the borders of the lake of Lucerne, and you will find all the features of this primitive democracy transmitted without interruption, from times the most ancient, to our own days. It equally existed among the Germanic tribes of the Low Countries. The Frieslanders preserved it because they knew how to maintain better than others their liberties in opposition to the spirit of despotism and centralisation represented first by Rome, afterwards by the legists, and by the spirit of the Roman law in the days of the Dukes of Burgundy.

When the common territory, "ager publicus," periodically divided amongst all, was successively usurped, and divided by prescription into private properties,

* I have sought to develope this view in a volume, recently published, on "Property, and its Primitive Forms."

and when inequality of conditions was developed by the accumulation of riches in the hands of a few, democratic institutions disappeared little by little. The inhabitants having nothing in the way of common property to manage had less reason for assembling together. They got tired of administering justice. They neglected to attend the public assemblies. From indifference, from discouragement, sometimes from fear, they let the administration pass into the hands of the "principes," of the leading men, of the most powerful. These, thanks to the predominance given by riches, by force, and by the sword, reduced the feeble to servitude. Communal liberties died, feudalism was established. Nowhere can this evolution be better followed than in England, where the "manor" absorbed the commune (the *gemeinde*), so that the very name has disappeared, and there remains nothing but the "vestry."

During the ten centuries which followed the Roman conquest a like transformation came about in the Low Countries, but obscurely, and without its details being preserved by history. When a kind of order was established, wars between various tribes becoming rare, the cultivators of the soil no longer had their arms always in hand, and so lost the use of them. Those localities which by industry, by trade, and by the agglomeration of artisans and business men, raised themselves to the rank of cities, had to re-conquer their lost liberties by prolonged struggles against their lords. Their victories, consecrated by charters, founded the free independent city of the Middle Ages, with franchises which recalled the democratic institutions of the primitive epochs. But the rural *gemeente* or commune remained in general subjected to the power of the lord. It had not, as in Switzerland, the power to free itself by force of arms. In Switzerland the reclaiming of primitive liberties succeeded even on the part of the country people, because the peasants of the mountains, devoted to the pastoral life and to the chase, had preserved the habit of using arms; besides which the nobles were few in number in a country so poor. In England, in France, in

Germany, the peasants were crushed because they had long been disarmed, and because the lords were able to form an armed body strong enough to stifle every insurrection. In the Low Countries, during the Middle Ages, the villages did not nominate their magistrates. Administration and justice were placed in the hands of the sheriffs (*schepen*, or *échevins*), and the officers of justice (*schout*), whom the lord or sovereign named. Moreover communal interests and political life were *nil* in the rural districts, no one taking any interest either in education, or in roadways, or in public works.

Nothing is more dramatic or more instructive than the picture of the progress of democracy in the great communes of the Low Countries, and nowhere can it be better studied than in the history of Liége. The conquest of popular liberties was there made in a more regular manner than elsewhere, because the sovereign authority exercised by an elective bishop was less powerful than when exercised by hereditary dynasties.* We cannot here relate the origin of the local institutions of the Low Countries; it must suffice briefly to indicate

* At first Liége was a free town, both with reference to the Emperor and to the Bishop. It included two classes of inhabitants—the "Lignages," that is to say, the ancient members of the clan, possessors of the soil, and the serfs, who were strangers who had taken refuge in the interior of the town. At first the government was aristocratic, for all the powers were exercised by the senate, composed of the fourteen sheriffs (*échevins*) who were recruited from themselves. In 1225 democracy made its first conquest: a college was created, and renewed each year, composed of two masters of the people (*deux maîtres du peuple*) named by the sheriffs, and by twelve juries selected by the citizens. In 1253 the bourgeoisie was allowed to nominate also the masters of the people, and the great council was formed of one hundred and twenty citizens elected by the six divisions of the city (*les six quartiers*) or "vinaves." Soon the smaller or lower class of bourgeois, the ancient serfs, enriched by work, became tired of paying imposts over the use of which they had no control. They demanded that all the inhabitants should be subjected to the same charges, and enjoy the same rights. The artisans, organised into three hundred and twenty trades, at length obtained their share in the government in the year 1303. From that day forth it required the express consent of the trades in order to establish a tax, contract loans, dispose of revenues, accord gifts to the prince, and likewise to make war or peace. From the peace of Angleur, in 1313, great and little citizens and artisans form but one people, who freely govern themselves. Corporations of workmen exercise the real sovereignty. In order to be elected to the high municipal magistracy a person must be affiliated to one of the trades Thus democracy established itself at Liége as at Rome, and as in the Italian Republics, by the successive conquests of the plebeians depriving the patricians of their privileges. In reality it was but a return to original liberties.

their character, so as to show how those now existing have sprung up.

The provinces of the Netherlands, or Low Countries, formed in reality separate and independent States, to such a degree that the inhabitants of one province were, except in certain cases, aliens in another. They were only bound together by obedience to the same sovereign, as is the case to-day with Austria and Hungary, Sweden and Norway. They did not form a united kingdom like England, Scotland, and Ireland. Each province was governed by a representative council, the Estates, who were generally composed of three orders—the clergy, the nobility, and the commonalty (*le tiers*). However, in exceptional circumstances, sometimes the clergy, sometimes the nobility, were excluded. We cannot give here the composition of the Estates, it varied in each province according to the historical development of each. In order to give some idea of it, the manner in which the Estates of Brabant were constituted may be taken as a sample. The order of the clergy was formed by the thirteen abbots; the Estate of the nobles was formed by the barons, to the average number of twenty-five, who had an income of four thousand florins a year from real property; and the Estate of the commonalty (*le tiers-état*) by deputies elected by the magistrates of the three chief towns of Louvain, Brussels, and Antwerp. In Flanders the nobility were excluded, as the clergy were in Guelderland. Each order had one vote.

The provincial Estates assembled generally two or three times a year, when convoked by the sovereign. They voted the subsidies which he asked for, and arranged according to their pleasure the taxes imposed to meet such demands. No tax then was imposed without the consent of the Estates. They nominated the provincial functionaries—the officer called the pensionary, the permanent deputation which was charged to watch over the regular execution of the will of the assembly of the Estates. It was, so to speak, the executive provincial power.

The Estates did not intervene in the drawing up of

the general laws and edicts, but they were often consulted, and they had the right of presenting remonstrances to the sovereign. He did not possess absolute power: he was bound to respect the provincial constitutions which he had sworn to maintain by an oath given in a solemn assembly of the Estates. The state reception of Brabant ("la joyeuse entrée du Brabant") was the type of the provincial charters. Most of these charters recognised that the subjects, in case of a violation of the compact by the sovereign, had the right to refuse obedience and subsidies—that is to say, recognised the right of insurrection.

The towns also constituted, in virtue of their privileges, political bodies nearly as independent as the provinces. Communal institutions were far from being everywhere the same, their autonomy was, however, very great in everything touching local interests.

In Holland, after the establishment of the republic, the institutions of which we have given a sketch were maintained, only the abolition of royalty gave them a new character. The Provincial Estates exercised in reality the sovereign power, for their delegates to the States-General (*les états généraux*) could only vote in conformity with the instructions of the assemblies who sent these delegates. Everything was within the competence of the Provincial Estates—as John de Witt maintained—that competence was only limited by the privileges of the towns, and the attributes, but few in number, of the States-General. The Provincial Estates voted the taxes necessary to cover the expenses of the province, and those needed to pay the subsidies claimed by the Council of State, which were devoted to the service of the Union; they decided on the proposals submitted to them by the States-General touching war, peace, and treaties of alliance; they made laws and regulations applicable only to the province; they levied troops and named the officers; without their authorisation no armed body could enter their territory; they conceded privileges to the communes as the king had done, and even coined money; no important resolution could be

taken, nor any tax levied, without their consent: they preserved the most complete autonomy. The republic was, in truth, only a federation of sovereign and independent countries.

The Towns were not hierarchically subject to the province. In virtue of their ancient franchises they themselves decreed their own taxes, and only paid after having consented to do so. They made their own regulations, and their citizens could only be tried by their own magistrates. These towns were governed by a citizen oligarchy. Formerly all the citizens, summoned by sound of bell, deliberated on important affairs, and helped the sheriffs (*échevins*) in their judicial functions. It was the government of the Germans of old, and of the Swiss "Landgemeinde." But little by little the more well-to-do, who had most leisure, came alone to the public assemblies. These citizens, who were the most eager to make use of their rights—that is to say, the most energetic—ended by forming a body of notables called "vroedschap." From the sixteenth century the "vroedschap" became a college, small in numbers, which renewed itself, named the magistrates, and governed the city.* The other inhabitants had allowed their right to intervene in the matter of communal affairs, and in that even of naming representatives, to be set aside. From being citizens they became simply those who were governed. History proves that men have been deprived of their rights as often by their own

* In order to give an idea of the organisation of a Dutch town in the sixteenth century, let us take Amsterdam. In this town, numbering 300,000 souls, the "vroedschap" was composed of only thirty-six councillors, who renewed their body themselves by the vote of the majority. The Council of Ancients ("oude raad") was formed by the old burgomasters and sheriffs (*schepen*) to the number of twelve. There were four burgomasters and nine sheriffs in office. They chose the burgomasters from amongst the "oude raad." The burgomasters named the sheriffs from a list drawn up by the thirty-six councillors. The magistrate who exercised judicial functions, formerly nominated by the sovereign, was now named by the burgomasters, on the presentation of the body of notables—the "vroedschap." The treasurers, the commissioners of marriages, of orphans, of maritime affairs, of finance, and all the lower grades of employés, were nominated by the burgomasters. The college of sheriffs, in conjunction with the magistrate who exercised the judicial function, had the right of making regulations (*teuren en ordonnantien*). Thus was formed a judicial bench, the *vierschaar*, which was the local tribunal.

indifference and apathy as by the usurpation of those who wished to enslave them.

In the towns which had become rich through industrial pursuits, as was the case in most of the great communes of Belgium, the artisans, formed into trade bodies or guilds, had also conquered from the thirteenth to the fifteenth century a right of intervening more or less actively in the management of administrative affairs. They named representatives in the Council, and often one or two burgomasters represented them specially. At Nimeguen the local power had passed almost wholly into the hands of the trades. The masters of the guilds nominated the twenty-four councillors which formed the great Council. They chose besides in the guild of St. Nicholas a college of eight masters, who were to be consulted in extraordinary circumstances. At Louvain the trades nominated a burgomaster, three sheriffs, and ten councillors, out of twenty-one. At Malines, out of twelve sheriffs the trades nominated six. At Brussels, the first burgomaster and seven sheriffs were taken from the "Lignages," a sub-burgomaster and six councillors from the trades.

The town governments then were exercised by the association of three elements of different origin:—The patrician element, which at first had all the power, composed of the sheriffs (*échevins*) named by the prince, the representatives of the "geslachten," or "lignages;" * the plebeian element, which had conquered its place by force, the representatives of the guilds or trades; lastly, the local element—the representatives of the "quartiers" or wards. The communal organisation was therefore the product of the natural development of the different social classes.

The local institutions of which a sketch has been given certainly laboured under grave defects. Local independence was pushed to an extreme, for each province, each town, was armed with a right of veto, which, if

* The "geslacht" was the Greek γενος, the Roman *gens*, the little German clan, the intimate group of free men and proprietors descending from a common ancestor.

rigorously used, rendered all common accord impossible, and made the Government powerless. But, on the other hand, by giving to each locality the power of self-government, and the right to take a direct part in the government, the State developed amongst its citizens a remarkable political aptitude. If in the midst of the gravest crisis, which often endangered the national existence, the Netherlanders displayed extreme prudence and rare ability, it may well be believed that their institutions contributed to give them those qualities.

There existed formerly in the towns and provinces a functionary who is to be found no more, and who has never been replaced—the Grand Pensionary (*Raad Pensionnaris*). He was a learned legist, prudent, eloquent, charged with defending local interests, and causing the law to be respected; he was the revered organ of the tradition and spirit of justice. The more often that election, in our democracies, changes those who fill administrative positions, the more necessary is it that a thorough knowledge of public affairs, a power of continued application, and a high intellectual culture, should be represented in assemblies so subject to change.

The French Epoch.—The kings of France, especially since the time of Richelieu, have done their utmost to stifle the independence of provinces and towns, in order that the sovereign might enjoy unlimited power. * The French Revolution annihilated whatever of self-government remained to them, out of hatred to the old régime, and in order to apply everywhere the new ideas by breaking down all local resistance. It was but the same spirit, despotism applied by way of making right triumph, which inspired Joseph II., when, by the edict of March, 1787, he wished to substitute for the ancient organisation of the Belgian provinces a system of thoroughgoing centralisation.

The French constitution of the year 3 (1794), applied to Belgium after the French conquest, divided the

* All this is set forth with great clearness in M. de Tocqueville's admirable work, "L'Ancien Régime et la Révolution."—[EDITOR.]

territory into departments, cantons, and communes, and at the head of each of these divisions was placed an elective council, and an agent of the executive power. But it gave no independence to the local administrators; they were completely subjected to the authority of the central government, which could annul the acts of the municipal and departmental councils, and even suspend or dissolve them. The constitution of the year 8 (1799) applied also to Holland, after the reunion with France, went so far as to suppress wholly all election. In the departments the prefects, the sub-prefects, the prefectoral council; and in the communes, the mayor, the assistants, the councillors, were all nominated by the chief of the State, who soon became Emperor. It was the perfect ideal of despotism and centralisation. The will of the master decided everything in the smaller localities, and down to the minutest details. I do not believe that anywhere, either under the Roman empire or in that of China, there has ever existed a political machinery so systematically and absolutely centralised.

The Dutch Rule.—When, in 1814, Belgium was united to Holland, in order to form the kingdom of the Netherlands, the provinces and communes recovered a little of their autonomy. The Provincial Estates were re-established with a part of their ancient powers. They were formed of three orders of deputies—from the nobility, the towns, and the country. The Provincial Estates, which had only one short session a year, nominated from themselves a permanent deputation, composed of five or seven members. It assembled regularly, and managed the provincial affairs in conformity with the laws and decisions of the Estates. The towns were administered by a Council of Regency, nominated by the electors and by an executive college, composed of a burgomaster and several sheriffs (*échevins*) nominated by the king. The rural communes were governed by a communal council, whose members were chosen by the Provincial Estates. The king appointed the burgomaster, the governor of the province, and two assessors.

*Present Time.**—As the local institutions of Holland and Belgium are very similar, they will be better studied together, taking first the Commune, which is the true foundation of the social edifice.

Belgium.

The Commune (Gemeente).

Communal Power.—The commune is the association which is spontaneously established among the inhabitants of a locality on account of the common interests created by living near one another. They must maintain order, execute justice, defend themselves, and, at times, carry on certain works which are indispensable to the existence and well-being of all; hence results the necessity of a communal power, of an authority which can oblige all to respect the laws, and to make such sacrifices as the common interest demands. In primitive societies power is exercised by the citizens themselves united in general assembly, as in the Swiss Landsgemeinde. Power is wielded later on by an elected body. It is but an act of extreme despotism to hand over that power to the delegates of the central authority. Communal interests obviously exist. There must therefore be a local authority charged to govern them. Macarel well says, "The commune is a necessary element of all civil society. It has, indeed, an individual existence (*une individualite*), which has its source in the nature of things." Royer Collard said also, with profound truth, "The commune is like the family, prior to the State; the political law finds it and does not create it."

The admirable saying of M. de Tocqueville should also be remembered: "The strength of a free people resides in the commune. Communal institutions are to liberty what primary schools are to science—they bring freedom within the reach of the people, they teach them

* For the purpose of studying the organisation of local institutions, the excellent book of M. Giron, "Le droit communal," and his Sketch in the "Patria Belgica" should be consulted." As regards Holland, there is the work of M. de la Bassecour Caan, "Handleiding tot de kennis van het administratief regt in Nederland."

the peaceful use of it, they habituate them to its practice." If in England the country people are so inferior to those of the towns in instruction, intelligence, and individual initiative, it is evidently because feudalism has deprived the rural districts (communes) of their autonomy and their administrative independence. In Belgium and Holland the communes no longer enjoy, as in the Middle Ages, the attributes of sovereignty; but they are, however, ruled by elective bodies, which, in matters of administration and police, have very considerable powers.

Communal Authorities.—The commune was organised in Belgium by the laws of the 30th of March, 1836, and of the 30th of June, 1842. The authorities which exercise power over the commune are the Communal Council, the College of Burgomasters, and Sheriffs.

The Council is composed of councillors—not less than seven in number, and not more than thirty-one—elected in conformity with a classification fixed by a law of the 28th of March, 1872. In order to be eligible as a communal councillor, it is necessary to be a Belgian citizen of twenty-five years of age, whose real abode has been within the commune at any rate since the 1st of January preceding the election. When, however, the commune has less than one thousand inhabitants, a third of the members of the Council may be taken from the inhabitants of another commune. This exception, so contrary to the notions and traditions of the commune, has been allowed, because in small villages it is at times difficult to find a sufficient number of capable councillors. However, it is but very rarely that this exceptional right is put in practice.

The councillors are elected for a term of six years; but the Councils are renewed, half at a time, every three years, so that there are communal elections occurring triennially. I think this system a good one. It is better to renew elective bodies partially than all at once, because by this means the traditional spirit is maintained, change is made more insensibly, and there is no sudden modification; this is desirable in policy as in Nature,

which, as it is said, does not proceed by jumps—*natura non fit saltus.* The outgoing councillors remain in office until the election of their successors has been declared valid, so that there is never any interruption in the exercise of communal powers.

The executive power is confided to a college or body, composed of sheriffs (*échevins* or *schepen*) and a burgomaster. Those communes whose populations are less than 20,000 have two sheriffs, the others four, Brussels and Antwerp five. The sheriffs are nominated by the king from among the members of the Council, and the burgomaster also; the Crown, however, has the power to choose him, with the consent of the permanent deputation, outside the Council from among the inhabitants of the commune.

The burgomaster and sheriffs are nominated for a term of six years, unless they have to be replaced in the interval. The burgomaster may be recalled or suspended by the king, and the sheriffs by the governor of the province, but only on account of serious misconduct or notorious negligence.

These arrangements are borrowed from the autocratic French system and the Latin spirit. According to Germanic traditions, the communal functionaries ought to be nominated by the inhabitants of the commune, or by their delegates. The argument used in favour of the nomination of the burgomaster and sheriffs by the central Government is that they possess certain powers which concern general interests, and that in small localities the choice might be very badly made. That is quite possible; but, on the other hand, a sovereign may abuse his prerogative, as has often been the case in France, in order to change communal authorities into electoral agents, so as completely to falsify the representative system, and establish despotism under the appearance of liberal forms. If it be difficult, in villages, to find capable persons, it is precisely there that the intervention of the Government exercises an almost irresistible influence, and annihilates local independence and freedom of voting. The mayors in France are too often petty tyrants, at the service of

the all-powerful central authority. The natural solution is to give to the chief of the commune nothing but mere communal powers, to regulate by law services of general public interest, such as instruction, and then to trust to the intelligence of the inhabitants to make a proper choice of the communal authorities.

In countries where the primitive democratic institutions have been maintained, as in Switzerland and Norway, the peasants even of the most out-of-the-way parts, elect the local authorities, who perform their functions to the satisfaction of the public.

Communal councillors are elected by secret ballot, by those inhabitants of the commune who are twenty-one years old, and who pay to the state direct taxes, licenses included, to the amount of ten francs. The qualification, which gives a right to vote for a member of the legislature, is higher; it is fixed by the Constitution at 20 florins, about 33 shillings. It has been placed as a barrier to the introduction of universal suffrage. The electoral lists are drawn up under the care of the sheriff's college. The permanent deputation of the provincial Council judges of the objections which are made touching the electoral lists, and there is an appeal from its decision to the Court of Appeal.

Experience has demonstrated that this power of appeal to one of the high judicial courts is indispensable. In fact, the two political parties who strive for the possession of power, seek to throw out all those electors opposed to their views, whose right to vote may be contested with more or less of reason; now the permanent deputation, elected by the majority of the provincial Council, belonging, as it does, to one or other party, is inclined to uphold those electors who are of its own opinion, and to throw out those who are not so. It is, therefore, necessary to recur, for a final decision, to a body elevated as much as possible above and beyond the influence of political passions. Without this superior intervention, a great number of electors would be unduly struck off the electoral lists, and the result of the elections would be completely fallacious.

The electors assemble, as a matter of right, every three years, on the last Tuesday in October, in order to proceed to the renewal of the members of the communal council who quit office. This assembling of the electors, regularly constituted by law, recalls the ancient German customs. It is a right put in force by the people, without having to wait for the good pleasure of the king, or for convocation by authorities, who might find it in their interest to cause delays. If seats become vacant between the times fixed for electoral meetings, the electors can be convoked, either by the communal Council or by the Government.

The right to preside over the elections belongs to the burgomasters, the sheriffs, and the councillors, or to well-known persons whom the presiding officer designates; but no irresponsible functionary can be appointed to do this work No armed force is allowed in the place where the election is being carried on, nor, indeed, in its neighbourhood, unless such force is asked for by the president conducting the election, for the purpose of maintaining order. Everything has been done to prevent the Government from intimidating the electors in their choice. The communal law has regulated the proceedings at elections, even to their smallest details. They need not be enumerated here. They are comprised in the 26th to the 42nd articles of the communal law of the 30th March, 1836.

The Permanent Deputation has the power of determining whether the elections have been properly made. It has a right to annul them, by a decision regularly drawn up, if there has been serious irregularity. In case of objections from individuals, or from the governor, the Permanent Deputation must give a decision, which has the character of a judgment. The governor alone can appeal to the king, in order to have this decision annulled. It is to be regretted that an appeal to a judicial authority has not been allowed in this case too, as there might be an unjust decision dictated by party spirit. If the governor and the ministry hold the same opinion as the Permanent Deputation the appeal will not take

place, and properly-conducted elections would be set aside. It is true that, as new elections must take place, the electoral body would soon make its opinion felt; still there is room for an abuse. It must, however, be admitted, that up to the present no such abuse has taken place.

The examination of the powers of the councillors elected is made by the communal Council; only it cannot sit in judgment on the questions raised with regard to this matter, the Permanent Deputation being the only judge of the regularity of the communal elections. Thus, an exception has been made here to the principle generally admitted, that every elective body has the right of determining whether its members are properly elected. It was feared that the Councils of rural districts would not be qualified to pronounce a judgment on matters often of a delicate nature. But this difficulty could have been got over by giving an appeal to a judicial authority. Such an appeal ought always to be allowed, as in the United States, because elective bodies can never be considered free from the influence of party spirit.

The communal Council meets whenever matters comprised within its function renders it necessary. The sheriff's college convokes the Council; but the demand of a third of its members can oblige the college to convoke the Council. This has been done to prevent the college taking the administration of affairs into its sole power. In France, the municipal Council can only assemble four times, excepting when authorised to do so by the préfet. The independence of this body is, therefore, far greater in Belgium.

The communal Council can only come to a resolution upon any matter when the majority of its members who hold office are present, and these resolutions are determined by the majority of the members present.

The inhabitants of the commune are interested in knowing what passes within the Council they have elected; but, on the other hand, some questions awaken popular passions, and require to be decided without being

subject to such a pressure, and, therefore, with closed doors. The law has, in this matter, taken steps which seem to us very wise. The publicity of the sitting is obligatory, when an important interest is at stake, that is to say, when there is a question about the budget, about expenses exceeding revenue, loans, the creation of establishments of public utility, the disposal of communal property, and the demolition of public edifices. Publicity is, on the contrary, forbidden when a question of a personal character arises. In other cases, it depends on the will of the Council, and closed doors are accorded when demanded by two-thirds of the members present.

In no case can the resolutions come to by the Council ever be kept secret. This is a point of the highest importance. Therefore is it that every inhabitant of the commune, and the delegate of the governor, or of the Permanent Deputation, have the right to demand that the minutes of the proceedings of the communal Council be communicated to them.

In France, the Government has the right of dissolving the communal Council, and of replacing it for three years by an administrative commission, composed as the Government likes. In Belgium, this exorbitant power does not exist. The choice of the commune is respected, and its nominees preserve their functions. No inconvenience has arisen from this.

The Prerogatives of the Communal Council.—The 75th article of the communal law declares: "The Council regulates all communal interests, and deliberates on every other subject submitted to it by a superior authority." It follows that the Council cannot go into matters of general interest, unless authorised to do so by the Government, or by the law. The proper prerogatives of the communal authority are:—1 To manage the property and the revenues of the commune. 2. To regulate and pay its expenses. 3. To put into execution the public works demanded by the public interest. 4. To administer the establishments belonging to the commune. 5. To give the inhabitants the benefit

of a good police, especially as regards cleanliness and health, as well as security in the streets and in public places and buildings.

These duties have always been recognised as essential attributes of the commune, but have been exercised with more or less of freedom in different countries and at different times; besides which, the central power, in its relations with its citizens, often makes use of the instrumentality of the communal administration, which then becomes the agent of the State. It thus intervenes in the service of hospitals and of public charity (which form, however, corporations having an existence of their own), also in the matter of public worship and instruction which are regulated by law.

To meet communal wants the Council has the power of voting local taxes, but under the reservation of the king's approval.

When the question of some important act arises which might compromise the future of the commune, or the general interests of the nation, the law declares that the decisions of the communal authorities are only valid when they have the consent of a superior power, either the central or the provincial authority. This system can be justified by very strong arguments. First, as has been said by Mr. John Stuart Mill, it is not well for a man or a body of men to possess unlimited power. It is the principal reason which justifies the establishment of a second chamber: a certain power of control is always necessary. No Council should, under the influence of a momentary impulse, have the power to alienate, for instance, the patrimony of the commune which ought to be reserved for future generations, or exhaust by taxes the resources of the inhabitants by local imposts, so as to prevent their bearing their fair share of the national burdens. The destruction of forests by some of the Swiss communes, and the detestable and scandalous mismanagement of the finances of New York, are examples of the abuses which come from the absolute independence of a communal power at once unstable, transitory, and often imprudent.

Hatred and vengeance, whenever and wherever they are unrestrained, lead to the worst consequences; the majority may then crush the minority by exceptional laws and taxation. There should, therefore, always be a barrier to prevent the violence and the excesses of the dominant party. The decisions of most importance must be approved by the king, such as the alienations or purchase of landed property, the imposing or taking off of taxes, loans, and general plans for laying out towns.

Other decisions must have the approval of the provincial deputation, such as the best manner of using to good purpose communal property, the buying of real estate, the annual account of receipts and expenditure, the alienation or the acceptance of donations and legacies, when they do not exceed 5,000 francs.

The law of the 30th June, 1865, increased local autonomy, but it might have done so still more without seriously endangering the general and permanent interests of the country.

The college of sheriffs, nominated by the king, is the executive power of the communal Council; it is charged with publishing and executing the resolutions of the latter, but it has besides numerous functions which are confided to it alone; thus, it is charged with the administration of communal establishments and property, with the care of the archives, and of the civil registers of births and deaths, with legal suits in which the commune is involved, with the supervision of hospitals, theatres, and the servants or employés of the Commune —it can even suspend these latter from their office for six weeks.

The burgomaster also possesses special powers. He is charged with the execution of the police laws and regulations; he is, besides, an administrator of justice, but, as such, subjected to the authority of the court of appeal. He seeks out and verifies breaches of the law, offences, and crimes committed within the territory of the commune. The police has been confided to the burgomaster alone, because its action must be more prompt and secret than any that can emanate from a corporate body.

The communal Council nominates and dismisses all servants (*employés*) of the commune, with the exception that its decisions, as regards the secretary and collector, have to be submitted to the Permanent Deputation. These two officers or functionaries must be possessed of such special qualifications, that it has been deemed best not to leave the choice of them to rural Councils which are not capable of making a good selection. The commissioners of police are nominated by the king out of a list of two candidates, to whom the burgomaster may add a third. They are under the authority of the attorney-general (*le procureur du roi*), as regards jurisdiction in matters of police, and under that of the burgomaster as to administrative jurisdiction. The duties they perform are of a general kind, the intervention of the central authority in their nomination may therefore be fairly justified.

Communal Finances.—As a general rule, the commune votes freely its own expenditure, and the taxes necessitated by it, nor can any authority impose financial burdens on the commune without its consent (see Art. X. of the Belgian Constitution). Certain laws, however, have imposed upon the communes a given amount of obligatory expenditure in the interest of the inhabitants themselves, or with a view to organise some great public service, such as the expenditure that must be incurred: — 1. For the salaries of the burgomaster, sheriffs, and other officers (*employés*) designated by the law. 2. For the payment of debts. 3. For the procuring and keeping in order of the civil registers. 4. For the maintenance of communal buildings. 5. For subsidies to ecclesiastical fabrics. 6. For the police who look after the protection and healthiness of different localities. 7. For the civic guard. 8. For public instruction. 9. For taking care of lunatics, of the blind, of the deaf and dumb, and of infirm paupers, when they are not otherwise provided for. 10. For the service of the streets, ordinary roads, bridges, aqueducts, within the limits determined by the law.*

* In Appendix I. will be seen the budget of a small commune of Flanders.

When the communes refuse or neglect to carry out their obligatory expenditure, the Permanent Deputation has the right to place it on the communal budget, and it is paid through the communal collector.

The communal income is derived:—1. From the produce of communal property. 2. From the right to shoot over their lands. 3. From carriage-stands and weighing-stands. 4. From certain fines. 5. From the "centimes additionnels" or principle of property-tax and of personal contribution. 6. From a proportional part of certain taxes collected by the State—this proportional part is given to the communes in place of the octroi duties which used to be levied on certain objects as they entered the towns. 7. From different taxes established by the communes with the consent of the Crown. Since the suppression of the octrois, which gave a considerable revenue, the genius of taxation has created every variety of impost. For instance, taxes on building and re-building, on brick ovens, on glasses, on balconies, on necessaries, on horses, dogs, buildings, steam-engines, barristers, carriages, assurances, the sale of cigars and liquors. On this matter see the excellent book of M. Hubert Leemans, "Des Impositions Communales en Belgique."

The communal organisation which has been just sketched has been at work in Belgium for forty years without giving rise to difficulties or even serious objections. It is, however, to be regretted that the mania of uniformity so characteristic of French legislation has led to the application of the same system alike to great towns and to rural parishes. It is evident that the former are more capable of self-government, and should therefore have more independence. The principle of communal legislation in Belgium is, notwithstanding, just on the whole. Only complete liberty should be given to the communes in the choice of Sheriffs and Burgomasters, instead of being put under the tutelage of the central authority; still, decisions which may be injurious to important general interests ought to be submitted for ratification to a superior authority, as no power should be absolute and beyond all control.

The Netherlands.

Communal Authorities.—The electors of the commune must pay taxes to the half of the amount which gives a qualification for voting for members of the legislature. The communal Council is composed of members in proportion to the population, and numbers from seven to thirty-six. These members are elected for six years, but one-third quit office every two years. The disqualifications are somewhat numerous—thus no minister of any church, and no soldier, can be on the Council.

The Council assembles six times a year at least, and as often besides as the sheriff's college deems necessary, or when demanded by a certain number of councillors. They receive a slight remuneration for their attendance (*presentiegeld*).

The publicity of their meetings is regulated as it is in Belgium. The election of those who are newly chosen is ratified by the Council, but there is a power of appeal to the Provincial Deputation (*Gedeputeerde Staaten*), and from that body to the king.

To the communal Council belongs the right of making regulations and of administration, but it must not infringe upon general laws and interests. The Provincial Deputation can ask the king to suspend or abrogate the decisions of the Council, but the central authority cannot put anyone in its place.

The sheriffs are nominated for six years by the Council, and are members of it; there are two for communes of less than 20,000 inhabitants, and three or four for more populous towns. The sheriffs remain in office for six years, but are changed, one half at a time, every three years.

The burgomaster is nominated by the king, and need not be a member of the Council; this often happens. It has been thought necessary to have in every commune a representative of the central power for the sake of administrative unity. The Government must, however, take into account in some measure the wishes of

the commune, as the Council can make the position of a burgomaster nearly unbearable, and such as he would not put up with; nor can the Council's resistance be overcome, for it cannot be dissolved, as in France, nor be replaced by any other body.

The sheriffs meet under the presidency of the burgomaster, and form the college of sheriffs, which is charged with the daily administration of the commune with powers similar to those it possesses in Belgium. There is an excellent rule which obliges the college to put out every year a detailed report, in the month of April, on the state of the commune—a report which has to be made public. The college is responsible for its management to the communal Council, to which it must always give account.

Attributes of Communal Authorities.—The Council of the commune manages communal interests. Its decisions touching property, judicial actions, as well as the budget of receipts and expenditure, must be laid before the provincial deputation. If this latter refuses its approval it must give its reasons, and the communal Council can appeal to the king, who decides within two months.

The burgomaster is charged with the execution of all the decisions of the college of sheriffs, and of the communal Council; he represents the commune in judicial matters; he preserves order, and can, for this purpose, call in the aid of the military, which, as should be specially noticed, cannot act of their own accord; he takes care of the theatres, and other public places. The salary of the burgomaster is fixed in towns by the king, and in villages by the Permanent Deputation.

Two or more communes may agree together to carry on works and form regulations, to create institutions, with the consent of the provincial deputation, or of the king in case the deputation refuses.

A secretary is nominated by the Council in every commune, with the approbation of the king, from two lists drawn up by the college. This secretary may be burgomaster, an accumulation of offices which cannot

be approved. The same person may be secretary to several adjacent communes, when their united population does not exceed ten thousand souls.

The secretary keeps the minutes, prepares and draws out written statements, and aids the communal Council in all its acts. He thus holds the place of the old pensionary, excepting that this latter was a much more important personage, he was the leader and the councillor of the commune and the province.

The collector is also nominated by the Council from a double list drawn up by the college of sheriffs. He keeps the money (*tient la caisse*), draws up the receipts, and only pays by a regular order, mentioning under what head of the budget the payment is made.

Belgium.

THE PROVINCE.

Provincial Authorities.—Provincial institutions were organised in Belgium by the law of the 30th April, 1836.

The provincial authorities are the Provincial Council, the Permanent Deputation of the Provincial Council, and the Governor.

The Provincial Council is composed of members who are elected directly by the electors of the province. The number of councillors is in proportion to the population of the province, and varies from forty to eighty.

The qualification for a provincial elector is the payment of at least twenty francs a year, of direct taxation, to the State treasury. The electoral lists are drawn up each year, between the 1st of August and the 3rd of September, by the college of sheriffs. Objections must be addressed to the Permanent Deputation, which delivers judgment at a public sitting, in which the grounds for its decision are made known. The interested parties can take the matter before the court of appeal, and even make an application for a reversal of judgment before the Supreme Court (*Cour de Cassation*).

The provincial electors meet every two years on the

fourth Monday of May at the principal town of the canton; they can form a single assembly if their numbers do not exceed six hundred. The law has taken strong precautions for securing the secrecy and the liberty of the votes given.

If difficulties arise with regard to the electoral proceedings, those who preside over them decide the matter in the first instance, and the Provincial Council, which verifies the powers of its members, gives the final decision.

The provincial councillors are elected for four years, but the Council is renewed one half at a time every two years. The Belgian legislator has very consistently introduced here the principle of the partial renewal of elective assemblies, which is excellent for maintaining a continuous and consistent method of administration.

The Council assembles of right every year on the first Monday in July in the principal town of the province. The duration of the session is for fifteen days at least, and for four weeks at most. The time during which the Council may sit has been limited to prevent its degenerating into a permanent political body; to this end the legislator has taken other precautions also. It has been laid down that no deputy or senator can be a provincial councillor; the provincial councillors are forbidden to issue any manifesto to the inhabitants without the assent of the Governor. This high functionary has, too, the power of closing at any time extraordinary sittings. These special sittings take place by the king's decree.

The Council elects its president and its vice-president. The Governor has not the right of presiding, he is only present at the sittings, and can only give advice. This has been done to free the Council from all Government pressure.

The sittings are public, unless the Council decides otherwise, either at the request of the president, or of five members, or of the Governor. The Council can hold no deliberations unless half of its members are present. It has the right of dividing and of amending every proposal.

The councillors do not represent, as they did formerly, the canton which has elected them, but the entire province. They must not consult their constituency as to how they should vote. Formerly the councillors were but delegates charged to carry out the ideas of their constituents, and consequently they could not depart from their instructions; but now they must only keep in view the general interests of the province.

Prerogatives of Provincial Authorities.—The prerogatives of the Provincial Council have chiefly reference to provincial interests, but the Council regulates also certain communal interests, and indeed questions of general interest.

Within its prerogatives of an exclusively provincial nature are comprised the following objects:—It settles each year the account of the receipts and expenditure of the past accounts, and votes the budget following.* It authorises loans, sales or acquisition of land, legal proceedings. It decrees the construction of roads, canals, and other public works, which have to be done in part or in whole at the expense of the province; it adopts the plans and estimates for those works, unless it refers them to the Permanent Deputation. The Council also regulates the provincial police and administration, but never in opposition to the general laws and regulations (of the country). It can sentence to penalties which do not exceed eight days' imprisonment, and fines to the amount of 200 francs; it is thus invested with a certain legislative power.

With regard to the particular interests of the communes, the Provincial Council decides on the execution of works which interest a number of communes united for carrying them on, arranging what work and what expense falls to the share of each. It determines what proportion the communes have to bear of the expenses for maintaining pauper lunatics. It further regulates the amount of direct taxation which has to be divided amongst the communes.

The Provincial Council is not, however, absolute

* See in Appendix No. II. the abstract of a provincial budget.

master in more important matters, and its decisions are subject to the approval of a higher authority, as are those of the Communal Council in similar cases. The deliberations of the commune with regard to the expenditure of the province, the means of meeting it, and the contracting of loans, are submitted to the approbation of the king. The decision of the Provincial Council in the following matters may also be subjected to the king's approval, if the governor delivers a declaration to that effect.

The creation of institutions of public utility at the expense of the province.

Purchases, alienations, and transactions which exceed 10,000 francs.

The construction of roads, canals, and other public works, the expenses of which exceed 50,000 francs.

Provincial regulations touching home administration, and those concerning the police.

In order to prevent the Governor from impeding the action of the Council, simply by refusing to do anything, he is obliged to notify his intention of recurring to the royal approval within ten days of the date of the resolution taken by the Council.

The king can within thirty days annul such acts of the Provincial Council as are injurious to general interests, or such as exceed its prerogatives. The royal decrees which annul or suspend must specify the reasons for so doing.

The Council cannot on any pretext whatever refuse to submit.

The acts of the Council are made public. Every one who likes can see the reports and minutes of the sittings.

The Permanent Deputation is a college or body elected by the Provincial Council. It has its special prerogatives, which are very important. It is one of our best local institutions, and they had a similar body introduced into France under the name of "Commission of the Department."

The Permanent Deputation is composed of six members selected by the Provincial Council from its own body; at least one of them must be taken from each of the judicial

divisions (*arrondissement judiciare*) of the province, so that every portion of it which may have special interests should be equitably represented. The Governor is of right a member of the Permanent Deputation; he presides over it, and has a voice in its deliberations, but not a casting vote. Its members are elected for four years, and renewed, one half at a time, every two years; they are paid, because their duties take up a great portion of their time every year. But this payment of 3,500 francs is rather an indemnity than a real salary. The prerogatives of the Permanent Deputation are numerous, they are of three kinds:—1st As the delegate emanating from the Provincial Council, the Deputation deliberates on all that concerns the daily administration of provincial interests. It examines the revenue and expenditure of the province When the Council is not sitting, the Deputation, when there is urgent necessity, can take in hand matters reserved for the Council. 2nd. As the agent of the central power, the Deputation is called on to give its advice in all affairs submitted to it by the Government. It participates in the execution of certain measures of public interest, like those concerning the police, the state of the public ways, and of public instruction. It exercises a control over the acts of communal Councils, whose more important resolutions must receive its approbation, as has been shown when speaking of communal institutions. 3rd. As a judicial power, it determines a great number of matters concerning political rights, or administrative questions referring to electoral registration, to elections, to recruiting for the army, to the militia laws, to those of the civic guard, to questions of residence, to the provision made for the poor in benevolent institutions, &c., &c. In all these cases the Deputation delivers real judgments, which the interested parties can appeal against, or take before the supreme court.

The acts of the Deputation may be set aside by the king for the same causes as in the case of the Provincial Councils; but its decision in matters of law can only be reversed by the judicial authority.

Each Deputation makes a yearly report to the Council of the condition and administration of the province.

The Governor is the representative of the central power in every province. Nominated by the king, he is then the organ of the State in its relations with the provinces and communes; but he can only exercise those powers which are conferred upon him by law.

He prepares the affairs which are to be submitted to the Provincial Council and the Permanent Deputation. He promotes the abrogation, by the king, of acts contrary to the public interest, or which are beyond the powers of these colleges or bodies; he nominates and discharges the servants of the provincial government, and overlooks their work; he disposes of the public force for the maintenance of order in the province; he sees to the proper execution of the deliberations, ordinances, and regulations of the Provincial Council and of the Permanent Deputation.

Special laws concerning the militia, mendicity, expropriation, &c., and other powers, too numerous to be mentioned here, are confided to him. The Governor is far from having in Belgium the exorbitant powers of a French Préfet. His authority is limited on all sides by the rights of the commune and of the province.

In every arrondissement—which is but an administrative sub-division of the province—a commissioner of the arrondissement (*commissaire d'arrondissement*), serves as a go-between, a kind of commissioner, between the communes and the Governor or the Permanent Deputation. The commissioners overlook, give information, and advise the chief authority at whose instigation they carry on their work. They are nominated by the king, and their action does not extend to communes of more than 5,000 inhabitants. They hold the position of sub-prefects in France. Their intervention is by no means indispensable, and the question of abolishing them has been often raised.

There is in every province a provincial Registrar (*greffier*), nominated for six years by the king, from three lists of candidates, drawn up by the Permanent

Deputation. He receives a salary of 5,500 francs; he draws up the minutes of the deliberations of the Council and of the Deputation; he keeps the seal and archives. He thus fulfils, in part, the functions of the ancient provincial pensionary, but without having the same prestige and authority, and without rendering the same services.

The Netherlands.

Provincial Authorities.—The provinces were in this country also, as in Belgium, the constitutive elements of the State. They formerly enjoyed absolute independence. They have preserved, to this very day, a certain autonomy in administrative affairs. The provincial institutions of Holland resemble very much those of Belgium, on which they have been modelled.

Provincial affairs are administered by an elective Assembly, the Estates-Provincial (*Provinciale Staaten*). The number of its members is fixed by law, which takes into account the relative number of the population, but without keeping to the exact proportion of the numbers of the inhabitants. Thus, South Holland elects eighty councillors; and Drenthe, which has the smallest population, thirty-four. The members of the Estates-Provincial are nominated for six years, one-half vacating their seats every three years. The elections are fixed by law to take place on the second Tuesday of May. The electors for the province are the same as those who have a right to vote for Members of the Chamber of Deputies. No qualification is required of a candidate, but he must not be a member of the upper House, nor have a place in the service of the province, nor be a minister of religion.

The Estates-Provincial assemble, as a matter of right, twice a year, on the first Tuesday in July, and the first Tuesday in November. The duration of each session is determined by the Estates themselves, and is not limited, as in Belgium, to four weeks at most. Extraordinary sessions are convoked by the king. The

Council ratifies the powers of its members, and nominates its office-holders (*bureau*). The councillors vote freely, without being obliged to take into account the instructions of their constituents. Resolutions are carried by a majority, but more than half of the members must be present, for the purpose of carrying on their deliberations.

Prerogatives of the Provincial Authorities.—The Provincial Council exercises administrative power in all matters of provincial interest, it has even the right to pass regulations, provided they are not contrary to the laws. But important acts are submitted to the king's approbation; the supreme authority however cannot amend nor confirm, in part alone, the decisions of the provincial authorities; they must be accepted or rejected as a whole. The royal will must be made known within two months, unless a statement is made setting forth the reasons for postponement. Provincial regulations must not infringe upon communal nor upon public jurisdiction. The provincial authorities can inflict penalties to the amount of seventy-five francs and seven days of imprisonment.

As Provincial Councils have only short sessions, and as the administration and interests of the province calls for permanent and daily work, it was necessary to create a body which would undertake this duty. From this necessity sprung the College of Estates Deputies (*Etats Députés* or *Gedeputeerde Staten*), which existed formerly in the days of the Republic of the United Provinces, under the name of "Committee of Councillors" (*Gecommitteerde Raden*). This college or body is now composed of six members, elected for six years, but renewed, one-half at a time, every three years. It assembles regularly at the chief town of the province under the presidency of the king's commissioner. Its members have a salary, paid out of the State exchequer in a very ingenious manner, so as to stimulate their diligence. The half of the salary is paid regularly, the other half forms a common fund, which is divided in proportion to the number of sittings attended by each

member. To pay office-holders in proportion to the work they do is obviously the application of the great principle of that responsibility which is, in fact, salary according to piece-work.

The Estates Deputies administer the property and the revenues of the province, and represent it in law-suits; they nominate all who are employed and paid by the province; take cognisance of and prepare all the affairs with which the Provincial Council has to do; and draw up an annual report of the condition of the province.

The king can suspend or annul the decisions of the Estates-Provincial or of the Estates Deputies, when they are opposed to the public interest or to the general laws.

The Commissioner of the king possesses, in this, the same powers as the Governor in Belgium. He countersigns all the acts emanating from the Estates Deputies; he sees to the executing of their decisions; he overlooks the provincial functionaries; he maintains public order; and is, in a word, the organ of the central authority in the provinces.

The province constructs the provincial roads, and keeps them in repair; has the right of regulating fishing, shooting, the condition of factories, the sanitary state of cattle, the cutting of peat, making of bricks, the condition of cemeteries, &c.

The budget of receipts and expenditure is submitted to the royal approbation, which is necessary for the imposition of any new tax. Amongst the expenses of the province are the salaries of all provincial servants; the construction and keeping in repair of roads, and other public works; the interest of loans; the proper repair of the buildings and other property belonging to the province; the care of poor lunatics; and the expenses of administration.

We may again repeat, by way of conclusion, that the provincial and communal organisation of Belgium and Holland is the result of a compromise between Germanic and Latin traditions.

Among the Germans of the middle ages the provinces and communes enjoyed very nearly complete autonomy, the authority of the central government was reduced almost to nothing. In the Roman empire, and within the French rule, which had inherited its administrative traditions, provincial authorities had little or no power left to them. Their prerogatives were insignificant, and the little they did was ordered by the all-pervading direction of the superior authority. The first of these systems is that of local autonomy or self-government, which is to be found at work principally in Switzerland, in Norway, and in America. The second is that of centralised administration, which, despite recent reforms, reigns in France at the present time.

In Belgium and Holland the communes and provinces govern themselves freely, but under the control of the supreme authority, whose consent is required for all important acts which trench upon the future, or which touch great existing interests; the representatives, however, of the communes and the provinces are not subjected to the tutelage of the superior authority, but only their acts in certain cases provided for by the laws. Certainly, it may be said that this control is still extended to too many matters; but the principle itself of a controlling power is indispensable. An Assembly should not be absolute master, even when charged only with local interests. It is well that it should have to reckon with a power moving in a different sphere and swayed by higher motives.

APPENDIX I.

BUDGET OF THE COMMUNE OF BECELAERE FOR THE YEAR 1873.

Population, 2,816. Area, 1,403 hectares.*

RECEIPTS.

EXTRAORDINARY RECEIPTS.

	Francs	Cts
§ A. *Receipts from preceding Accounts.*		
1. Surplus from the budget of last year (1874)†	873	02
§ B. *Other Extraordinary Receipts.*		
1. Subsidies from the State and the province for constructing roads, school-buildings, and restoration of the church . .	1,000	00
2. For carrying out sanitary measures		
3. Product of sales of property duly authorised		
4. On account of burial-ground given in the cemeteries . .		
5. The remains of the subsidies allowed in 1873 (year before last) for primary instruction, adult schools, and the music school	30	00
6. Loans for the construction of roads, school-buildings, or for establishing an equilibrium between income and expenditure	4,000	00
Total	5,903	02

ORDINARY RECEIPTS.

§ A. *Centimes added to the Direct Taxes raised by the State, called "Additional Centimes."* ‡		
1. Seven additional centimes on the ordinary direct contributions	750	00
2. Additional extraordinary centimes on direct taxes, for paying off loans, &c., &c.§	4,560	00
3. Share of the commune in the communal indemnity in commutation for the octroi duties, see Law, 18th July, 1860 .	5,137	83
§ B. *Communal Taxes, &c.*		
4. Personal tax	5,550	00
5. Communal tax on dogs	220	00
§ C. *Public Instruction and Fine Arts.*		
6. State and provincial subsidies for primary schools . . .	3,745	00
7. Ditto ditto for adult schools (evening and Sunday). . .	377	00
8. Ditto ditto for music school	100	00
§ D. *Revenue of different kinds.*		
9. Interest on capital due from the State or individuals . .	742	32
Total	21,182	15
Extraordinary Revenue	5,903	02
Grand Total of Receipts	27,085	17

* One hectare is equal to two acres one rood.

† The accounts of 1873 showed a deficit which is included in the last article of the expenditure

‡ All communes levy seven centimes of ordinary taxation by the law of 12th July, 1821.

§ The levy of the extraordinary centime (tax) is authorised by royal decree when the ordinary resources of the commune do not meet ordinary wants, or for construction of roads and schools.

EXPENDITURE.

EXPENSES OF COMMUNAL ADMINISTRATION.

§ A. *Matters of Internal Administration.*

	Francs. Cts.
1. Salary of the burgomaster and sheriffs. Counters recording the attendance of the communal councillors at meetings. Salary of the secretary. Office expenses. Salary of the officer charged with the care of the civil registers. Salary of the collector. Salary of the publisher of laws and decrees. Contributions. Salary of the provincial architect. Salary of the ringer of the curfew-bell (*la cloche de retraite*). Rent of the communal house. Purchase of civil state registers. Subscription for collection of laws, administrative records of the province, and purchase of administrative papers. Premiums of insurance against fire	2,250 05

§ B *Public Health and Security.*

2. Salary of police who guard the fields and country properties (*les gardes champêtres*). The dress and equipment of the same. Expenses of patrols. Lighting. Proportion of the costs of the council of experts (*prud'hommes*). Supplementary salary of the commander of the *gendarmerie*. Expenses of police registers. Vaccination fees for children of the poor. Printing expenses for militia and civic guard. Expenses on account of militia-men. Maintenance of roads, bridges, aqueducts, and water-courses	2,419 00

SUBSIDIES TO DIFFERENT ESTABLISHMENTS.

§ A. *Maintenance of the Poor.*

3. Subsidy to the Board of charity. Expenses of maintenance and instruction of the blind, the deaf and dumb, and other poor, placed afterwards in establishments not within the commune. Subsidy towards the endowment fund for the benefit of workmen who have merited decoration. . .	8,052 50

§ B. *Public Worship.*

4. Supplementary pay to the minister (*curé*) and for the vicarage	300 00

§ C. *Public Instruction.*

5. Expenses relative to primary instruction. Distribution of prizes. Subsidies to adult schools and schools of music .	5,295 00

MISCELLANEOUS EXPENSES.

6. Unexpected outlay and public fêtes. Proportion of the commune's contribution to the reserve fund for secretaries and communal servants. Also for the pensions of the rural police (*gardes champêtres*). Subsidies to musical and choral societies. Irrecoverable portions of subscription lists and dog-taxes. Past arrears. Deficiencies of the direct taxes. Remissions. Indemnity for estimates of valuation connected with the register of lands	859 21

COMMUNAL DEBT AND EXTRAORDINARY EXPENSES.

§ A. *Communal Debt.*

7. Pensions. Life pensions. Interests on capital payable by the commune. Payment of the capital of the debt . .	1,135 00
Carried forward	20,310 76

	Francs Cts.
Brought forward	20,310 76
§ B. *Extraordinary Expenses.*	
8. Public works, plans, estimates, &c. Special subsidy for restoration of the church. Construction of paved or macadamised (*empierrées*) ways or roads. For footpaths. Purchase of ground to enlarge the public way. Special subsidy to the musical society for the purchase of instruments, for buying uniform or keeping it in repair. Expenses of taking the census. Deficit in the accounts of the year before last (1873)	6,652 57
Total Expenditure	26,963 33

RECAPITULATION.

	Francs. Cts.
Receipts	27,085 17
Expenditure	26,963 33
Surplus	121 84

BUDGETS OF THE BELGIAN COMMUNES FOR THE YEAR 1870.

COMMUNES IN THE PROVINCE OF	RECEIPTS.		EXPENDITURE.	
	Ordinary.	Extraordinary.*	Ordinary.	Extraordinary.†
	Francs	Francs.	Francs	Francs
Antwerp	6,485,922	5,739,764	5,171,411	2,863,439
Brabant	12,583,676	15,860,988	8,431,562	19,097,251
W. Flanders . .	5,093,258	4,979,602	4,552,685	3,181,725
E. Flanders . .	6,034,290	8,451,921	5,192,639	5,093,503
Hainaut	7,323,100	7,491,161	6,054,113	4,892,594
Liége	6,828,056	8,627,085	7,154,543	4,162,388
Limburg	1,256,067	1,424,569	1,180,316	787,035
Luxembourg . .	2,641,466	5,437,555	2,252,589	2,019,500
Namur	3,571,669	3,644,199	3,388,474	2,451,782
The whole kingdom	51,817,504	61,656,844	43,378,332	44,549,217
Totals . . .	113,474,348		87,927,549	

The total communal expenditure is then about 17½ francs per head, the half of which is for ordinary expenses.

* By extraordinary receipts, are meant those from sale of lands, loans, and subsidies granted by the State.

† The purposes to which extraordinary expenditure is applied are, public works, the erection of schools, and the purchase of lands and buildings.

APPENDIX II.

Budget of the Province of West Flanders in 1874.

Receipts.		Francs.
Surplus from the year preceding the past one		60,401
Tax of 30½ "centimes additionnels" on the direct taxes, property tax, &c.		515,690
Provincial taxes:—		
a. Dog tax	75,000	
b. Horse tax	11,700	
c. Shooting licenses	9,000	
d. Sale of tobacco and liquor	185,300	
		281,000
Miscellaneous receipts, including loan of 3,275,000 francs for different public works		3,422,286
Total		4,279,377

Expenditure.	
Obligatory Expenditure.	
1. Administration	49,938
2. Justice and police	141,109
3. Bridges, highways, cross-roads	159,770
4. Interest and liquidation of debt	143,428
5. Public worship	28,100
6. Administration of charities	20,200
7. Public instruction	81,712
8. Miscellaneous expenses (Chambers of Commerce), &c., &c.	26,950
Total of Obligatory Expenditure	651,207
Optional Expenditure.	
9. Expenses of administration	22,653
10. Public works	103,121
11. Sanitary purposes	7,500
12. Churches and monuments	57,550
13. Charitable establishments	24,000
14. Public instruction and fine arts	122,344
15. Miscellanous expenses	3,291,000
Total of Optional Expenditure	3,628,168
Total of Obligatory Expenditure	651,207
Grand Total	4,279,375

Budgets of the Belgian Provinces in 1871.

Provinces.	Revenue.	Expenditure.
	Francs.	Francs.
Antwerp	925,176	837,214
Brabant	2,879,829	3,153,250
W. Flanders	985,366	899,003
E. Flanders	748,341	695,218
Hainaut	1,313,394	1,097,773
Liége	3,022,393	1,952,643
Limburg	269,050	287,585
Luxembourg	456,210	419,570
Namur	564,630	522,099
The whole Kingdom . . .	11,164,389	9,864,355

The average of provincial taxation for the whole country was 1 franc 24 centimes per head in 1871.

In Eastern Flanders, the province the least taxed, the average was only 84 centimes per head. In Luxembourg, the most heavily taxed province, it was 1 franc 84 centimes per head.

LOCAL GOVERNMENT IN FRANCE.*

By M. le Comte de Franqueville.

The old system of Local Government in France was entirely altered at the end of the last century. The former division of the territory into *provinces* has been suppressed, that of the *communes* only being preserved.

The new system established during the French Revolution has been re-modelled on many occasions. Various laws have been passed on this subject under each of the governments which, in France, have succeeded one another since the beginning of the century. It may be confidently asserted that, although the general principles of legislation are in some degree settled, the details may yet receive many important alterations, according to the political institutions which will be finally adopted when the Provisional Republic, now existing, shall be replaced by some regular form of government. It would be impossible to describe in a few pages all the regulations now in force; it is therefore only proposed to give a general outline of the system, which will be found sufficient for the purpose of comparing the institutions of France with those of other countries.

I.—The Department.

The French territory is divided, for the purpose of Local Government, into *departments*, *arrondissements*, *cantons*, and *communes*.

The number of the departments is 86; each of them including from two to six arrondissements, from seven-

* This Essay was written in English by its author.—*Editor's Note.*

teen to sixty-two cantons, and from seventy-two to 904 communes. The number of inhabitants, according to the census of 1871, varies from 118,898 to 2,220,060. As regards the extent, the largest department includes as much as 1,082,552 hectares; the smallest, 47,500. Lastly, the sum yearly paid as land tax (*impôt foncier*) is between 187,662 francs and 13,921,022 francs.

There are 362 arrondissements, 2,865 cantons, and 35,989 communes; on an average, the population of every arrondissement is 100,000, of every canton 12,600, and of every commune 1,000, in round numbers.

The circonscription of the departments, arrondissements, and cantons has been established by law, and can only be altered by legislation; but a decree is sufficient to authorise the modification of the communal boundaries.

The Local Government of every department is conducted by a *Préfet* and a *Conseil Général;* the former being intrusted with the executive power, the latter with the deliberative power.

The Préfets are appointed by the Sovereign, who is guided in his choice by the Secretary of State for the Home Department. There is no restriction whatever as regards this choice, neither on account of age nor of special knowledge; and the Préfets may be dismissed at any time. They receive, out of the funds of the national exchequer, a salary of £1,400 a year for the first class, £1,000 a year for the second class, and £720 for the third class, besides a sum of money for the various expenses of the *Bureaux de la Préfecture.* The Préfet is assisted by a deputy, called *Secrétaire Général de la Préfecture,* who ranks as *Sous-préfet,* and is appointed in the same manner as the Préfet himself, and holds office according to pleasure.

The authority of the Préfet is twofold: he is the representative of the central government, and the chief of the local administration in the department.

In the first capacity he is directly under the orders of all the ministers, and more especially of the *Ministre de l'Interieur* or Home Minister. He is in all matters,

whether civil or judicial, the representative of the State, and is consequently charged with the direction of the police, and must assure the execution of the laws and *décrets*. In the second capacity he is the representative of the department, and also guardian of the communes. It would be very difficult indeed to enumerate all the official duties of the Préfets: they are very numerous, and of many different kinds, as will be seen by the details which will be given.

There is also in every department a special and permanent body, styled *Conseil de Préfecture*, including seven members in the Department of the Seine, and three or four members in the other departments. These members are styled *Conseillers de Préfecture*. They are appointed by the Sovereign, at the suggestion of the Secretary of State for the Home Department, and may be dismissed at pleasure. They must be twenty-five years of age, and be called to the bar, or must have held during ten years some administrative or judicial functions. They receive an annual salary which is the tenth part of the salary of the Préfet.

The conseil de préfecture is presided over by the Préfet, or, in his absence, by a Councillor appointed by the Sovereign as deputy-chairman for the ensuing year. The duties of representative of the Government, or *ministère public*, are performed by the secretaire général de la préfecture.

It must be remembered that the Courts of Law have no jurisdiction whatever in administrative matters. The proper tribunals for questions of that kind are, the conseil de préfecture, in the first instance, and the Council of State, in appeal. It follows that the conseil de préfecture has a twofold character, being, both the council of the préfet and also a special and independent court of justice. Its attributes may be summed up as follows:—It has to assist the Préfet with its advice; and in certain cases the law declares that the Préfet cannot act without the advice of the conseil de préfecture. It possesses also a power of administrative tutelage, and no commune may sue or be sued without

the previous consent of this same council. The conseil de préfecture has also to judge special matters which are within the boundaries of its jurisdiction. It has to decide all applications made by private individuals for the exemption or reduction of their part of direct taxation; all difficulties between the administrative authorities and the undertakers of public works as concerns the interpretation or execution of contracts; all claims from private individuals against the undertakers of public works, and in consequence of temporary occupation of lands for the purposes of taking or extracting materials. Lastly, it has to judge all difficulties connected with public highways; also all matters of contention concerning the property of the State. Some minor attributes have also been granted to it by special laws.

Having thus described the constitution of the executive power, that of the deliberative must now be considered.

The *Conseil Général* is an elective body which possesses in some degree, as regards the department, the same powers as the National Assembly with regard to the State. Its organisation has been very frequently altered; it is now regulated by a law passed on the 10th of August, 1871.

The number of the members who are styled conseillers généraux varies according to the number of cantons; the general rule being that every canton elects one councillor, without regard to the number of the population. The election is made by universal suffrage and every inhabitant whose name is inscribed on the electoral lists has a vote.

For the purpose of electing the councillors the electoral body is summoned by the executive power, not less than fifteen days' notice being given. The poll takes place in the chief town of every commune on Sunday, between seven in the morning and six in the evening. The votes are immediately counted, and no one is elected unless he has, first, the absolute majority of the votes given, and, secondly, a number of votes equal to one-fourth of the number of electors inscribed. Such con-

ditions not being complied with, the ballot takes place on the following Sunday, and then the candidate who has the largest number of votes is elected, without any regard to the number of electors.

Every French citizen may be elected as a conseiller général, provided, first, that he is not less than twenty-five years of age; secondly, that he has not been deprived of his civil and political rights by judicial authority; thirdly, that he is a resident ratepayer in the department. The law prescribes also that no more than one-fourth of the members may be elected from amongst the ratepayers not residing in the department.

No one is allowed to be a member of more than one conseil général, or of one conseil général and one conseil d'arrondissement. A certain number of officials, such as the préfets, sous-préfets, magistrates, engineers, &c., are excluded from the conseil général in the department where they exercise authority.

The conseil général decides the validity of the elections; all petitions against the return of any members are disposed of by it, and its decision is conclusive.

The conseil général is elected for six years, half of the members being elected every three years, in rotation.

There are two ordinary sessions of the conseil général every year, one being held the first Monday which follows the 15th of August, and the other the day appointed by the conseil itself during the preceding session. The length of the first session does not exceed one month, that of the latter is confined to a fortnight. Besides this, extraordinary meetings may be held, first, if summoned by a decree of the Sovereign, and, secondly, when two-thirds of the members send a written requisition to that effect to the chairman of the council; but the duration of such sessions is limited to one week.

At the opening of the session in August the senior member presides at the conseil général, the junior member acting as secretary. The first proceeding is to elect by ballot a chairman, one or more deputy-chairmen; also the secretaries for the ensuing year.

The meetings of the conseil général are public, but

the council may, upon a requisition signed by five members, decide that a secret committee shall be formed.

Half of the members, plus one, form the quorum of the council. The votes are taken by a public ballot at the requisition of a sixth of the members; the chairman has on every occasion a casting vote.

The conseil général makes its own regulations respecting the manner of conducting its business.

The minutes of every meeting are compiled by the secretaries, and must be at the disposal of every newspaper published in the department within forty-eight hours after the meeting. It is not lawful for any such newspaper to criticise any deliberations of the council without printing, in the same number, the part of the minutes which relate to the same subject. Every elector or ratepayer of the department has the right to acquaint himself with every minute or deliberation of the council, to copy the same, and publish them through the press.

The Préfet has the right to be present at every meeting of the conseil général (except when the question deliberated concerns the examination of his own accounts), and to be heard whenever he demands an audience. The heads of the various special administrations of the department are bound to furnish all information required by the council about the affairs of the department.

Every act or deliberation of a conseil général relating to some object not within its legal jurisdiction is void, and has no force whatever; it may be cancelled by a decree of the Sovereign according to the advice given by the Council of State.

Every deliberation which takes place out of the meetings authorised by law is void, and to no effect whatever; it may be cancelled by the Préfet, and the members may be prosecuted before the courts of law by the public prosecutor.

The dissolution of a Conseil Général may be pronounced by the Sovereign. If the National Assembly is then sitting the decree must be sent to it as soon as pos-

sible; if not sitting the decree must call the electors for the fourth Sunday following, in order that a new council may be elected.

The first attribute of the Conseil Général relates to finances. The legislative assembly fixes, every year, the sum to be paid by each department as land-tax (*impôt foncier*), personal-tax (*contribution personnelle et mobilière*), also the tax on doors and windows (*impôt des portes et fenêtres*).

The Conseil Général has to divide the sum to be levied amongst the arrondissements, and also to decide all applications, from the conseils d'arrondissement and from the communes respecting any reduction of the part to be borne by an arrondissement. Its decision is final and conclusive; but the total sum required of the department by law may not be altered under any pretence whatever, and when the portion contributed by any arrondissement is altered the difference must be paid by the other arrondissements.

If it happens that the conseil général fails to carry this out the division is made by the Préfet in the same proportion as that made for the year preceding. It is the special privilege of the conseil général to vote the additional centimes.

Besides the aforesaid general taxes, there is a fourth tax—viz., licences (*patentes*); and these four taxes are styled the four direct contributions. The *centimes additionnels* are sums levied according to the ratable value of property assessed to these contributions, and are an additional percentage upon the four or some of them. These centimes are either general—that is to say, for the benefit of the state itself; departmental—viz., for the benefit of the departments; or communal—viz., for the benefit of the communes. The conseil général has nothing to do with the first; but it possesses the exclusive right to vote the departmental centimes, and to settle the maximum number of the centimes which may be levied by the communes for extraordinary purposes.

The centimes that the conseils généraux are authorised by law to vote are either additional, special, or

extraordinary. In the first category are included the centimes for the ordinary expenses; in the second, those for the expenses of registering the survey of land (*cadastre*) for the parochial highways (*chemins vicinaux*) and for elementary education; in the third, those for any extraordinary purposes.

The maximum number of centimes, which may be voted by the Conseil Général, is decided every year by law.

The Conseil Général has the power of borrowing any sum of money for the purposes of the departmental administration upon the security of the rates, but on the condition that the repayment of both principal and interest shall be made within a period of fifteen years.

The conseil général decides without appeal the following subjects—viz.:—

1. The purchase, sale, and exchange of the departmental property of every description, whether real or personal.

2. The system of managing the departmental property.

3. The letting or hiring of all property.

4. The alteration of the use of lands and buildings which belong to the department.

5. The acceptance or refusal of donations or legacies made to the department, when there is no opposition from the natural heirs.

6. The construction or repair of the departmental roads; the nomination of the persons, whether ingénieurs des ponts et des chaussées (engineers of bridges and roads) or agents voyers (inspectors), who shall be charged with the duty of inspecting and repairing the same.

7. The construction of the parochial highways of public or common interest (*grande communication ou intérêt commun*), and designation of the communes which shall contribute towards the same works; also the sum to be paid by every such commune. The distribution of the sums of money granted out of the public exchequer, or out of the departmental funds for parochial roads of

every description. The choice of the persons (whether ingénieurs des ponts et des chaussées, or agents voyers) who shall be charged with the management of the parochial highways of public and common interest; also the limitation of the sum to be paid as compensation for the statute labour on the highways.

8. The abandonment of departmental roads and parochial highways of public or common interest.

9. The schemes, plans, and estimates of any work whatsoever to be paid out of the departmental funds.

10. The offers made by the communes, by companies, or private individuals, having for object contribution towards any expenses of a departmental interest.

11. The authorisation of public works having a departmental interest, and being executed by any company or private individual.

12. The railway lines having local interest; the system of their construction, and contracts relative to their management.

13. The ferry-boats to be established upon the roads which are under the control of the department, and the maximum of the tolls to be taken.

14. The insurance of buildings belonging to the department.

15. The actions at law, when the department is either plaintiff or defendant.

16. The compromise relating to the rights of the department.

17. The lunatic-asylums belonging to the department, their receipts and expenditure; also contracts with any other private or public asylums for the maintenance of the lunatics of the department.

18. The maintenance of poor children (*enfants assistés*).

19. The sums to be paid by the various communes for lunatics and poor children.

20. The establishment of departmental poor-houses, and the management of the departmental institutions for the relief of the poor.

21. The superannuation funds for the clerks of the

préfectures and sous-préfectures; also for the officers whose salary is paid out of the departmental funds.

22. The contribution of the department towards the works which are of interest both to the department and to the commune.

23. The settlement of difficulties about the sums which are to be paid by each commune respectively, for the works which interest several communes.

24. The approbation of the decisions of the *conseils municipaux* as regards the establishment, alteration, or suppression of fairs and markets.

25. The approbation of decisions made by the conseils municipaux (municipal councils) having for object the continuance of existing *octroi* duties, or the increase of the same, within the boundaries established by a general law passed July 24th, 1867.

26. The alteration of the communal circonscriptions of the same canton, provided the municipal councils agree to it.

Every decision of the Conseil Général must be executed unless, in the twenty days which follow the end of the session, the Préfet appeals against it on the ground of violation of law. Notice of the appeal must be sent to the chairman of the conseil général, and to the chairman of the *Commission Départementale*. Unless cancelled within two months, the decision must be executed.

It may be cancelled only by a decree of the Sovereign in Council of State.

The Conseil Général deliberates also upon some other questions, such as the amount to be contributed by the department, in the works to be executed by the State and which concern the department; also some matters relative to the octroi and other subjects of a departmental interest which may be submitted to it; the only difference between the questions upon which it has to deliberate and the questions which it has to decide being that a decision may not be cancelled except within twenty days; whilst a deliberation may be suspended by a decree of the Sovereign in Council of

State, within three months from the end of the session.

The Conseil Général gives its advice in the following matters:—viz., the alterations of the boundaries of the department, arrondissements, cantons, and communes of various cantons; some provisions affecting the woods belonging to the communes; and any other questions which may be submitted to it by the Government. Lastly, the Conseil Général has the right of expressing wishes on any subject which is not political.

Three important alterations have been introduced, during the last four years, in the legislation which affects the Conseils Généraux.

According to the law passed August 10th, 1871, it is lawful for two or more Conseils Généraux to communicate with each other through their chairman respecting the various matters of interest to their departments. They may also make contracts for the undertaking or maintenance of any works or institutions.

The questions which concern the departments are to be discussed in some special meetings at which the representatives of the various conseils généraux are to be present. These questions must be definitely approved of by the conseils généraux themselves.

The second innovation is this: a law passed February 15th, 1872, has decided that, should the National Assembly be unable to meet, on account of some extraordinary circumstances, then every conseil général is to appoint two delegates, who shall meet in the same place as the legal Government then existing. The meeting of the delegates cannot be legally constituted unless half of the departments are represented.

In such an emergency it would be the duty of the meeting to provide for the maintenance of order, and for the provisional administration of the country; to assist the National Assembly; to remove any difficulty which might be opposed to the assembling of the same; and, if necessary, to prescribe what general elections shall be held for the return of a new Assembly.

Lastly, it has been deemed expedient to borrow from

the laws of Belgium a new institution which, up to now, has not been of much use—viz., the *Commission Départementale*. Every year, before the close of the session of August, the conseil général elects, from amongst its own members, a *commission départementale;* it is composed of from four to seven members, including as far as possible one member residing in each arrondissement, or elected by the same. Every member of the conseil général may be elected, excepting the members of the National Assembly (if any) and the mayor of the chef-lieu du département (chief town of the department).

The commission is elected for one year, but in case of difficulties arising between it and the Préfet, or in case the commission deviates from its attributes, it is lawful for the conseil général to appoint some new members.

The senior member is chairman of the commission, and has a casting vote in addition to his own vote. The secretary is elected by the commission itself. The quorum of the commission is half of the members. The sittings are held at the préfecture at least once a month, and occasionally the commission adjourns to some day specially notified.

It is also lawful for the Préfet or for the chairman to send notice of meetings at any time.

The Préfet or his representative has the right to be present at every meeting of the commission, and the heads of the various departmental administrations are bound to furnish all information that may be required by the commission as regards their respective powers.

In case of any difficulty arising between the Préfet and the commission départementale, either the conseil général may be specially summoned in order to decide the question, or the question may be submitted to the conseil général during the next session.

It may be added that the members of the commission départementale, like the conseillers généraux, do not receive any salary or indemnity whatever.

As regards its attributes, the commission départementale settles every question sent to it by the conseil

général, examines all affairs regulated by law, and advises the Préfet on every question affecting the interests of the department.

At the opening of every session of the conseil général the commission départementale gives a report of its own proceedings; it also makes any proposals it deems expedient.

The law has given some special powers to the commission départementale as regards the ordinary highways and some other subjects of minor importance. The conseil général can increase these duties to a somewhat large extent, and can entrust the commission départementale with a part of its own powers, by means of special delegation.

The decisions of the commission départementale may be appealed against, according to the questions raised, before the conseil général, or before the Council of State.

Some special rules have been framed for the departments of the Seine, Seine et Oise, and Rhône. In the former the Préfet is also the central mayor of Paris, but he is not charged with the administration of the police, which is intrusted to a special functionary, styled the *préfet de police*. Moreover, it is not lawful for the department to raise an extraordinary rate, or to borrow any sum of money, unless the same is authorised by the National Assembly. Lastly, the Conseil Général of the department is formed by eighty members of the common council of the city of Paris, assembled with the members elected by the arrondissements of Sceaux and St. Denis.

As regards Seine et Oise, the superintendence of the police belongs to the préfet de police, as in the Département de la Seine.

In the department of the Rhône the duties of the Préfet are the same as those of the Préfet de la Seine and the *préfet de police*. He acts also as central mayor of the city of Lyons.

The Department is a corporate body (*personne civile*), having consequently the power to purchase, sell, and

possess, to sue and be sued; it has also its own receipts and expenditure.

The budget of the Department is divided into two parts—ordinary and extraordinary.

The ordinary budget includes as receipts :—

1. The sum raised as ordinary additional centimes, of which the levy is authorised by the annual budget law.

2. The sums raised as special centimes for parochial highways, elementary education, and the register of the survey of lands.

3. The income and receipts of the property belonging to the department.

4. The tolls levied for the use of the ferry-boats, and some other duties of various descriptions.

5. The sums, if any, granted to the department out of the public exchequer.

6. The sums of money which must be paid by the State, or communes, as contributions towards the expenses of lunatics, poor children, parochial highways, and railways of local interest.

The total number of centimes authorised to be levied for departmental ordinary purposes is thirty-five, bearing upon the land tax and personal tax; consequently it represents about a third of the principal of the contributions. One centime is levied in addition to the principal of the four direct contributions, thus giving a total of thirty-six centimes.

The ordinary expenses to be paid out of the funds thus collected are :—

1. The lease, furniture, and maintenance of the houses of préfecture and sous-préfecture, the meeting-rooms of the departmental council of public education, and the office of the inspector of the academy.

2. The barracks of the gendarmerie.

3. The lease, furniture, maintenance, and other expenses of the court of assizes, civil and commercial tribunals, also the smaller expenses of the justices of the peace.

4. The printing and publication of the lists for the

elections of the tribunals of commerce, and of the lists of the jury.

The expenses included under the four heads above are compulsory, and should the Conseil Général abstain from voting them, it would be lawful for the government to levy a special contribution in order to pay these expenses.

The other expenses of the ordinary budget are the ordinary expenses necessary to the department, and also those correlative to the receipts of the special centimes—viz., the parochial highways of public and common interest, elementary education, and the register of the survey of lands; but it may be noticed that the sums accruing from the centimes levied for these three purposes, if found more than sufficient for their respective objects, may be expended for any other ordinary expense of the department.

The extraordinary receipts are:—

1. The sums arising from the extraordinary centimes annually voted by the conseil général within the limits of the maximum fixed by law.
2. The sums borrowed by the department.
3. Donations and legacies.
4. The sums arising from the sale of departmental property.
5. The repayment of sums owing to the department.
6. All other incidental receipts.

It is very difficult to give an exact list of all the extraordinary expenses. They consist chiefly in public works, purchase of buildings, repayment of loans, &c.

The receipts and payments of the department are made by the same officials as those for the State—viz., the general treasurer, collectors, and paymasters.

All the accounts for the preceding year are forwarded to the departmental commission ten days before the beginning of the session of August, audited by the Conseil Général during the aforesaid session, and definitely settled after having been controlled by the audit court (*cour des comptes*) by a decree of the Sovereign.

The following is an account of the total receipts and expenditure out of the departmental funds for the last year, of which the accounts have been definitely settled —viz., the year ending the 31st December, 1869:—

RECEIPTS.

A.—Ordinary Receipts.

	Francs.
Ordinary centimes départementaux	62,804,115
Miscellaneous ordinary receipts	11,365,313
Special centimes for highways	23,410,506
Miscellaneous receipts for highways	29,262,569
Total of ordinary receipts	126,842,503

B.—Extraordinary Receipts.

Extraordinary centimes départementaux	47,398,089
Loans	24,644,055
Miscellaneous	1,566,770
Total of extraordinary receipts	73,608,914
Grand total of receipts	200,451,417

EXPENDITURE.

A.—Ordinary Expenditure.

Compulsory expenses	5,400,624
Maintenance of the departmental properties	4,270,521
Furniture of the departmental buildings	757,302
Departmental roads	24,200,908
Highways (*chemins vicinaux*)	354,181
Relief of poor children	9,011,162
Lunatics	10,157,541
Maintenance of the poor	3,365,289
Public Worship	362,335
Archives	482,148
Assistance given to literature and arts	816,348
Assistance given to agriculture and industry	2,313,879
Grants to the communes	1,198,819
Miscellaneous	4,116,116
Interest and repayment of loans	2,185,496
Public education	995,042
Survey of lands	20,707
Railways of local interest, and highways	47,760,191
Total of ordinary expenses	117,668,609

B.—Extraordinary Expenditure.

Expenses through extraordinary rates	40,281,415
„ „ loans	20,951,544
„ „ miscellaneous receipts	1,215,503
Total of extraordinary expenses	62,448,462
Grand total of expenditure	180,117,071

According to the estimates included in the last annual law of finances, passed the 5th of August, 1874, the total of the ordinary and extraordinary receipts for the year 1875 will be 202,274,000 francs. Of this sum the centimes will produce about 130,000,000 francs, the surplus being raised by loans and other extraordinary or eventual receipts.

II.—The Arrondissement.

The *Arrondissement* is only a territorial circonscription, and does not constitute a corporate body; the consequence is that its government is much more simple than that of the department.

In every arrondissement, excepting that in which the principal town of the department is situated, the central government is represented by a sous-préfet who is under the immediate control of the Préfet.

The sous-préfets are appointed by the Sovereign, as proposed by the Secretary of State for the Home Department, and they hold their office at the Sovereign's pleasure. There is no special qualification necessary as regards age or special knowledge. They receive, out of the public exchequer, a salary of 8,000 francs a year for the first class, 6,000 francs for those of the second class, and 4,500 francs for those of the third class.

The sous-préfet acts principally as intermediate agent between the mayor and Préfet, and has not the power to decide of himself any question of importance. It has been proposed several times to suppress this functionary as being of no great utility. Besides the sous-préfet, who represents the executive power, there is in every arrondissement a special council, styled the conseil d'arrondissement. The number of members is equal to the number of cantons, each canton electing one councillor; but there must not be less than nine such councillors; if, however, the cantons in the arrondissement be fewer than nine, then the cantons which contain the most inhabitants choose the members wanting to complete the number required.

The rules relating to the elections, the qualifications

of electors, and the members to be elected are substantially the same for the conseils d'arrondissement as for the conseils généraux. They remain in office during six years, half of the council being elected every three years, in rotation.

There is every year an ordinary session, which is divided into two parts; the first precedes and the second follows the session of the conseil général. The conseil d'arrondissement may be summoned at any time for an extraordinary meeting, by a notice from the Préfet, which must be authorised by a decree of the Sovereign.

The chairman, deputy-chairman, and secretary, are elected by the council itself for every session, whether ordinary or extraordinary. The sous-préfet has the right to be present at every meeting of the council, and must be heard whenever he demands an audience.

The rules relative to the dissolution of the conseils généraux are the same as for the conseils d'arrondissement.

The attributes of the conseil d'arrondissement are not very numerous.

In the first part of its ordinary session, before the meeting of the Conseil Général, the conseil d'arrondissement has to examine the claims for reducing the share to be contributed by the arrondissement to the direct taxation, and also the claims of the communes for the same purpose. The deliberations are sent to the Conseil Général, which has the power to decide them.

In the second part of the ordinary session, after the meeting of the Conseil Général, the conseil d'arrondissement divides amongst the communes the assessment of the arrondissement, in the direct taxation, in the same manner as the division amongst the arrondissements is made by the conseil général, and according to the same rules. It is bound to conform to the decisions of the conseil général respecting the claims of the communes.

The conseil d'arrondissement has no other direct power, but it must advise on certain occasions, such as the alteration of the administrative boundaries; it may also express any wishes upon matters concerning the arrondissement.

III.—The Canton.

The *Canton* is a territorial circonscription, which is governed by no special administrative authority or body. There is a justice of the peace in every canton, but it must be remembered that in France these magistrates have only a judicial capacity for the smaller civil affairs, and do not possess any authority whatever in administrative or criminal affairs. It has been already stated that each canton elects one member for the Conseil Général.

The question of forming a *Conseil Cantonal* has often been raised, with the object of giving to the canton the management of some special affairs, but nothing has been done as yet, and it is probable that nothing will be done for some time.

IV.—The Commune.

The last and smallest, but most ancient and important, perhaps, of the administrative divisions, is the *Commune*.

The Commune is essentially a corporate body, with the power to contract, purchase, sell, sue, and be sued. The management of its affairs belongs to the mayor and common council (*conseil municipal*).

The system of appointing the Mayors has been very frequently altered, and is not as yet definitely settled. According to the law actually in force they are appointed by the Sovereign in every *chef-lieu*—that is, chief town—of the departments, arrondissements, and cantons; and by the Préfet in every other commune. They are not necessarily chosen from amongst the members of the common council.

Besides the Mayor there is, in every commune, one or more *adjoints* (deputy mayors), who are appointed in the same manner as the Mayor.

There is no special qualification necessary for these offices, but a certain number of officials are excluded by

law—viz., the Préfets, sous-préfets, secrétaires généraux, and conseillers de préfecture, priests or clergymen of the various persuasions, judges, officers and soldiers, engineers of *ponts et chaussées* (bridges and roads), officials of the financial administration, all those employed by the commune, commissioners of police, and policemen.

The duties of the Mayor and of the adjoint are entirely gratuitous.

The Préfet has the right of suspending the Mayors and adjoints in the exercise of their functions for two months; and this delay may be extended by the Secretary of State for the Home Department. The Sovereign may dismiss them whenever he deems it necessary.

The duties of the Mayor are very numerous. He is charged with the registration of births, marriages, and deaths. He is the representative of the Government in the commune, and also the representative of the commune itself.

In the first capacity he is charged, subject to the control of the superior administration, with the publication and execution of the laws and regulations, with special duties respecting the elections, the recruiting of the army, the taxes, and the public safety.

In the second capacity the Mayor is the chairman of the common council, the representative of the commune in the courts of law; he is entrusted with the preparation of the financial estimates, the general superintendence of the properties of the commune, and has the right to appoint the greater number of the officials paid out of the funds of the commune; lastly, he has the power to make bye-laws for the purpose of regulating the safety of the streets, the punishment of offences against the public peace, the order in public places, the sale of provisions, the public health, and public theatres.

The Common Council (*conseil municipal*) is an elective body; it has to decide questions affecting the management of the commune, and to assist and control the Mayor.

The number of its members varies according to the number of the inhabitants of the commune. In the small communes where the number of the inhabitants does not exceed 500, there are ten members; if more than 500, and not exceeding 1,500, there are twelve members; if more than 1,500, and not exceeding 2,500, sixteen members; if more than 2,500, and not exceeding 3,500, twenty-one members; if more than 3,500, and not exceeding 10,000, twenty-three members; if more than 10,000, and not exceeding 30,000, twenty-seven members; if more than 30,000, and not exceeding 40,000, thirty members; if more than 40,000, and not exceeding 50,000, thirty-two members; if more than 50,000, and not exceeding 60,000, thirty-four members; and in communes containing more than 60,000 inhabitants the number of common councilmen is thirty-six.

The election is made by the electors who are inscribed on the special electoral lists. These lists are compiled by a special commission including the Mayor, one delegate from the Government, and one from the common council. Its decisions may be appealed against during twenty days, the final decision belonging in every case to the justice of the peace.

The list must include every French citizen over twenty years of age, not having been deprived of his civil rights, born in the commune, or taken as recruit in the same division, or who, having left the commune, has returned and resided there during six months, or who during the preceding year has been married in the commune, or has been inscribed in the register of the direct contributions, and finally, every citizen who, not being in the aforesaid conditions, has inhabited the commune for two years.

Every one may inspect and take a copy of the electoral lists. A revision takes place every year, and the fresh inscriptions or striking off may be made during twenty days.

The Municipal Council is elected for three years. It holds every year four ordinary sessions, which take

place at the beginning of February, May, August, and November, and may last ten days. Besides this, the council may be called together for an extraordinary meeting when necessary.

The members are summoned by the Mayor; but the extraordinary meetings must be authorised by the Préfet. Every question may be examined in the ordinary sessions, but, in the extraordinary meetings, the council may only decide the questions specially fixed.

The Mayor, or, in his absence, the adjoint, presides at every meeting, and has a casting vote in cases of division.

The common council may be suspended by the Préfet for two months, or by the Secretary of State for the Home Department for one year. After that time the council resumes its duties, unless dissolved by a decree of the Sovereign.

When the council is suspended the Préfet appoints a special commission, of which he chooses the members, and which acts as the council itself.

The Municipal Council has the following powers:— First, the management of the properties of the commune; second, the lease of the same properties for a term not exceeding sixteen years; third, the division of common property, such as lands, woods, &c.; fourth, the purchase of real estate, when the value does not exceed, for the same year, one-tenth of the income of the commune; fifth, the repairs and maintenance of the common buildings, when the sum to be expended does not exceed a fifth of the ordinary income, or the sum of £2,000; sixth, the tolls taken for the fairs and markets, also for the burial-grounds; seventh, the insurance of the common buildings; eighth, the acceptation of grants and legacies made to the commune, when there is no special charge or claim.

The budget of the commune is presented by the Mayor, and voted by the common council. It includes, as receipts, the income of the properties of the commune the sums raised as ordinary *centimes*, and authorised to be levied by the annual law of finances, the part allotted

to the commune in the tax of the *patentes* (licenses), the receipts of the octroi, the tolls of fairs and markets, the sale of land in the burial-grounds, and some other receipts of minor importance. Under the head of "extraordinary receipts" are included the extraordinary contributions specially authorised, the sale of communal properties, grants, legacies, loans, and every other accidental receipt.

The expenses are divided into two categories, the one being obligatory, the other permissive.

The law includes, in the first class, the expenses which relate to the maintenance of the mansion-house, the subscription to the bulletin of the laws, the expenses of the census, the register of births, marriages, and deaths, the salary of the municipal collector, that of the chief clerk of the octroi, the expenses of collecting the rates, the salary of the rural policemen, that of the commissioners of the police, the lease and the maintenance of the rooms for the justice of the peace, the expenses relating to elementary education, the indemnity for lodging the priests where there is no presbytery, the assistance rendered to the fabric of the church where the income is insufficient, the expenses attending the maintenance of the foundling children, the maintenance of the buildings belonging to the commune, the inclosure and maintenance of the burial-grounds, the taxes upon the goods of the commune, the repayment of debts, the management of the communal highways, election expenses for members of the National Assembly, general councils, councils of arrondissement, common councils, and some other small items.

Every outlay not included within the aforesaid description is facultative; and when the ordinary receipts exceed the sum necessary for the obligatory expenses the exceeding sum may be employed for some other object, according to the decisions of the common council: but when these receipts are insufficient, not only the common council has no right to vote any sum whatever for a facultative expense, but it is bound by law to vote the necessary funds. Should it fail to do

so the sum absolutely necessary is demanded of the commune by the Sovereign, when the population exceeds 100,000 inhabitants, and in every other case by the Préfet in the council of préfecture.

The total amount of the receipts and expenditure of the commune is not ascertained every year. Four times only has the Home Department published a complete account of them—viz., for the years 1836, 1862, 1868, and 1871; and it may be interesting to know the figures of each of these years.

	1836.	1862.	1868.	1871.
RECEIPTS:—	Francs.	Francs.	Francs.	Francs.
Ordinary . .	100,848,990	291,899,431	309,488,605	313,169,350
Extraordinary .	24,461,073	149,517,559	130,078,005	226,416,910
EXPENDITURE:—				
Ordinary .	83,830,926	256,954,948	276,343,915	276,187,190
Extraordinary .	33,962,204	193,283,419	167,518,655	244,314,970

According to the statistical information for the year 1871, which does not include the communes of the Département de la Seine, the various items of receipts and expenditure have been as follows:—

RECEIPTS:—	ORDINARY. Francs.	EXTRAORDINARY Francs.
Centimes communaux . .	43,638,655	
Tolls and duties (fairs, markets, and burial-grounds) . .	26,315,460	
Income from common properties	14,127,165	
Income from common woods .	19,633,985	10,633,435
Income from the public and other funds and stocks . . .	5,107,160	
Octroi	78,213,835	8,173,500
Receipts for elementary education	36,855,090	6,798,715
Receipts for the highways. .	70,367,925	16,496,250
Tax on dogs	4,726,855	
Special receipts for public worship		10,454,435
Special receipts for buildings, water supply, and lighting .		18,691,415
Special centimes for repayment of loans		21,377,110
Special receipts in consequence of the war		123,810,855
Miscellaneous	14,183,220	9,981,195
Total . .	313,169,350	226,416,910

EXPENDITURE :—	ORDINARY. Francs.	EXTRAORDINARY. Francs.
Management expenses . .	17,589,070	
Taxes, insurance, maintenance of buildings	23,782,130	
Taxes and management of the woods	8,213,275	
Collection of the octroi	11,103,960	
Ditto of other taxes	12,467,675	
Expenses of the police	15,254,830	
National Guard and firemen	4,257,975	
Public worship . .	6,827,265	10,166,775
Elementary education	65,556,485	8,586,340
Highways and streets	79,853,625	17,442,700
Relief of the poor .	17,739,440	
Purchase of public funds and other stocks . .		2,522,715
Repayment of loans .		60,369,255
War expenses . .		119,124,085
Miscellaneous . .	13,541,460	26,103,100
Total	276,187,190	244,314,970

Deducting from these numbers the sums which have been received or expended in consequence of the war, it will be seen that the real income has been 415,775,305 francs, and the expenditure 401,378,075 francs, for the year 1871.* A sum of 101,234,705 francs has been raised by means of the *centimes additionnels* on the direct contributions; and, as the principal of these contributions is 265,034,000 francs, it appears that the communes received as much as 40 per cent. besides the sums raised by the national exchequer.

Paris has a particular system of government. As has been said, the Préfet de la Seine acts as central mayor, and the superintendence of the police is intrusted to a special official, the *Préfet de Police*.

The city is also divided into twenty arrondissements, each of which includes four districts (*quartiers*). There is a mayor and three adjoints for each arrondissement, who are appointed by the Sovereign; and these officials must not be chosen from amongst the members of the common council. Each of the eighty districts elects one member of the common council. The council

* It must not be forgotten that these numbers do not include the Département de la Seine. The budget of the ville de Paris is about 200,000,000 francs a year.

itself elects its chairman, deputy-chairman, and secretaries. The Préfet de la Seine and the Préfet de police have the right to be present at every meeting, and to be heard whenever they desire an audience.

In all other respects the rules which regulate the common councils of the other communes are in force also in Paris.

The town of Lyons has also a central mayor, who is the Préfet du Rhône. It is divided into six arrondissements, each of which has a special mayor and two adjoints, appointed by the Sovereign. The Préfet is charged with the superintendence of the police. With this difference, there is no further distinction between Lyons and the other towns of France.

Before concluding it must be remarked that the local taxation is now, in round numbers, a sum exceeding 800 millions of francs for the whole country, including the Département de la Seine. The proportion between the various sources of income may be nearly estimated at 500 millions from direct taxation, 200 millions from indirect taxation, and 100 millions from tolls, duties, and miscellaneous revenues.

Such is, briefly stated, the system of Local Government in France at the present time. It is unnecessary to insist upon its advantages or its defects: the reader will be able to judge for himself.

LOCAL GOVERNMENT AND TAXATION IN RUSSIA.

By Ashton Wentworth Dilke.

Among the reforms for which Russia is indebted to the present emperor, by no means the least important is the entire change which was effected in Local Government in 1864. Following, as this ukaz did, immediately after such reforms as the emancipation of the serfs, and the complete reorganisation of the administration of justice, it created less attention abroad than it deserved to do, or would have done, had it been promulgated at a less busy time. The Polish insurrection, too, was giving rise to a certain amount of unfavourable criticism on Russia, which caused European writers to be very doubtful as to the genuineness of reforms to be carried out in an empire commonly supposed to be in a restless and unquiet state, eminently opposed to the granting of a first and considerable step towards representative government.

I must premise my remarks on Local Government by saying that an empire such as Russia, so large in extent of territory, and inhabited by peoples of so many different races and creeds, and with such varying circumstances even among the truly Russian population, cannot be considered as a homogeneous mass because it happens that its divisions are contiguous to one another, instead of being, as in the British Empire, scattered over different quarters of the globe. Though the inhabitant of Samarcand can travel to Warsaw, and a Caucasian mountaineer can be carried by steam to Helsingfors, without leaving Russian soil, still this unity of soil in no way contributes to the unity of peoples, or of their

local institutions, and the German of the Baltic provinces is as far removed from the Siberian peasant in this respect as an Indian hill-tribesman from a Canadian Frenchman, or a Fiji Islander from an inhabitant of Guernsey. Different systems of Local Government exist in Poland, Finland, the Baltic Provinces, as well as in the Caucasus and in Central Asia, though, as a general rule, it may be laid down that the less civilised a nation under Russian rule the more chance has it of obtaining local freedom; while even in the heart of Russia the presence of exceptional bodies, such as the Cossacks, and various Finnish and Mongol tribes, breaks the uniformity of the system. To treat of all these varying forms—interesting as many of them are, each requiring the knowledge of a specialist—within the limits of an essay would be hopeless; we must then confine our attention to the system which prevails among the majority of the Great, Little, and White Russian races. This system, at least as far as the towns are concerned, is gradually being introduced into Siberia; it therefore concerns at the present moment, speaking roughly, about three-fifths of the total population of the empire. The exceptions are: (1) Bessarabia, inhabited chiefly by Moldavians, and enjoying certain privileges; (2) the Don Cossacks, on account of their peculiar internal system; (3) the Governments of Astrakhan and Archangel, on account of their size and situation, and the scantiness of their population; and (4) certain provinces of Lithuania, Little and White Russia, lying close to the Polish frontier, by reason of the Polish influence in them, and of their participation in the revolt of 1863.

The consideration of a brand-new system not worked out of the existing one, but raised up partly by the side of, and under the supervision of, the older official Local Government, and partly in direct opposition to it, is of necessity laden with difficulties. The system can as yet scarcely be said to be in full working order; Russians themselves have not fully made up their minds as to the merits and demerits of the new plan, and the ten years which have elapsed since the reform have

hardly given sufficient time for a clear and impartial judgment, embracing all quarters of so immense an empire; nor can it be said that any book has yet been published representing the general ideas of the Russian public, whether noble, merchant, or peasant, as to the failure or success of the institutions. Allowance has to be made for many conflicting causes. At first all parties were alike enthusiastic in their admiration of the reform. Admirers of English constitutional monarchy saw in it a germ which would tend to the realisation of their hopes; while nationalists and Philoslavs saw in it, with equal reason, the re-establishment of an old and purely national system; even the bureaucracy of the empire, though partly superseded by it, welcomed it at first as an incontestable advance. Great was the interest felt in the elections by all classes, and admirable the way in which the delegates fell into work of which hitherto they had had but little knowledge; the Russian people, with hardly an exception, were as proud of the way in which they had helped to carry out the reform as they were of the sovereign who had introduced it. The reaction, after this hopeful mood, has now set in; the provincial assemblies are represented in their worst light, and the press joins in ridiculing the institutions which it helped to found; while the official element, alarmed at seeing its power vanishing, raises petty difficulties in the way of the elected assemblies, and endeavours thereby to deter enlightened and honourable men from serving; hoping by the degradation of the elective principle in the minds of the nation, to pave the road for an entire practical restoration of its own influence.

We have but little knowledge of what form Local Government assumed before Peter the Great. The various provinces, even after they ceased to be independent, seem to have had a considerable amount of power, varying according to the character of their rulers at the time being. Peter put an end to the domination of the *voevods*, or military rulers, and divided his empire into eight provinces (*gubernia*), which number was gradually increased to sixteen under the Empress

Elizabeth, and to forty-four at the death of Catherine II. The latter, by her famous ukaz on the internal government of Russia, published in 1778, established the *namestnitchestvo*, or lieutenancy, comprising three or four provinces; for which title was afterwards substituted that of governor-general, except in the Caucasus and Poland—in the former of which it still exists, while in the latter it was abolished in February, 1874, a governor-general being substituted for the viceroy (*namestnik*).

As changes are constantly being made in Siberia and Turkestan, it is difficult to state the number of provinces or governments otherwise than approximately. At present, then, Russia (excluding Poland and Finland) is divided into about sixty provinces, thirteen or fourteen of which do not yet possess a settled organisation; such provinces (*oblast*), exist in the Caucasus, Turkestan, and Siberia, and the lands of the Don and certain other Cossack forces. These provinces are massed into groups of five or six each, forming a governor-generalship, of which there are eleven, not including Poland.

Each government is managed by a civil governor (*grajdanskyi gubernator*), military governors also existing side by side with these in some of the more distant districts. The power of the governor, who may be compared with the French préfet, is limited by the provincial council (*gubernskoe pravlénié*: not to be confounded with the elected provincial assembly), which he is obliged to consult in all important matters, but whose decision is not binding on him, though if adverse to his, this fact must be stated in the minutes. This council is generally composed of five or six members, appointed by the central government.

There are also other official councils, such as the Crown chamber (*kazionnaya palata*), which manages the finances, and councils for the supervision of postal communication, of Crown buildings, the Imperial estates, and other functions. These will be treated of more fully in their relation to the elective system. The provinces are subdivided, for administrative purposes, into districts.

(*uiezdy*), of which there are generally from 10 to 15 in each province.

Before the ukaz of the 1st–13th January, 1864, there existed in Russia only three popular or elected assemblies with deliberative powers. Of these, one, the lowest, and at the same time the most widely-spread and important of all, was the village assembly (*mir*, *mirskaya skhodka*), which, though not materially altered, received extensive powers in 1864, and will therefore be spoken of under the head of the reform of that year.

The second was the assembly of nobles (*blagorodnoe* or *dvorianskoe sobranie*), an old-established body which still exists, but which, by the foundation of the elective system, has lost the little influence it once had, and has become more than ever an excuse for visiting the capital of the province. The nobility of each district meet once in three years, and proceed to the election of a district-marshal of the nobility (*uiezdnyi predvoditel dvorianstva*) —in the same way is elected a provincial marshal (*gubernskyi predvoditel*). The suffrage is limited by a franchise, formerly of a hundred souls (male serfs), and now of land (about 600 acres). Nobles with less than this amount may coalesce to send a deputy. The assembly deliberates without the presence of the official governor, and its functions are now confined to matters directly concerning its own class, such as keeping the register of the nobility of the province. It has also a certain amount of power in dealing with refractory members of its order. Formerly, however, it possessed the right of electing the chief police officer of the district (*izpravnik*), as well as several other officials, and had charge of the distribution of taxation, and of the recruiting system.

The third assembly which existed before the ukaz of the 16th–28th June, 1870 (*gorodovoe polojénie*), was the town council (*gorodskaya duma*), of from three to six members, elected by the town, but presided over by the mayor (*gorodnitchi*), who was appointed by Government for three years.

These assemblies, especially that of the nobility, nominally had considerable privileges; and the abuse or

disuse into which these privileges fell was naturally made great use of as an argument against the further extension of local self-government, but unfairly so. The system was an attempt to amalgamate the official and elective elements, and failed for that reason. The executive power, though elected by the people, was only responsible to the bureaucracy; its connection with the electors ceased from the moment after one election till a short time before the next, and the executive, though elected, was never recognised by the people as in any way differing from the ordinary official power. This may well be compared with the feeling of the rural population in France for the officials elected by themselves, but subordinated to a strict control from the central authority.

I now come to the system of local self-government (*zemskiya utchrejdéniya*) established by the ukaz of the 1st–13th January, 1864. Of this I propose to give a brief account, previous to entering upon the details of its constitution or discussion of its merits.

The basis of local self-government is the village commune (*mir*) which at its assembly (*mirskaya skhodka*) of all the heads of families (women included) deals with the following subjects:—

1. Repartition of land; the commune being, in the immense majority of cases, a body holding its land in common.

2. Distribution of taxation among the members of the commune; the latter being responsible as a body for the debts of individual members (*krugovaya poruka*).

3. Recruiting (under the old system).

4. The granting of passports to its members; discharging old members and receiving new ones.

5. Small civil and criminal cases.

Next above the village commune stands the canton (*volost*), which is but an extension of the patriarchal system of the commune for the sake of convenience.

The next step is the district assembly (*uiezdnoe zemskoe sobranie*), composed of from twenty-five to thirty-five members, from three to five of whom are elected by the district town (*uiezdnyi gorod*), and of the

remainder half by the communes of peasants and half by the landed proprietors, noble or not, in a special assembly. This deals with—

1. District communication.
2. Schools.
3. Sanitary matters, such as drainage, vaccination, cattle disease.
4. Election of the arbiter of the peace (*mirovoi posrednik*), an official appointed under the Emancipation Act for regulating questions between proprietors and peasants.

We then have the provincial assembly (*gubernskoe zemskoe sobranie*, commonly known as *zemstvo*), composed of five or six members from each district assembly, which decides questions above the power of the district assembly, such as—

1. Main roads and railways.
2. General education.
3. Famine, epidemics, hospitals, &c.

The village commune (*mir*), as I have before said, is the unit of Russian Local Government. It is not a body artificially created for special purposes, but arises naturally out of the wants and character of the people. Nothing can give a better explanation of its significance than the various meanings of the word. Besides its ordinary signification, it expresses the world, peace, order and regularity, even the holy oil used by the Church; we may compare it with the Greek *kosmos*, which it much resembles; but its meaning to a Russian is wider and deeper even than this. A Russian peasant lives for his commune, and not for himself; to him life as a unit is almost unintelligible. The old patriarchal system, a remnant probably of the time when the Slavonic race was still a pastoral one, has been handed down untouched—nay, strengthened even by some local circumstances. The fear of wild beasts, the constant dread of Tatar and Polish incursions, the long winter, with snow-storms in which a solitary cottage might easily be overwhelmed—all this, combined with the natural gregariousness and communistic spirit of the Russian peasant, and the fact that it was the interest of the

landowner in former times to keep his serfs together, has tended to make the peasant crowd into large villages instead of cutting out his way by himself in the backwoods, as an Anglo-Saxon with more of the spirit of independence and individualism would have done under similar circumstances. This crowding into villages of eight or ten thousand inhabitants (which are not uncommon) has naturally increased the spirit of local interest, and with it the ease of establishing and carrying out a system of self-government; for as the organisation and elective principle were already present—not merely officially, but ingrained in the minds of the peasantry—there was nothing to be done but to acquaint the peasants with the full extent of their privileges, and allow them to settle the details in the manner which was traditional among them.

To this day there is nothing formal in the meeting of the communal assembly. As the peasants in the days of serfdom met to discuss their relations with their lord and master, so now they meet in the same way to fulfil their higher duties towards the State. The meeting is called by the elder (*starosta*), very frequently as the people are leaving church, and always takes place in the open air in the middle of the village street—often, unfortunately, not far from the door of the tavern. During the actual transaction of business whisky is seldom drunk, and it is doubtful whether the peasants would allow a drunken man to take part in the meeting —I, at least, have never seen a case; but after it is over the whole body generally adjourn to the tavern, once more to talk over the business which has been settled. Formalities there are none; the credentials of voters are not looked into too closely. Nominally every head of a household is entitled to a vote, but the peasant would never allow an old man of experience to be denied the right of speaking on any technical question; and the question of who is a member and who is not is entirely left to the feeling of the meeting; a young fellow, with perhaps his share of the common land, and therefore a legal right, might attend the meeting, standing respect-

fully on the outskirts, but would not think of thrusting his opinion on to the greybeards before him; nor would a woman, though entitled to vote, be present, but her son Vania or her brother Fédia would speak with more authority, it being known to the whole meeting that Vania or Fédia represented such and such a house, as well as his own, if living separately. The assembly seldom comes to an actual vote on any subject. Russian peasants hardly ever decide by majorities; but if two parties disagree in a matter, it is talked over and over again, the meeting is adjourned, and the village in the meantime talks it over once more, quietly; and at the next meeting, when the question again arises, some compromise is generally arrived at, or the minority, seeing their position, withdraw. This hatred of the mere brute power of a majority is very remarkable, and forms a peculiar characteristic of these assemblies. The peasants would never think of voting one by one for the candidates for various positions; the names are talked over before the meeting begins, and when a name is mentioned the meeting shows its feeling by a few words, and he is chosen or not. The elder (*starosta*) is paid a small sum for his services, and is generally chosen by the peasants for his eloquence and ability in laying a case before them clearly. The power of the commune over its own members is considerable, though it has been often much exaggerated, for in fact it is rarely exercised, except for the purpose of making a man pay his share of the taxes.

I have now to mention the widest form of peasant self-government, which is the canton (*volost*). It is the highest extension of the patriarchal system, and may be said to be rather a division for convenience sake than to serve any wide purpose; it is generally the same group as the parish, or priest's jurisdiction (*prikhod*). Every village of more than 2,000 inhabitants (and such are very common in Russia) forms a canton of itself, while in the case of smaller villages several are joined together for the purpose. Here the nearer presence of the official system is felt, and we in consequence find a

more firm and certain plan supplanting the somewhat vague though national and excellent assembly of the commune. The latter elects one member to the cantonal assembly for every ten hearths in the village; these, again, elect the cantonal tribunal of justice (*volostnyi sud*), of about six or eight members, presided over by a *starshina* or elder of higher rank than the *starosta*, who also carries out their decisions with the help of constables called *sotski's* and *desiatski's*—*i.e.*, men of a hundred or ten. Their power is limited to matters involving sums under 100 rubles (£14) in civil cases, and in criminal cases to imprisonment for a week and a few strokes with a birch-rod, or a fine of a few shillings. Their justice—which I once had occasion to appeal to—I found speedy and intelligent, with an impatience of formality which I had not expected in Russia—a land where all evidence even of the most trivial kind had, until quite lately, to be written down, as no oral testimony was received. A bribe, in the case referred to, was not asked for, and would probably not have been taken.

This same cantonal assembly (*volostnaya skhodka*) again (under the law of 1864) elects the electors (*vyborstshiki*) for the district assembly (*uiezdnoe zemskoe sobranie*). These electors are chosen by the cantonal assembly from itself, and may be of any number not exceeding one-third of that body, provided that every village in the canton has at least one member. The permanent board of the district assembly informs the cantonal assembly at the proper time of the impending elections, when the electors (*vyborstshiki*) for the circuit of a justice of the peace (*mirovoi utchastok*) intermediate in size between the *volost* and the *uiezd* meet in the presence of that justice, who opens the session (*izbiratelnyi siezd*), on which they elect a president out of their own body, and proceed to the election of the number of deputies allotted to that circuit for the district assembly. The peasants may elect men of their own number, landed proprietors of the district, or orthodox priests.

This system has an obvious disadvantage, which must have been foreseen by those who drew up the ukaz, and which is probably founded on the wish to break up the power of the peasants in the assembly; not nominally of course, but in reality. The peasants of the villages contained in the cantons which form the district of a justice of the peace, know nothing of one another, or if they do, are but jealous and quarrelsome; so when their delegates meet in the presence of the arbiter of the peace, an ordinary peasant from one of the villages has little chance of being elected, owing to the envy of the delegates from other villages. The result of this, coupled with the still lingering fear that the peasants have for any one in authority, is that the president exercises far too much influence in deciding who shall be elected; hence the election falls on land-owners of the district, who, for one reason or another, have not been elected by their own class, and on a few "well-intentioned" peasants from among the village officials, who are entirely dependent on the arbiter of the peace.

The *volost*, however, which was originally intended to be be nothing more than machinery for the more convenient carrying out of the details of peasant administration, and which it was wished to make directly responsible to the bureaucracy, has fallen, owing to the great want of any lower executive, into the hands of the district assemblies and their permanent boards, and is used by these—illegally, no doubt, but without harm to the people—as a means for executing their measures. The *volost* was founded entirely for the peasantry; it is now used largely by landowners and others, and is thus losing its former significance. This should be remedied, either by recognising the existing state of things, or by enforcing the law as it nominally stands.

The first elections were carried out by a temporary committee nominated for the purpose (*osobaya vremennaya kommisiya*), partly official and partly chosen by the existing elective machinery of the nobility, and by a similar district committee, also partly official and partly

elective. Since the first elections the management of the succeeding ones has been laid on the permanent executive board of the elective assemblies themselves (*zemskaya uprava*). These make out the electoral lists of landowners qualified to vote directly; of those qualified to have a representative (minors, females, absentees, and groups of landowners possessing less than the qualification); of the persons qualified to vote in the district town, either by their position as merchants, or by possession of certain property within the town (inhabitants of other towns within the district vote together with those of the district town); and a list of village communes, grouped into cantons, and these again into the circuits of the justices of the peace, together with the number of members allotted to each circuit. All persons feeling themselves aggrieved at the decision of the district board have the right of appeal to the board of the provincial assembly, which appeals, together with a general report of the work done, are forwarded by the district board. The provincial board acting on this report, names the time and place for the meetings of the various classes of electors, which have to be held within two months from the publishing thereof.

The district board, on receiving from the provincial board notice that the elections are to take place within a given time, informs the district marshal of nobility, whose duty it is to superintend the elections by the landowners; the mayor of the town for the town elections; and for the village elections the council of the peace (*mirovoi siezd*) for each circuit of a justice, to which is added an official, representing the committee for the management of Crown property.

The marshal of the nobility first calls together the small landowners, the extent of whose property is calculated, and when divided by the qualification for a full vote in that district, gives the number of delegates whom they may elect to the general meeting of the landowners; these may either be members of their own meeting, or landowners already possessing a full vote of their own. Afterwards a meeting is called of the fully-

qualified landowners (the possession of about 500 acres being the average franchise, which varies according to the size of the government, being more in the large and distant ones), including the above-mentioned delegates, and representatives of persons who are unable for various reasons to be present (these representatives may be already members, or not, but no member can have more than two votes, one for himself, and one as delegate or representative). This meeting proceeds to verify the credentials of its members, and from its decision there is no appeal. They then elect their representatives (*glasnyie*), on the average about twenty in number, to the district assembly; any member, or any person proposed by one member, may be elected. A few persons beyond the required number are elected to fill up vacancies during the three years' duration of the assembly, caused by death, or by double elections, refusal to serve, &c. Each name is put separately to the meeting, and those who receive the greatest number of votes are elected, provided however that they receive the votes of at least half the members present. The vote is by ballot. The names of those elected are immediately communicated to the electoral meetings of the peasants, to avoid double elections. The meeting must not last more than three days.

The same holds good of the meetings of the peasants' delegates, and of those of the district town (elected by merchants and by persons rated at a certain sum, varying from £100 to £500), the latter as a rule having from three to eight representatives, and the peasants about twenty, or the same as the nobility, making the average number of a district assembly from forty to fifty persons.

The provincial assembly (*gubernskoe zemskoe sobranie*) is elected by the district assemblies out of their own members in the proportion of one representative for every six members, giving an average of about seven members from each district, and a total number ranging from 30 to 100, according to the number of districts in the province. It is presided over by the marshal of the nobility of the province (*gubernskyi predvoditel*

dvorianstva). An official (or, in cases where the Crown owns much land, two or even three) from the committee for the management of Crown property (*upravlénie gosudarstvennych imustshestv*), and one from the *udelnaya kontora*, or office for certain special imperial lands, are *ex-officio* members, as are also officials from government mines or works, in provinces where such exist. The session may not last more than twenty days without special leave. The assembly, after hearing the report of the permanent board for the past year, and deciding such questions as may be brought before it, elects (once in three years) a permanent board (*gubernskaya zemskaya uprava*) of from three to six paid members, with a president, also paid, which commences its sittings as soon as the Ministry of the Interior has confirmed the president's election. The district assemblies also elect similar permanent boards. The members both of the provincial and district assemblies may be paid if it is found necessary, but they must be paid by the body which elects them, and not out of the funds of which the assembly disposes. The ordinary remuneration of a member of the permanent board is about £200 a year, which, though amply sufficient in Russia to support a man with no other means, is not enough to attract worthless men only for the sake of the salary. To the honour of the assemblies it must be said that but few cases of jobbery have occurred in which sums, disproportionate to the limited means of the country, have been paid at the instigation of "carpet-baggers," themselves elected, or hoping to be elected, to the board.

We have thus seen how district assemblies are elected by the nobility, burghers, and peasantry, and how the provincial assembly is formed by delegates from each district, and we have now before us four elected bodies —the district assembly and its permanent board, and the provincial assembly with a similar board. We may now consider their powers and their relations to one another and to the bureaucracy.

Their duties and powers extend over the following subjects:—Prevention of famine and of plague among

cattle; supervision of buildings and ways of communication belonging to them; foundation of benevolent societies, hospitals, churches, prisons, &c.; prevention of poverty; introduction of a mutual insurance system; general supervision over trade, education, health; fulfilment of such measures as government shall lay upon them; the repartition of such government taxes as shall be put under their power; the repartition, collection, and power of spending such taxes as shall be needed for their own wants; and the power of reporting through the provincial official authorities to the central government on any matter they shall judge of importance to their province, as well as the duty of furnishing all information such as may be wanted by the central authorities.

These points are common to both district and provincial assemblies and permanent boards. Their special duties may be laid down as follows:—The provincial institutions have to decide what buildings, roads, &c., shall be considered provincial, and what district; to institute new fairs, and change the dates of those already existing; to move, through the governor, that certain roads be considered imperial and not local; to manage the mutual fire insurance system; to redistribute among the districts the taxes of which the collection may be laid on them; to consider complaints moved against the permanent board; to levy tolls and raise loans; to found banks, with permission of the central power; to encourage exhibitions, &c. The permanent board carry out the instructions of the assembly, manage financial matters, prepare affairs in a simple form to be laid before the annual meeting of the assembly, maintain or defend actions at law for or against the assembly, and consider complaints against the district permanent boards. They have no power of instituting fresh taxes or loans without the consent of the assembly, except in urgent cases, and then only for a sum fixed beforehand by the assembly. The district assembly report the amount of taxes allotted by the provincial assembly to the district; decide as to what roads shall be maintained by the villages, and what by the district; supply

information to the provincial assembly, and carry out the latter's instructions; while the district permanent board bears precisely the same relation to the district assembly as the provincial board to the provincial assembly. As a matter of fact, however, it is found that the power which should be centred in the assemblies has of late passed very much into the permanent boards, being naturally more energetic and interested than members of a large assembly.

All this would seem amply sufficient to satisfy the most genuine friend of self-government; it even includes matters which ought not to be included (and are not in any country but Russia); commercial matters, for instance, must of necessity be better managed by officials who have no feeling in the interests of one spot as compared with those of another, than by an elected body, which must necessarily contain men either themselves engaged in trade or with such connections in the town or district as are not calculated to render them strictly impartial. This pleasant impression, however, is done away with by the suspicion that the central authorities have only taken this method of delegating all business which they did not care about to the elected bodies, hoping at the same time to gain a powerful argument against any real extension of self-government.

The relation of the elective institutions to the bureaucratic system, which exists side by side with them, and was partially supplanted by them, may be given as follows:—The session of the provincial assembly is opened by the governor; but neither he, nor the vice-governor, nor the members of the provincial council (*gubernskoe pravlénie*), nor any legal or police officials, can be elected representatives. The provincial assembly can only call an extraordinary meeting with the permission of the governor, and under any circumstances only once a year. The governor can stop any illegal decision of the assembly, or any decision which, in his opinion, is contrary to the general interests of the empire, as can also the Minister of the Interior; but the assembly has the right of appeal to the Senate (the

highest legal assembly in Russia). I need hardly, however, point out that most of the questions which have to be decided by these assemblies are questions of the moment, referring to the domestic economy of the province for the year in question; if then a decision of the assembly is quashed by the governor, and an appeal lodged by it with the Senate, the result of the appeal never arrives before the following session of the assembly, *i.e.*, exactly a year after it was brought on. By that time, even if the decision of the upper court is favourable, the matter has lost all its importance and freshness, and the assembly may even be forced to stultify itself by passing a needless act; otherwise the official authorities might reasonably complain that the assembly, after putting them to the trouble of defending their decision in the Senate, has, on gaining its cause, actually taken no steps to carry out the measure enacted by the assembly and confirmed by the Senate—in a word, may easily represent that the assembly has been actuated only by a wish to place them in a false position.

The assembly is responsible for all illegal acts, for all acts surpassing its powers, or for not fulfilling the lawful demands of the provincial officials. The following list is that of the measures for the carrying out of which the assembly must obtain the governor's permission: Measures of taxation; measures for changing the direction of roads, and for their division into various sections; foundation of exhibitions of local productions; and the temporary removal of members of the permanent board. The following measures need the confirmation of the Minister of the Interior: Loans, amounting to more than two years' income; certain important tolls and changes in high-roads; opening of important fairs, &c. All measures passed by the assembly must immediately be communicated to the governor, and by him, if necessary, to the minister. The veto must be communicated by the governor to the permanent board within a week. The matter is then re-discussed by the assembly, and if passed a second time by them is effectual; but the governor has the power, on his own responsibility, of

preventing their decision from taking effect, laying the matter, at the same time, before the Senate, and announcing it to the minister. When a matter is referred to the minister, he returns it within two months. His veto may be overruled by the assembly, in which case the matter is referred to the Senate.

This would seem to be fair enough, but in laws such as these everything lies in the way in which they are carried out. The assemblies have no responsibility, as in other countries, before their electors; nor, except in extreme cases, before the law. Their responsibility is before the bureaucracy, and before that only. The legality or illegality of any particular act may indeed be decided without great difficulty; but the insertion of a phrase, such as "whatever he (the governor) may consider opposed to the true interests of the empire," opens up wide questions as to what the true interests of the empire are, on which elected delegates and paid officials are scarcely likely to agree, while in case of disagreement it is hardly needful to say whose views are looked on with most favour by the central authority; and when once a particular assembly gains a reputation for *volnodumstvo*—free-thought—or has the epithet of "not well-intentioned" applied to it in an official report, its future appeals will have but a poor chance of receiving favourable notice in the Senate.

There is also another elective assembly in Russia not included in the above provincial institutions—*i.e.*, the town council. The new system had existed for some time before 1870, but had only been applied to Petersburg, Moscow, and Odessa; it has now been extended to most of the chief towns of the empire, even into Siberia. I must here remark that I have ranked local government in the country before that in the towns, in the order in which the ukazes regulating local self-government appeared, though in most countries, if not in all except Russia, the reverse would be correct, but the reason is very simple. The towns in Russia are far less important than in other countries, especially than in England; they are very small, very poor, have

few large manufacturing establishments, and, above all, are inhabited, with few exceptions, by a more backward and unintelligent population than are the country districts. Instead of being an honour to be a burgher of a town in Russia, it is rather a disgrace; and even the Russian peasant, fond as he is of seeking work in towns for a short period, rarely leaves his home entirely under the hope of becoming a *meststhanin*, or burgher. The communistic division of the land amongst the peasants, by preventing misery among them, also prevents the existence of a prolétariat, as instead of the position we are in in England, where everyone who sinks below a certain level seeks the nearest large town, in Russia none can sink below a certain level, and it is only such as rise above that level that seek the town, and then it is not in despair, but to better their already advantageous position. In towns, then, we have the assembly treated of by the ukaz on towns (*gorodovoe polojénie*) of the 16-28th June, 1870; this altered the existing institution, which greatly needed reform. The assembly bears the name of Town Council (*gorodskaya duma*, the latter word meaning thought), and is composed of members elected for four years, under the presidency of the mayor (*gorodskoi golová*, head of the town). Towns with less than 300 electors have thirty members in their council; for every 150 electors beyond this number are added six representatives, till the total number reaches seventy-two, above which it may not pass. The process of election is as follows:—The electors of the town are divided into three elective bodies; one of those who collectively pay one-third of the taxes of the town, and who individually pay the largest sums; one of those who also pay one-third, but individually pay smaller sums; and one of the remaining inhabitants. The town may be divided into two divisions only, if more are not thought necessary; *i.e.*, in cases where the inhabitants are much on an equality with one another in wealth. Each elective body elects one-third of the town council. This system, it will be seen, is practically a graduated franchise, giving each wealthy merchant, for example, in

the first body, which is usually small in numbers, a far more influential vote than that of a member of the third meeting. To appoint the same franchise for the first class of electors for all the towns in the empire would have been an impossibility. The small towns in Russia are so poor that, if the franchise had been fixed at a moderate sum even, not half a dozen merchants with that capital would have been found in many of those towns, while in the great centres, the number obtaining the right of voting in the first class might well have been even larger than those included in the other two. This system, which works very well, was found to be necessary from the fact that under the old system of election the votes of the lower class of electors completely swamped those of the higher class, thereby driving them out of the Town Council, and forcing them to abandon all interest in the local government of the town, at the same time giving great power into the hands of a few officials or unscrupulous persons who choose to make the Town Council an instrument for carrying out their plans. The franchise is practically universal, females voting by proxy; it includes all persons owning property of any kind, or keeping a shop; all merchants, and some clerks, with two years' residence, not, however, necessarily unbroken; but it thereby excludes workmen, who are not numerous in Russia, but who for the most part have a vote in their commune for the district assembly, being generally peasants who only come into the town for a short period, with a passport from their commune. Officials are not allowed to vote. It is not necessary to go through the details of the voting, which bears a general resemblance to that for the district and provincial assemblies; one point, however, is worth mentioning—viz., that the number of non-Christian members of the Town Council may not exceed one-third; this is meant to prevent towns like Kazan and Astrakhan, where the Tatar element is wealthy and well organised, from electing a Mahommedan Town Council, and towns in the west of Russia from having a majority of Jews. Every elector may be chosen, whether by the

electoral body he himself votes in, or by one of the others.

There are, then, two assemblies acting together as in the provincial institutions, viz., the Town Council and the Town Permanent Board (*gorodskaya uprava*). This latter is elected by the Town Council either out of its own members or not, and must consist of at least two members, besides the mayor as *ex-officio* president. In towns, however, as might naturally be expected, the Council meets much oftener than the provincial assemblies can do, and can have a more strict control over the Permanent Board, which is for that reason not so powerful, and does not bear so much responsibility as the Permanent Board of the provincial or district assemblies, which only meet once a year. It may be considered, however, doubtful, even allowing this possibility of a stricter control than in the country assemblies, whether the presidency of the mayor over both the Council and the Board is desirable or not; the balance of opinion seems in favour of the idea that the president of the Permanent Board, which, as it were, checks the action of the larger assembly, should be elected separately. Now, when the action of the Permanent Board is being examined by the Town Council, the mayor though he may be present, is not allowed to preside over the latter.

On the duties and powers of the Town Council I need hardly say much. Under the former system it was so restricted in money matters, that not a ruble of its very limited income could be spent without the sanction of the governor, which sanction was only granted after one of the interminable correspondences which abound in Russian offices. Now they have much more freedom of action, but want of money is still greatly felt. Even the Town Councils of the largest towns in the Empire are almost all in debt, while in some so-called towns it is said that the total income amounts to sums occasionally as low as £40. All matters concerning the town, such as building, lighting, paving, and so forth; measures for the encouragement of trade, naturally are allotted to the share of the municipality; in a word, there is nothing

in its powers, always allowing for the local tinge peculiar to Russia, to distinguish it from similar bodies in other kingdoms. The working, however, of the Town Councils is far from being satisfactory. Partly from the meddling of the officials, and partly from the ignorance of a large number of the members, the work is very badly carried out, and both the Councils and their Permanent Boards are often held up as proofs of the incapacity of Russians to govern themselves.

We now come to the question of taxation, as connected with the local government of the empire. A Commission has been sitting for some years past, engaged in collecting materials and reporting on the advisability or necessity of changes, caused by the reforms of the present government. The question of taxation is so closely bound up in that of local self-government as against bureaucratic government, that the Commission has often been compelled to wait for the results of certain reforms before being able to advocate any change in the system of taxation. Many of the suggestions have been carried into effect, others have been refused, while some are now under discussion. I must, therefore, endeavour, as far as possible within the limits of an essay, to show the relation of the various taxes to each other and to the new system of local self-government.

The taxes, as everywhere, may be roughly divided into three classes—(1) indirect (*kosvennye nalogi*); (2) direct imperial taxes (*priamye nalogi*); and (3) direct local taxes (*zemskia povinnosti*). These latter, which we may consider first, as most directly concerning this essay, have been subject to great complications, arising from the fact that they chiefly regard a class already involved in the gigantic financial operations of emancipation, combined with the almost simultaneous abolition of the old brandy-farming monopoly, and had therefore to be arranged with regard to the already existing and complicated laws on these subjects.

Formerly most of, in fact, nearly all, the Local Taxation of the Empire was paid in kind. The billeting of soldiers, keeping roads and bridges in repair, and

maintaining the post-stations and the stations for the transport of criminals sentenced to deportation, fell upon the lower classes of the population far more severely than upon the upper. However, at the commencement of the present century, when payment in money began to take the place of payment in labour or kind, a committee of nobility was appointed every few years to inspect the accounts concerning their province. This, it may be said, was the commencement of Local Self-government; but, owing to the carelessness of the nobility to whom this duty was intrusted, combined with the natural dislike of the officials to the measure, it remained a mere farce. It will easily be understood that these local rates fell much more heavily on some parts of the Empire than on others; for this reason, certain taxes were termed Imperial, while others remained local. Unfortunately, the division was made with little judgment, the larger taxes alone, and not the most unevenly distributed, being made Imperial, so that these latter exceeded the really local taxes by nearly ten to one. The committees appointed from 1851, by the nobility and burghers, increased the tendency to centralise the Local Taxation of the whole Empire, re-distributing it afterwards.

When the Local Government of the Empire was transferred to elected assemblies in 1864, the larger part of these local taxes which had been made Imperial ought naturally to have been placed under the management of the assemblies elected for that purpose. Not only, however, was this not done, but even more of the taxes, formerly administered by the local authorities, were handed over to the central power, and only an absurdly small proportion of the local taxation could be disposed of by the new assemblies. We must remember that in Russia, owing to the immensity of the distances, and the difficulty of efficient control, the central authority pays much more for everything than the local authority does, and the latter, again, more than would an elective body, composed of local men of all classes, well skilled in the financial details of the

questions on which they have to decide, and of necessity far more economical than a wasteful and irresponsible central authority some thousands of miles away. At present the elected assemblies cost each province from £10,000 to £15,000 annually (a heavy extra tax on a poor Russian province), and have the management of only about one half that sum. Whereas, if the whole of the Local Taxation were given into their hands, it is certain, to anyone knowing how Russian official contracts are entered into, that the cost of the elective assemblies would be more than recouped by the saving, not to speak of the advantage to public morality.

Up to 1864, the amount of local taxes paid by the peasants was enormous. Prince Vasiltchikof, in his interesting work on Local Government in Russia, shows that the sums paid were:—

By the peasantry, with 109,000,000 of *desiatines* ($2\frac{1}{4}$ = one acre), 35,000,000 rubles.

By the landowners, with 70,000,000 *desiatines*, 500,000 rubles.

By the Crown, with 113,000,000 *desiatines*, 36,000 rubles.

When the ukaz of 1864 was passed, almost the first act of the newly-elected assemblies was to demand, in the most disinterested manner, an equal repartition of the local taxation, if the Crown would consent to bear its proper share. The Crown only consented to do so on a part of its lands; and though the decision of the Senate was favourable to the assemblies, yet the resistance created a bad impression throughout the Empire.

The assemblies at last carried the day, and were allowed to tax the upper classes as well as the lower. So thoroughly did they do their work that while—in imperial taxation—the proportion paid is ninety-one per cent. by the peasants, to nine per cent. by the landowners, the proportion in local taxation—in the provinces where the elective system is at work—is forty-nine per cent. paid by the peasantry, to fifty-one by the landowners.

The assemblies, by a most unfortunate decision of the

Minister of the Interior in 1867, were forbidden to lay any more taxes on the merchant class, who are very lightly taxed in Russia, and were thus compelled to fall back on the peasants, who are now taxed to the very utmost extent which they can bear; and, knowing that this endeavour to levy taxes in one way would only result in there being a deficit on some other point, they refrained in the majority of cases from imposing new taxes, thereby accepting their own insignificance. In many parts of Russia land pays more (sometimes four or five times as much) in local taxation than capital in the hands of a merchant pays in Imperial and Local Taxation together. Under such circumstances, it is intelligible that the land-owning class, in whom the power chiefly lies, seeing that they alone have to bear the cost of the improvements they propose, are being gradually forced to parsimony and neglect of their duties. This is especially the case among the peasants, who, though generally well-inclined to Local Self-government, are still so heavily taxed in other ways as to render it impossible for them heartily to acquiesce in measures which only result in further taxation, of which they have to bear more than their share. So terrible, indeed, is the state of things in Russia now, that the number of districts in which the amount paid per desiatine *exceeds* the average income to be derived from the land, is greater than those in which the reverse is the case.

Having thus endeavoured to explain the present system of Local Government in Russia, we must now consider how far its failure has been caused by the incapacity of the nation for governing itself, and how far by almost inevitable collisions between the official and the elective systems.

The Russian mind is greatly given to general reasoning. One of the worst points in the character of Russians, when dealing with a matter such as this, is their contempt for details and for practical questions, and their fondness for plunging into wide and misty systems of high politics, without making sure of their foundation.

Of late the tendency has been reversed. The press, partly from its knowledge of the faults of the Russian mind, and the feeling of self-examination and self-depreciation common to most Russians, partly also from the fact that its sphere of discussion on higher matters has been greatly limited by the increased strictness of the censure, has occupied itself entirely with details, and especially with details of local administration, chiefly looked upon from a highly unfavourable point of view. This, together with the difference between the views of peasant and noble, or of noble and noble, renders it difficult to draw any general conclusions with the certainty of their being correct.

The ukaz granting Local Self-government cannot be said to have been received with much enthusiasm. After the other important reforms of the commencement of this present reign, Russians, a race easily inspired with great hopes and equally easily cast down, were full of expectation of some vague but great changes; but the ill-timed severity of the government, wreaked upon the writers of certain addresses to the emperor, drawn up in a spirit of constitutional freedom, caused a reaction unfavourable to the scheme. Calm men, however, acknowledged that what was granted, however limited, was good and well-arranged, that the great danger of interference by the local official element was sufficiently guarded against, and that thus it was the duty of every patriotic man to help the government in its well-meant work, with the hope perhaps of a further movement in the same direction, if the carrying out of the first showed that it was fitted to the necessities and character of the nation at large.

This renders the failure of these institutions—since, er a lapse of ten years the judgment of most impartial ssians is that they have failed—all the more lament- able. The failure cannot be laid at the door of the people; they have done their share of the work. The peasants—about whose enfranchisement the retrograde party, and not they alone, prophesied most dismal things—have shown that they fully appreciated what

had been granted them, and made a good use of it. At first there existed a tendency among certain classes to endeavour to teach the peasants, to patronise them, to influence their choice of delegates; but those who tried this soon discovered that the poor, unenlightened peasant was in reality more skilled in self-government than the noble who wished to teach him, and the spirit of the peasants was fully shown in the elections that followed. In the assemblies themselves, however, the peasants are generally overawed by the landowners, and though the former often speak with weight and eloquence, they seldom vote against the latter when it comes to a division. Indeed, remarkable as is the good sense and ability of the peasants, and however much we may rejoice to see that Russia has avoided the strife of class against class, of the former serf against his former owner, it might almost be wished that the peasants would show a little more initiative and energy in promoting the interests of their own class. However, the deep division which exists in Western Europe between the aristocracy and democracy has never been natural to Russia, and the fact that class-hatred is entirely foreign to the character of the people helps to explain this situation.

The nobles behaved very well with reference to the new institutions. They had a very uphill task set them; matters were laid before them in the state in which they had been left by the outgoing officials; they had no real knowledge of circumstances to work upon; they were looked upon with ill-concealed hostility by the officials on whose rights they encroached; and, worst of all, they had hardly any money. The law that nothing can be printed about the meeting of an assembly without the permission of the governor of the province, who always uses his power of censure with great strictness, is of itself sufficient to deter people from writing upon the question, and to prevent its being discussed with the necessary freedom.

That Russians can not only appreciate but turn to good account real reforms, when such are granted them,

is undoubted. The delight with which the two other great reforms of this reign were looked upon by all concerned—I mean the emancipation of the serfs and the establishment of elected magistrates and trial by jury—and the excellent results on the whole which they have given (especially in the latter case, which directly affects the people), show that it is by no fault of the nation that local self-government has failed as it has. In the towns (though even there it must be granted that the management has improved since the old official times) it has failed, undoubtedly, from the want of intelligence and of a sufficiently wide patriotism among the inhabitants, as well as from the other causes I have mentioned; but in the country, where the people, both noble and peasant, are more truly represented, the responsibility for the failure lies entirely on the heads of those who grudgingly gave up a share of their privileges. While nominally acceding to and rejoicing in the reform, they in reality did all they could—by skilful manipulation and by means repulsive to all honest men—to keep the power in their own hands. The central authority, too, who announced the Emperor's will, immediately took precautions—too successful, unfortunately—to thwart it, and at the same time to throw the blame of failure off their own shoulders on to those of the nation, which was thus injured by this unworthy proceeding.

LOCAL GOVERNMENT AND TAXATION IN SPAIN.

By Señor Moret y Prendergast.

The above title will no doubt awaken in the mind of the reader the memory of the old municipal life of Spain; of that splendid life which produced the warriors who re-conquered the Spanish soil, the men who originated her marvellous cathedrals, her splendid cities, and all that brilliant and, so to speak, fantastic greatness which, towards the end of the fifteenth century, surrounded the throne of Ferdinand and Isabella. If, however, disappointment should be felt at finding in this Essay only dry commentaries and meagre remarks about well-known facts, that must be laid neither to the charge of the writer nor of the subject itself; the fault lies with the manner in which modern events and institutions in Spain are connected with her past history. It would be easy to commence with the proud memories of days gone by, thus veiling the miseries of the present. But it is better honestly to avow that Local Government, as actually existing in Spain, bears no similarity whatever to that of preceding centuries. The old and glorious Spain died under the hands of the Asturian kings, and there are no other records and traditions to fill up the mournful space of some two hundred years than those which always survive the decadence of greatness, because they are signs of death and degeneracy in themselves.*

* This point has been well developed by Buckle (see his "History of Civilisation," Vol. II., chap. 1). However I may differ from his notion of Spanish history, I must confess that his appreciation of the eighteenth century, to which I allude, is most remarkable.

In dealing with our subject we shall set aside whatever does not bear upon the modern annals of the country.

Local Government is a word which requires special explanation in the case of Spain. Her whole life has been made to depend upon the Central Government, and in consequence, every portion of this life is organised according to the principles on which the constitution of Spain is framed. Thus the source of political life arises from the constitution, and each political convulsion, remodelling as it does the constitution on the principles of a new scheme, produces, with a new code, a fresh series of organic laws for the provinces and towns, called after the old Roman names *provincias* and *municipios*. Local life and Local Government mean, consequently (in Spain), a portion of the Central Government, therefore they afford no trace, either of special principles, special organisation, or the remains of old institutions. There is nothing but Central Government modified and extended to comparatively local purposes.

The mere perusal of all Spanish constitutions shows this fact plainly. Each of them establishes special principles for the ruling of *provincias* and *municipios*, which are subsequently developed by means of legislative Acts, called organic laws.

The first Spanish constitution, that of 1812, established a complete organisation for provincial and municipal life, affording expansion to fresh elements, developing local initiative, and laying down the principle of Local Self-government.

The second constitution, that of 1836, was a compromise between the political parties. It maintained the main features of that of 1812 for local institutions, but entrusted their development to special laws, which gave rise to much political mischief, and led at last to a revolution against Espartero, Regent of the kingdom during the minority of Queen Isabella II.

After his fall a new Constitutional Code, that of 1845, was issued. It was intended to embody the doctrines of the successful party, called moderate, who

looked very coldly on Local Self-government. As was to be feared, the spirit of centralisation which pervaded that party inspired also their manipulation of local organisation and rule. Articles 72 and 74 of this code of 1845 merely established that each province should be ruled by a body under the denomination of the Provincial Deputation (*Diputacion Provincial*); and each town by a municipality, the formation and powers of which were to be laid down by special laws. But while doing so, good care was taken that the interference of the Central Government with those local bodies should be distinctly set forth; but no mention was made of the right of the corporations (as in the Constitutions of 1812 and 1836) to elect their own mayors (alcaldes). Moreover, Article 76 provided that neither taxes, nor provincial nor municipal dues could be imposed by the local authorities without special provision being made for it in the annual budgets presented to the Cortes. All this simply meant absolute dependence upon the Central Government.

It was easy to foresee that a fresh revolution would change all this machinery, especially if it were intended to overthrow the men who had framed the constitution of 1845. And such was the case, when in 1854, after a military rising, a new constitution was proclaimed, although never put in force.

In 1868 a far more important revolution than the former ones took place, in consequence of which a new code was voted by a constituent assembly in the following year, 1869. This code founded the system of Local Government in Spain, which is in force at the present day. It is, therefore, important to explain it fully, as contained in Article 99.

It declared that Provincial and Local Government should be carried on by provincial assemblies (*Diputaciones Provinciales*), and by municipalities (*Ayuntamientos*). It laid down the following basis for regulations:—

1: The management of all local interests and finances to be entrusted to these local corporations.

2. The public to have access to all meetings.

3. Budget, accounts, and records to be published.

4. Interference of the Executive and of the Cortes only to be exercised in order to prevent these local bodies from overstepping the limits thus accorded to them.

5. The regulation of their powers with reference to imposing taxes, so as to prevent any conflict between their system of taxation and that established by the Cortes for imperial purposes.

The perusal of these articles conveys to the mind of the reader the real aim of this new constitution with regard to Local Government, and the spirit in which it was intended to frame the laws. But before entering into the analysis of this local legislation, it will be well to explain the terms employed, and to accompany them with a few remarks.

Local Government in Spain is divided into two branches, provincial and municipal.

Provincias, or Departments, are portions of the national territory, the separate division of which has been established without the least regard either to traditions, dialects, or economical interests; they are only intended to facilitate the task of central rule, always jealous of the slightest local independence, which is regarded as separatism.

There are forty-nine of these provincias, or departments, in Spain; the colonies, which are ruled by special laws, being excepted.*

Municipios, or Municipalities, are corporations to which Local Government is intrusted; they exist in all parts of Spain, from the hamlet to the largest town.

French influence can be clearly traced in all this framework, and, as a matter of fact, the constitution of 1845, the most centralising political law of Spain, and the very first which organised a kind of Local Government, was cast in French mould; its authors, indeed, boasted of it.

* The names of the old kingdoms, with the single exception of Asturias, have nothing to do with the present departments of Spain. People often speak of Castile, Andalusia, Catalonia, &c., but those names mean only past memories, not real provinces.

The constitution of 1869 was, on the contrary, inspired by the liberal party, which following its old traditions of 1812, aimed at infusing into the political organisation of Spain English principles. English readers will then find what is familiar to them in the manner in which the constitution of 1869 sets forth the political rights and guarantees granted to the Spanish nation.

But the present state of Local Government in Spain cannot be explained without comparing the constitutions of 1845 and 1869, and showing how they differed.

These two constitutions form the past and the present sources from which spring the two opposing principles now pervading Spanish political life. The old codes of 1812 and 1836 enjoyed so brief an existence that they failed to take root in the country. But both were the basis, more especially the former, of a liberal policy. A different spirit animated the code of 1845. It succeeded in setting up a real organisation throughout the country; indeed it is to the men who then organised almost every branch of the political and administrative life of Spain, to whom blame or praise must be awarded for the first establishment of a professedly constitutional system. As French influence was prevalent at that time (1845), owing mainly to the success achieved by M. Guizot in the Spanish royal marriages, it was France that supplied the mould in which the modern life of Spain was cast. It is surprising that this was the case; but it is, nevertheless, the fact. The first Spanish constitution, that of 1812, was drawn up by men, the majority of whom had emigrated to England, and whose minds were filled with a sincere admiration for the progressive enlightenment of English society, in which they had found a home and friends. They, consequently, tried their best to introduce into Spain the institutions and life of the free England they so much admired. Distrusted by King Ferdinand, and abandoned afterwards by England, who was devoted at that time to the Holy Alliance, those amongst them who were fortunate enough to escape from death on the

scaffold came over to England, where they continued to cherish their former faith and hopes. They returned to Spain in 1820, and renewed their constitutional work, but were driven back again to England in 1823.

Thus the cradle and traditions of the liberal party came from Great Britain.* This tradition would have inspired all the subsequent steps of constitutionalism in Spain had it not been for the new element which the death of King Ferdinand (1833), and the liberal initiative of the Queen Regent, Cristina, brought into play. But unfortunately this new element consisted of men just emerging from absolutism. They joined the upholders of really liberal principles without having either a right notion of their meaning, or the slightest knowledge of English progress and institutions, which inspired those who were sincere lovers of freedom. This new element, called afterwards *moderado*—conservative would not be the proper name for it—originated the constitution of 1845, with its French spirit and its centralising aims; it professed to represent the conservative element of the political life of Spain, in opposition to the liberal party. To this *moderado* party was entrusted the Government of the country from 1843 to 1854, the most peaceful period after the end of the civil war. It was through the signal failure of England in her efforts to prevent the Spanish royal marriages that this party owed its success. Thus Spain was doomed to a closer intimacy with France, whose ruling principles, coupled with the reactionary ideas embodied in the *moderado's* platform, gave birth to the whole system of 1845. Successful as that constitution was however, at first, it soon proved to be quite inadequate to the requirements of the day; so much so, that, after the revolutionary struggle from 1854 to 1856, it had to be largely modified and enforced in a more liberal spirit by those men of conservative leanings who ruled the country after that period.† But the benefit thus derived

* See letters to Lord Holland, by D. Manuel José Quintana, printed for the first time in the "Biblioteca de autores españoles," vol. i., 1864. Rivadeneira, Madrid.

† This alludes to Marshall O'Donnell and his rule, from 1858 to 1864.

was merely transient, and passed away with its authors. The constitution fell back at last into its original narrowness, and at length seemed to have no other object than that of maintaining Queen Isabella on the throne. It fell with her in 1868.

Painful experience, and a better knowledge of the real state and requirements of the country, caused the unanimous rejection of the code of 1845. The appeal made in 1868 to the constituencies was answered by the election of an assembly, the leadership of which was entrusted to the chiefs of the Liberal party; they were in the end supported by the best men of the old Conservative Liberal Union.*

The consequence was that the French mould was cast aside, and that the new framework was raised rather on English principles, in accordance with the traditions of the Liberal party. Centralised action had been unsuccessfully tried, and the time for fairly testing self-government and independent action had arrived.

It was this new spirit which Art. 99 of the Constitution of 1869, above quoted, was especially intended to infuse into the forthcoming laws on Local Government.

The originators of that Constitution were believers in the power of self-government, and endeavoured to imbue with its spirit municipal and provincial cuncils, while guaranteeing at the same time individual freedom. Whether they have succeeded or not is still to be seen; but what has been already stated will show what are the sources of Local Government in Spain,† and what the difficulties it has had to encounter.

* I shall only mention the late Don Antonio de los Rios y Rosas, who, together with the late Don Salustiano de Olozaga (respectively members of the Conservative and Liberal parties), sat together on the committee which framed the Constitution, and brought forward its several Articles in the Cortes.

† The last revolutionary convulsions, and the advent of the republic, have not modified the state of things as described above. The so-called federative party and its ephemeral existence did not bring any new elements or principles into political life. Federation, if it means anything at all, is only a disintegrating chaos, without other definite object than that of destroying Spain, and reviving the old dead and buried kingdoms brought into unity by Ferdinand and Isabella in the fifteenth century.

Provincias, or Departments.

All Spanish constitutions consider the country as a whole; and therefore immediately after the notion of the State or central government, arises that of the *provincias* as the natural division of the whole territory. All these are ruled by Governors (Gobernadores), who represent the Government, and by corporations called provincial assemblies (*Diputaciones provinciales*). These two authorities clearly show that the interests to be governed are looked upon in two different ways—namely, as national interests, and as local interests; consequently, the Governor (Gobernador) is freely appointed by the king, and the *Diputacion provincial* is elected by the inhabitants of the province. The electors are all the male inhabitants who have passed their twenty-fifth year. Thus, the electoral law is based on the principle of universal suffrage. Provinces under 150,000 inhabitants elect only twenty-five deputies, their number gradually increasing up to forty-eight in provinces over 500,000 inhabitants.

For electoral purposes the provinces are divided into districts, each district electing one deputy; so that every interest may have a fair representation in the assemblies.

It is important to state that, to be qualified as a candidate for a seat in the provincial deputation, it is necessary to be a citizen of Spain and domiciled for four years in the district, or eight in the province, in which the candidate seeks election. Members of both houses of Parliament, as well as *alcaldes* (mayors), and government officials, are disqualified for election; it being the aim of the law to trust the management of the provincial interests to an assembly composed of thoroughly local representatives of each province.

These provincial assemblies examine, and either confirm or reject the election of their own members. Their powers continue for a term of four years, and half their number vacate their seats at the end of the first two

years. No salary or remuneration is awarded to the deputies.

As these assemblies are too numerous for the daily transaction of business, they meet only once every six months, the presence of the members at those meetings being compulsory, as it is also at any extraordinary meetings which may be called. The conduct of business is carried out in conformity with by-laws framed by each provincial deputation. For the carrying on of its daily work, the deputation appoints an executive committee composed of five of their own members. They are appointed at the first meeting of the deputation, and with them the whole management of ordinary business rests. A salary, paid out of the provincial treasury, is granted to these five members.

Passing now to the examination of the powers of these provincial assemblies, it will be found that the law is defective inasmuch as it is too vague; for it only says that they ought to guard all those interests of their respective provinces which are not entrusted to the care of the municipalities. But the law provides, as a special duty of these assemblies, that they should promote improvements, such as roads, canals, benevolent institutions, &c.; it takes care, however, at the same time, to state that all such improvements are to be carried out in accordance with the laws specially framed for those purposes. Now, these special laws are made and interpreted by the central power, which thus in fact can overrule, at its pleasure, whatever the provincial deputation endeavours to do. This is a complete bar to the really free action of these local assemblies, and it is worthy of remark. It would be unfair to attribute this fault to the Cortes which framed these laws, as it arose from confidence in the loyalty of the local corporations. It would be perhaps better to explain such a failure through the very incomplete notion of a department (province). In Spain, the arbitrary division of her old provinces into departments clearly shows that these latter do not represent real communities with interests of their own, but artificial

divisions of the national territory. The formation of Spain as one united kingdom was worked out by absolute kings, who aimed at the destruction of whatever awoke any feelings of independence or local life. When modern institutions were called into being a fear of federalism (never altogether extinct) prevented the old provinces being taken as the basis of local government. And thus provincial life is without a solid foundation, and all legislative efforts are baffled by this original difficulty. This explains why the laws are on the one hand so clear as regards the Governors and their powers, and on the other so deficient in defining the powers accorded to the provincial deputations. This appears yet clearer when the matter of taxation is examined.

Thus the provincial deputations are entitled to a revenue arising from provincial property, tolls, dues, registration-fees levied upon all public provincial institutions, and from an extra tax which they are authorised to impose on towns or municipalities, which tax is to be in proportion to the direct taxes paid to the public treasury. This sounds well, but in practice, as will be shown towards the end of the article, these resources are altogether insufficient. There still remains an important point to deal with. It is that relating to the interference of the central Government with the provincial deputations or assemblies, which is another weak point of the system. The Governors or *Gobernadores* are the recognised chairmen of the provincial assemblies; and at the same time they are but high officials dependent upon the Home Secretary, who is the real master of the most important matters connected with them. Independent as the *Diputaciones* are legally, they are, nevertheless, *de facto*, subject to the central power. Their decisions have to be submitted to the *Gobernadores*, who have the faculty of disapproving of them by reference to the Home Secretary. There are, indeed, decisions reserved, in theory at least, to the special province of the *Diputaciones*, but as a matter of fact there is really nothing to guarantee freedom of action to the deputa-

tion; for the law which gives the *Gobernadores* power to veto the decisions of the *Diputaciones* says, "when the decisions relate to matters which, according to this law, or to any other law, depart from the competence of the deputations." . . . And as there is hardly any matter which does not fall within the scope of some law or other, a wide margin for interpretation remains in favour of the central authority, as experience has proved. It is also to be remarked that these deputations do not possess the privilege of addressing themselves directly to the Government, asking for or proposing whatever they may think proper, as was specially set forth in the first Spanish Constitution of 1812.

Moreover, the *Gobernadores* have the power to adjourn, close, or delay the meetings of the deputations on grounds of public order, and to send the whole deputation before a court of law, and even fine their members. All these powers of the Governors must, it is true, be exercised under the control of the law, and with proper reference being made to the Government; but this is a guarantee of but little practical importance. However, as a matter of law, the *Gobernadores* are responsible before the courts of law for any transgression or bad use which they may make of their powers.

Municipalities.—We now come to the last division of Local Government—viz., the Municipal Institutions. Municipalities are associations established by law, composed of persons residing within a municipal territory, the governing bodies of which are the *ayuntamientos*, or town councils.

Every place inhabited by not less than two thousand people, and able to defray its expenses, is entitled to a municipality; any place which does not satisfy these requirements is united to another place or places, and they are thus made part of a municipality. Thus the whole country is, without exception, divided into municipalities; and as each municipality belongs to a province, the organisation of the political life in general can be clearly seen at a glance.

It is needless to say that uniformity of organisation

is the main feature of this system, to which the Basque provinces only make an exception. Reference will be made to it in a few words at the end of this article.

All inhabitants of Spain must be included in a *padron* (census), which the *ayuntamientos*, or municipalities, are obliged to take every five years; and this census determines the Spanish subjects entitled to political rights and protection from the Government at every stage of social life. Moreover, inscription in that document is the requisite condition for exercising civil rights.

The *ayuntamientos*, or municipalities, are composed of several members, their number being proportionate to that of the inhabitants of the place, and varying from six to fifty. These bodies are composed of the *alcalde*, or mayor, who is the chairman; of the *teniente alcaldes*, or deputy-mayors; and of the *concejales*, or councillors. The *alcaldes* and *teniente alcaldes* exercise the executive power of the municipalities (*ayuntamientos*), and in that capacity the former possess many rights which give them special importance. There are also one or two members of the *ayuntamientos* called *sindicos* (from the Latin *sindicus*), upon whom devolves the duty of representing the *ayuntamientos* in all cases where legal questions are involved.

For administrative purposes each town is divided into districts, each district being subdivided into *barrios* (groups of streets). The management of each district is entrusted to a deputy-mayor, and that of each *barrio* to a functionary, called *alcalde de barrio*, who is appointed by the *ayuntamiento*, and selected from the inhabitants of the *barrio*.

These municipalities are elected by all those whose names are entered in the census papers, and who are twenty-five years old. Every two years the electors assemble during the first fortnight of the month of May, for the purpose of electing substitutes for one-half of the councillors who have to vacate office, according to law. For the purpose of balloting, the town is divided into electoral districts, each district electing a

proportionate number of councillors. In order to be qualified to become a municipal councillor, a few years' residence in the town is required, and a candidate must also have completed his twenty-fifth year. Members of both Houses of Parliament are disqualified for election, as well as magistrates, notaries, registrars, officials of any kind, and all persons connected with municipal contracts, or engaged in law-suits with the municipality, or being debtors to municipal funds.

To hold the office of *alcalde* and *síndico* it is requisite to know how to read and write.

The members elected assemble on the first of the month following their election, and choose their alcalde (mayor), who becomes their chairman. This point—the keystone of Local Government in Spain—marks the difference between the past and the present constitution and laws; those of 1869 give this right of electing their mayor to the municipalities. The deputy-mayor and síndicos are also immediately elected by the councillors. Moreover, these corporations appoint committees to which they permanently entrust the management of the respective branches of the municipal administration.

What this administration is we shall proceed to explain.

The law empowers the municipalities (*ayuntamientos*) to carry out all economic and administrative business, and in accordance with the principles laid down by the constitution of 1869 (Art. 99), such law declares that all matters relating to special local interests are exclusively within the attributes of the municipalities, these being as follows:—

1. The regulation of the traffic and maintenance of the streets; public charities; all sanitary regulations; the care of moral and material interests; and public security.

2. The administration of the local revenue and expenditure.

3. Educational and benevolent institutions.

Thus a wide field is afforded for action similar to that of the best of free and self-governed countries.

Within that sphere of action the municipalities are enabled to frame rules, enforcing them with fines; also to appoint their officials to carry out the distribution of personal taxes, and to act conjointly with other municipalities.

They (the municipalities) are at liberty to petition the provincial deputations, the Governors, the Government, and the Cortes. Their decisions have the force of law within their own jurisdiction. Only in some special cases they have to be submitted to the provincial deputation, and in a few others to the Government.

Such is the extension accorded to municipal power. But it is necessary to add here that it is expressly set forth by the law that the municipalities are delegates of the Central Government, and therefore are bound to carry out the orders and instructions given them by the Government, and to aid the government officials in the discharge of their duties; so that in this respect the municipalities may be considered as a board, constituted for receiving and carrying out those orders, thus serving as a link between the Central Government and the citizens. This latter provision is, however, a source of danger to municipal freedom. It would have been much better to have formed local boards for Government purposes, as was at one time contemplated, but afterwards abandoned by the Cortes, on account of the expenses entailed. Independent life cannot be coupled with such subserviency; for it is obvious that faults committed by the municipalities, as representatives or servants of the executive, afford a pretext either for annulling their entire action, or for getting rid of members obnoxious to the Government.

Another main feature of the municipal system in Spain is that of a second assembly, called *Junta Municipal*, which is formed for financial and administrative purposes. These assemblies, which co-exist with the *ayuntamientos* (municipalities), are composed, firstly, of all the municipal councillors, and secondly, of a number of citizens, three times that of the councillors, taken from the ratepayers of the town.

For this purpose, the ratepayers are divided into groups, each group supplying a number proportionate to the amount of the taxes which it pays. Out of these groups, the *ayuntamientos* draw by lot those who are to form the assembly for the year. Of course, no matters relating to the budget, or to the levying of taxes, can be transacted without the *junta municipal*, which, with the *ayuntamientos*, constitutes a single body for carrying out those purposes.

It will suffice to state that this novel creation of the *junta municipal* was established (1870-71) as a practical means of counterbalancing the evils of universal suffrage, and of preventing new comers and ill-advised majorities from oppressing the wealthy class, and from mismanaging the revenues of the towns. This interference of the ratepayers, through the *junta municipal*, is intended to be a sufficient guarantee for establishing such an amount of confidence as is required for municipal government.

The only point which remains unexplained, is the one relating to Local Taxation. This matter, the great importance of which requires no comment, is unfortunately full of deficiencies, and is likely to compromise the whole prospects of Local Government in Spain. As has been already stated, the chief revenue of the provincial assemblies (*Diputaciones Provinciales*) must be derived from a supplementary tax, in proportion to the amount of the direct taxes paid to Government. Overtaxed as the ratepayers are, it has been found very difficult to reckon upon such a source of revenue, and as the deputations are the true representatives of the ratepayers, they have done nothing to remedy this evil, thus leaving themselves destitute of any real means. Municipalities are also greatly embarrassed by the same difficulty. The law imposes upon them many duties, which are compulsory, and for which special items of expenditure have to be included in the municipal budget. In order to meet those items, and to keep up a proper revenue, they are compelled, by the law, to confine themselves to the following sources of revenue :—

1. The rent derived from municipal property; monies or dues, belonging either to municipalities or to institutions administered by them.

2. From dues derived from municipal works, fines collected according to law, and municipal fees collected from cemeteries, &c.

3. From a general distribution of the amount of the deficit of their budget, which is made amongst all the inhabitants of each town in proportion to their means.

4. From excise, when the preceding distribution should prove deficient or too onerous.

At the first glance it would appear that the above-named sources include every description of local income; but as the only real revenue in Spain, in large towns, at least, is the excise, and as that tax has been abrogated by the Cortes (whether for municipal or imperial purposes), the municipalities have been compelled to depend upon the other three sources of revenue. These, however, have proved wholly deficient, because all large towns object to the personal tax (*impuesto personal*). The municipalities thus finding themselves moneyless, and unable to fulfil their obligations, the intelligent classes have become discouraged, and refuse to form part of corporations thus deprived of pecuniary aid and of good leaders. Party spirit and continual struggles for supremacy have co-operated also to make the people regard with dislike duties which entail such responsibility and danger, without any compensation—not even that which ought to be attached to honest and upright proceedings.

Where these difficulties have been overcome, and financial embarrassments alleviated, as in the case of Madrid, a respectable municipality has been formed. This proves that the system is good, and gives hopes for the future.

Such are the main features of the system of Local Government and Taxation at present existing in Spain. But as the establishment of this system is of a recent date (1870), it would be unfair to pass a severe judgment on it before its working has been fully tried. It

aims at establishing in Spain what has been already attained in well-governed countries—that is to say, a municipal system working as a part of a well-organised government. Peaceful times and some years of practice are required before it ripens and yields good fruit.

But as there are conflicting principles at work, and as the ideas which inspired the centralising laws of 1845 still find favour with many people, attacks are sure to be made upon institutions based upon the principle of self-government; party spirit also will mislead public opinion both as to the merits and the faults of this more liberal system. Centralising principles having, however, been tried and found wanting, to condemn the present laws without proper experience of their working is senseless. Such conduct would only lead to new revolutions, provoked by a reactionary course of policy.

Looking at facts alone, and at the first results of the system inaugurated in 1870, an impartial observer cannot fail to approve of it. When it began its working, a revival of local life arose from the appeal made to local initiative. Many municipalities were composed of the best men in the provinces, and these newly-chosen bodies devoted themselves to their task energetically; consequently hopes of success were generally entertained; and if those hopes have faded away, it must be attributed to the uninterrupted series of revolutions and troubles which have followed the resignation of King Amadeus. From that moment, those parties which have successively held power through revolutionary means have, each in turn, done their best to break down the organisation of the provincial deputations and of the municipalities, so as to open the way to their own partisans. In this manner they have sought to secure for themselves the influence which the above-named local bodies ought to command. Political changes have latterly taken place with astonishing rapidity, succeeding each other with increasing fury, like the waves of a stormy ocean, and so the new system has failed to take a strong hold of the country. Now there only remains to be seen whether

the reaction against the revolution which dethroned Isabella will be so blind as to try and destroy the good seed of local self-government, entrusting again local rule to the hand of central authority, apparently so strong, but really so deficient. Should, on the contrary, the principles of local self-government maintain themselves, and be at the same time united to a well-ordered and free government, a blessing hitherto unknown in Spain, then there is no doubt that better times would be in store for the country, which only needs peace and rest to develop her extraordinary sources of wealth.

It must, however, be borne in mind that the question of Local Government in Spain is still unsettled. It remains to be seen whether the victory will rest with the liberal principles of self-government, inaugurated by the constitution of 1870, or with the reaction against it, which seeks to re-establish the old yoke of centralisation.*

The Basque Provinces have been referred to as being an exception to the general system of Local Government in the rest of the Peninsula. In these provinces all is old and traditional—instead of uniformity they exhibit a great variety of local customs. Their system is one of *fueros*—that is, of special freedom derived from old traditions and from political compromises between contending parties and claims. There are, however, two distinct principles involved in the system of *fueros*—that of local institutions for managing local interests, and that of the general government of these provinces as a body. This latter would separate them from the country at large, and claims for them special privileges at the expense of the nation; such as exemption from the military service, to which the rest of Spain is subjected, and from direct land taxes collected for the national treasury; while freedom from the government monopoly of tobacco is also demanded as a right of the Basque Provinces. Against such special privileges Spain

* This is equally true now, after the revolution which has proclaimed Alphonso XII. King of Spain.

protests, and for their maintenance the Basques are always ready to fight.

But, as regards purely local institutions and Local Government in these same provinces, not only do Spaniards in no way object to them, but there are not a few persons who think it would be desirable to give similar local institutions to the whole country.

To explain fully the Basque system would be beyond our purpose, because it is essentially limited, and because it is not so much a regular system as a mass of old customs, protected by a peculiar language, and preserved in a mountainous region cut off, to a great extent, from the rest of Spain. It is enough to say that a very genuine local spirit pervades this whole district, and that in local matters it is much better governed than the other portions of the kingdom. It is a fact that all classes of Basques take a real interest in Local Government, and that both their general assemblies (*juntas forales*) and their municipalities comprise within them men who are among the leaders and the well-to-do classes of the community. Their charitable institutions, prisons, and roads are better managed than in other provinces of Spain. It is to be lamented, indeed, that the Basques wage a brave but hopeless struggle on behalf of the Carlist pretender, against the rest of the country; but the resources and vigour they display in doing so prove how great is the power acquired by constantly attending to their local affairs. Misdirected as that power no doubt is, it is not the less a proof of what capacities are developed by the habit of local self-government—capacities which need only wise guidance to become a fruitful source of strength and well-being to the nation.

LOCAL GOVERNMENT CONSIDERED IN ITS HISTORICAL DEVELOPMENT IN GERMANY AND ENGLAND, WITH SPECIAL REFERENCE TO RECENT LEGISLATION ON THE SUBJECT IN PRUSSIA.*

Kreis-Ordnung für die Provinzen Preussen, Brandenburg, Pommern, Posen, Schlesien und Sachsen, vom 13 *December*, 1872.

LOUDER and louder, year by year, the question of Local Government knocks at the door of every Parliament in Europe. Year by year schemes are born and die, and the solution seems no nearer than it was before. Everywhere the same phenomena meet us. Society, as it were, grown out of its political clothes, and looking helplessly about for new stuffs and old patterns, or old stuffs and new patterns, wherewith to fashion unto itself a garment. Everywhere a dualism between society and the State, each looking askance at

* In undertaking to write the German article for the Cobden Club Series on Local Government, I projected a very different scheme from that which I have actually carried out. My wish was to furnish a picture of existing communal institutions in different parts of Germany, with exhaustive details upon the incidence of their local taxation. After collecting large masses of wholly useless materials, I was forced (by the unexpected death of Dr. Schwabe, the Head of the Statistical Department of the Berlin Municipality, whose statistical experience in communal matters and kind co-operation could alone have enabled me to overcome the immense difficulties in my way) to give up the undertaking, and at the eleventh hour to substitute the accompanying comparative sketch of the historical relations between Central and Local Government in Germany and England. I feel I owe an apology to the Club for the very rough and unfinished state of this essay, and for its character being so different from that originally determined upon by the Literary Committee of the Club. But, on the other hand, I think that under the circumstances of the case I have some claim to indulgence. R. B. D. MORIER.

the other, not knowing whether to consider its rival as a future master or a future slave. Everywhere the same diagnosis, pronounced by the consulting physicians, that the seat of the disease is to be found in the deficient institutions which connect the social units with the political centres; and that the remedy is to be sought in the reform of those institutions.

Combine your present fortuitous human atoms, they say, into organic groups, place these groups into organic connection with the national or imperial centres, and the problem is solved. In other words, seek out the right relation of the individual to the Local Government, and of the Local Government to the Central Government; and when you find them you will be on the high road to restored health and strength.

It is astonishing how many seekers are employed in this field; how they differ from each other in their personal qualifications, and how great is the contrast presented by their several methods. Gneist, in his masterly anatomy of Self-Government in England; Mr. William Rathbone, in his able letters to the *Times;* the Communards of Paris, toppling down the column in the Place Vendôme; M. Castelar, perorating at Madrid; the Federalists of Carthagena manning iron-clads with galley slaves, and cruising about in no particular direction, followed at a disrespectful distance by foreign men-of-war, with no particular instructions; are all of them labourers toiling in the same vineyard.

Having, with this chaos before us, to contribute an Essay on Local Government in Germany to the Cobden Club series, we have chosen as our text the law on the organisation of the *Circle,* or, to use the nearest approximate English equivalent, the *County,* in the Eastern Provinces of Prussia: First, because it is the only portion of the edifice of Local Government in the course of construction in Prussia actually completed; secondly, because it is a very scientific piece of workmanship, pre-supposing for its due comprehension a tolerable acquaintance with the social and political circumstances of the country to which it is intended to

apply, and therefore requiring an historical *résumé*, which will enable us to place before the reader the ideas "in the air" respecting Local Government as they actually present themselves to the legislative mind of Germany.

For it is not too much to say that the law, which we are about to describe, could never have come into existence otherwise than as the product of the doctrines in regard to self-government, of which Professor Gneist has, for the last twenty years, been the eloquent and unwearying exponent. These doctrines are based upon his incomparable analyses of the historical materials out of which our self-governing machinery has been built up. His various works on Self-Government in England; on the Communal Institutions of England; on the Administrative Constitution of England, have placed, in lavish profusion, within the reach of his German readers, all the knowledge requisite for them to form their own judgment on the doctrines he propounds.

The results of his inquiries, in many ways, run counter to received opinions, both Liberal and Conservative; and are diametrically opposed to current Continental ideas on the subject of Parliamentarism. For our own part, we believe him to be, in the main, right; and the current opinions he combats to be, many of them, at least wrong; but whether this be so or not, we believe it is desirable that views so weighty, based on knowledge so profound, and now about to be subjected on a large scale to the test of practical application in the shape of positive laws, should, in outline at least, be placed before English readers. This we propose to do incidentally in the following pages.

In the first part of our essay we shall, following Professor Gneist's method of comparative historical analysis, give a sketch of the main incidents connected with the relations borne by the local institutions to the general institutions of the country in Germany and England—only we must reverse his process. He takes the knowledge of German history for granted, and explains to his readers, in detail, the incidents of English

institutions, only adverting to German facts to exhibit the necessary contrasts. We, on the contrary, must take the knowledge of English facts for granted, and endeavour to give to our readers a picture of German institutions. We shall, however, give a connected sketch of the corresponding English institutions, so as to enable the reader to see in what way it is purposed to apply them to the actual communal relations of Prussia.

In the second part we shall give a description of the existing administrative machinery in Prussia, and of the changes brought about by the law of the 13th December, 1872.

Before, however, we proceed with our sketch, it will materially assist the reader if, in a few sentences of our own, we give a summary of Professor Gneist's main doctrine.

England, in the 18th century, deservedly fascinated the attention of all political thinkers as the only European country in the possession of political liberty. In examining the causes of this strange phenomenon, the conclusion arrived at was, that Englishmen were free because they had self-government; and that they had self-government because they had Parliamentary institutions. The great continental recipe for political liberty therefore became the creation of parliamentary institutions. Fix upon a census; divide the country into electoral districts; elect representatives; find some big town-hall for them to sit in, and the thing is done; all the rest will come of itself. The Parliament will beget self-government, self-government will beget liberty. Professor Gneist, in a clearer manner than has ever been done before, explains to his countrymen, what we all of us know, that the reverse of this is the case—that it was because we were free in the old Teutonic, positive, and concrete sense of the word *freedom*, and not in the abstract negative sense of the word *liberté* that we were self-governed; and that it was because we were self-governed in our local affairs that a Parliament grew up in which we were able to govern

ourselves in regard to our imperial affairs: in a word, that in the received continental doctrinaire view cause and effect had been reversed. But the great argument of his works goes to show that the essence of self-government in England as distinct from continental imitations, and also from actual popular views in England, was something diametrically opposed to what is now meant by Representative Government; that it was the carrying out the will and the doing the work of the *State* by the local units of society themselves, and not the carrying out the will and the doing the work of the local units by means of delegates or representatives named by those units. That the *local* bodies were *public* bodies, doing public work. That the Lord-Lieutenants, the Sheriffs, the Justices of the Peace, were not elected magistrates to do the work of their constituents, but the King's servants, named by him to do the King's work, *i.e.*, the public work. That Quarter Sessions were not county parliaments; vestries not parish parliaments to make or amend laws, but public bodies under the dire obligation to carry out Imperial laws; that county-rates and parish-rates were not self-imposed burdens, but burdens laid on with an equal hand by the Imperial Parliament. In a word, that Self-Government means the harnessing of Society to the State, not the disintegration of the State into joint-stock companies, ruled by boards of elected directors.

The above is, of course, no more than an indication of the most general kind of the tendency of Professor Gneist's doctrines. An adequate idea of them can only be obtained by a study of his works, as his arguments always take the concrete form of historical illustration. We can, however, specially refer the reader to two passages, the one in which he pleads the cause of the State against the *Ancien Régime* (*Englische Communal Verfassung*, vol. ii. p. 1222), the other against the ideas of modern society, as embodied in Mr. Mill's work on Representative Government (*Verwaltung, Justiz, Rechtsweg*, p. 52).

PART I.

In the essay which we contributed to the first Cobden Club series, we traced back the history of land tenure in Prussia to the system of the Teutonic mark. Similarly, in attempting the anatomy of the present communal institutions of Germany, we must go back to the Teutonic *Landesgemeinde.*

The *Landesgemeinde* is a community of free marksmen, "seated" within the boundaries of a *Gau,* or other well-defined geographical area, who, in virtue of their being freemen, have the right of owning land, and who, in virtue of their right of owning land, have certain public duties to perform. Freedom, landed property, public duty, these are the correlatives which make up political society in the embryo state of the Teutonic polity.

Freedom implies political equality. All the members of the *Gemeinde* are peers, and have equal rights, but as far as the eye can penetrate into the gloom of the earliest traditions, blood is privileged, and certain families practically possess the monopoly of furnishing candidates for higher public office.

Landed property means, originally, equal proprietorship in land and husbandry in common, necessitating a highly complicated system of land laws, for an account of which we refer our readers to the essay above adverted to.

Public duties mean personal military service; the furnishing, by each freeman, of his own equipment, and the maintenance of himself in the field; personal cooperation in keeping the peace of the mark; a personal share in the administration of civil and criminal justice.

The *Landesgemeinde** (the *civitas* of Tacitus) is the *political* unit, the *State,* of the Teutonic Cosmos; and as such stands opposed, on the one side to the *tribal* unit,

* In the language of German public law the word *land,* when used as a compound, always has the signification of sovereignty attached to it, *e.g.*, *Landeshoheit,* sovereignty; *Landesherr,* sovereign; *Landesfrieden,* peace, or, as we should say, the king's peace.

and on the other side to the unit of the *Hundred* (the *pagus* of Tacitus).

The tribal unit represents unity of origin and blood, symbolised by common religious rites, periodically celebrated at the shrines of the tribal deities. The tribal assembly is attended by delegates, or ambassadors, from the *Landesgemeinden*, or *civitates*, who meet for religious purposes only. If politics are discussed they are politics of an international kind, such as would occupy the attention of a congress of modern plenipotentiaries, and have reference to the maintenance of peace between the *civitates*, not the maintenance of the public peace within a *civitas*.

The unit of the Hundred is the judicial unit. The assembly of the Hundred at the *Mallstett** is the Teutonic Court for the administration of civil and criminal justice, for purposes of police, and for all those acts of voluntary jurisdiction, such as contracts, the publication of wills and testaments, &c., which require publicity and solemnity as a condition of their validity.

The Dorf, or township, is not a public but merely an œconomic unit, and as such has no public Court, and no public officer at its head.†

The assembly of the *Landesgemeinde* (the *concilium* of Tacitus) is a sovereign assembly, and as such exercises *all* the prerogatives of sovereignty. It decides on the policy of the *civitas*, such as questions of peace and war, and it legislates. In its sovereign capacity it exercises a concurrent jurisdiction with the ordinary Courts—*i.e.*, with the Courts of the Hundred. It nominates Presidents of the Hundreds (the *principes* of Tacitus; the *ealdormen* of early English history), who, as such, are, in the first place, judicial officers—

* The *Mallstett* is the place of *talk*; the *talksteads*; parliament.

† In this account of the different functional attributes peculiar to the three assemblies of the old Teutonic community, we have followed Professor Rudolf Sohm (*Die Altdeutsche Reichs und Gerichts Verfassung*, vol. i., p. 8). His discovery, for it may well be so called, that these assemblies, instead of being mere reproductions of each other on a larger or smaller scale, had each its distinct organic function in the Teutonic body politic, and especially that the assembly of the Hundred was exclusively a judicial unit, and the Hundred, therefore, *par excellence*, the Teutonic *Court*, has thrown a new and invaluable light on the rudimentary history of the Teutonic constitution.

judges presiding over Courts which are at once civil and criminal, and also police-courts; and, in the next place, generally the executive officers over the Hundred. Lastly, in case of war it elects the Herzog, Heretoga, who leads forth the "nation in arms" to battle.

To appreciate at their full value what these public civil duties of the Teutonic freemen imply, to understand the kind of political education which they must have imparted to the individual marksman, and the nature of the inherited and transmitted habits which they must have generated, we ought to examine more in detail than our space will allow all that the business of one of these Hundred Courts involved.

It must suffice to say that the presiding judge—the *princeps* or the ealdorman—was only a president, a Speaker, as it were, of the assembled commons, and not a judge in our sense—*i.e.*, not a legal expert. His presence was necessary to the constitution of the Court; he directed its proceedings and saw to the execution of its decrees; but the Court itself—*i.e.*, all the freemen of the Hundred, compulsorily attending, and subject to fines and penalties for non-attendance—furnished the judges, the juries, and the advocates, as well as the accuser and the accused. The *finding* of the sentence* (*Recht finden, ein Urtheil finden, geben, weisen*), involving as it were a *search* for justice amidst the intricacies of law and fact, is confided to a select body, chosen from amongst the freemen, who have special knowledge and acquaintance with the law; not a class of legal experts or lawyers, but instructed laymen, like the working justices of the peace at English quarter sessions.

These men appear under the most varied names in the barbarous codes, and finally develop into the *Schöffen* or *Scabini* of a later period—*i.e.*, juries—who have to decide both on issues of law and issues of fact.

The sentence, once found, is assented to or dissented

* The memory of this primæval procedure of the Teutonic Court has remained embalmed in the English expressions: the *finding* of the Court; *found* guilty; &c.

from by the court—*i.e.*, by the assembled freemen—and in the latter case a fresh search has to be made. When ratified by the assembly the sentence is binding, and the president has to see to its execution.*

When we consider the extraordinarily complicated character of Teutonic laws, the intricacies connected with the rights of feud, the systems of the Wergyld, compurgations, ordeals, and, in connection with what we should term the police of the community, the system of the frankpledge, or "mutual guarantee," we shall realise that the *Mallstett* of the Hundred was, so to speak, the civil and political gymnasium in which our race received its rudimentary public education, and that it was this early education which determined the future history of the Teutonic nations, whether or not they came into direct contact with Latin civilisation. Nay, we do not even hesitate to say, that exactly in proportion as the later Teutonic community did or did not keep alive in its institutions the distinctive spirit and *raison d'être* of the primitive Hundred Court—*i.e.*, the *public* character of the *local* body—it succeeded or failed in attaining the high destiny to which it was born—that of a commonwealth of law-loving, because law-administering, and, as such, law-making freemen.

That which we are at present concerned to note is that in this earliest stage of Teutonic society we find self-government in its most absolute and most uncompromising form. The Greek ideal of a perfectly free state, of every citizen of which it can be said that he governs and is governed—ἄρχειν καὶ ἄρχεσθαι—is realised. Society and the State are exactly conterminous with each other—neither overlaps the other. Social rights are exactly balanced by public duties, public duties by social rights. The franchise of the old Teutonic community is the amount of public work done on behalf of the community. In a political society of this kind it is clear that there is no room for even a rudiment of representative government, Society itself does the work of the State and does not delegate it to others.

* See *Eichhorn's Deutsche Staat's und Rechts Geschichte*, vol. i., §§ 74 and 88.

There is an old German proverb—

"Wer nicht mit rath
Der nicht mit that"—

"A man is not to be called upon to execute that, in the framing and projecting of which his voice has not been heard"—which expresses in a few words the ruling principle of the Teutonic community, viz., that law-makers and law-enforcers should be one and the same, and that the whole community should consist of men acting in this double capacity.

It is the proverb reversed, however, as we sometimes meet with it, which more truly represents the political principle of our primitive life, and forms the basis on which all genuine Teutonic institutions have been built up:—

"Wer nicht mit that
Der nicht mit rath"—

"Only the *doers* shall have the right to be the *councillors*." Only the *doers* of the public work have the right to determine how the work shall be done. The apprenticeship of the public service gives the knowledge of the public service, and the knowledge of the public service gives the right to make the laws which are to rule the public service; therefore, if society means to make its own laws it must itself do the public work, and not delegate it to an official class. It was by master masons, who, as apprentices, had hewn stones and mixed mortar, and not by so-called architects, that the great cathedrals of the Middle Age were conceived and built. This was not the way in which the Pyramids of Egypt raised their heads above the valley of the Nile.

In reviewing these early features of Teutonic society we must not, however, forget that at no time is this society to be conceived of as consisting solely of freemen. The freemen have two social strata below them: (1), the unfree, or half-free (*liti, leodes, leute*)—*i.e.*, a class not enjoying the positive rights or exercising the positive duties of freemen, and bound by certain services to a lord, but enjoying *personal* rights, and under the protection

of the laws; and (2) the slaves, whose personal rights stand at a minimum, and who are not much more than the chattels of their masters. The infinite varieties of unfreedom afford one of the most difficult and intricate portions of early Teutonic history and jurisprudence, and the phases through which this unfreedom passes, either deepening down towards slavery, or rising upwards towards perfect liberty, are of the greatest importance in testing the downward or upward movement of Teutonic political society; but the point with which we are at present concerned is only to note that every such unfreeman, though not an active member of the *Landesgemeinde*, and standing outside the jurisdiction of the Hundred Court, stands yet within a jurisdiction of his own, and, like the freeman on the *Mallstett*, is an active and passive member of a Court in which he has "to stand to right" (*zŭ Recht stehen*), as the expression runs. This leads us to the important question of the *Dinghof*, or Manor to which a Court and jurisdiction are attached—the *Saca and Soca* of early, the Court Baron and Customary Court of later, English history—the *Patrimonial Gerichte* of latest German history.

It is probable that, in the very earliest times, every freeman's *Hof*, or Court, had rights of this kind attached to it, because it was of the essence of the free condition to exercise a jurisdiction over all the members of a household who were not free. But inequality of property on the one hand, and more complex and circumstantial processes of law on the other, soon made themselves felt, and the manorial jurisdiction and the manorial Court became in time attached to a limited number of manors or *Höfe*—greatly differing amongst each other, however, in relative importance.

A point to note, in connection with these manor Courts, is that, a jurisdiction of this kind once firmly established, there is a natural tendency for it to grow by the absorption of surrounding elements, and to extend itself by legitimate and illegitimate means. Thus, in the English Saca and Soca, during the so-called Anglo-Saxon period, we find that where the homesteads of individual

freemen were interspersed within the limits of a Saca and Soca, these freemen had to "stand to right" in the Court Baron, and not in the Hundred Court.*

We have now to deal with a later, though still a very early stage of Teutonic society—the period, namely, when the kingly office begins to assume more distinct and definite form.

The King appears on the Teutonic horizon long before the kingly office, properly speaking, does; or, if we may thus express ourselves, the King is present in Teutonic society long before the Crown appears in Teutonic politics. As he specially represents the blood or genealogy of the race, he probably had special functions connected with the periodical meetings of the tribe; but as long as the sovereign *Landesgemeinde* remained settled on German soil its constitution did not admit of a kingly office, and only allowed of a King *honoris causâ*.

When the office has once assumed its definite form the important point to note about it is that it is generically different from that of *Herzog* or *Ealdorman*, and that it represents a new and higher conception of the State and of society. The correlative of Herzog is a tribe out on a foray, or on the march in search of new homes, to be won by their good swords; that of King is the *rice, Reich*, realm. In a word, the King in Teutonic society is the *concrete* which corresponds to the *abstract* State of modern society. To the ancient Teuton he represents that larger *ego*, the setting up of which in an outward and visible and at the same time ideal form (as the embodiment of *all* the functions which the individual is conscious of his inability to fulfil single-handed) is the first and *sine quâ non* condition of every higher type of society. No matter in what form the embodiment takes place, whether in that of the personal representative of the blood of the nation (*Cyning*, King, *Kin*), regarded as a link which maintains the connection of the race with its Divine ancestry, or in that of the πολις, to which the ideal devotion of the citizens is due, as in the Greek world, or in the *patria* of the old Roman world, or in

* See *Gneist, Englische Communal Verfassung*, vol. i., p. 71.

the modern abstract *State*, the idea, or rather the natural law (the φυσει πολιτικος of Aristotle), is the same. It is the throwing out by society of a potentialised *ego* capable of uniting into a force, one and indivisible, the sum-total of the forces dispersed in the separate individual *egos;* it is the centripetal force which society requires to make head against the centrifugal instincts of the individual human units of which it is composed.

We may therefore assume as a universal rule* that the concentration of political power in the hands of the King—in a word, the Supremacy of the Crown—is a necessary phase which the Teutonic community has to traverse in its progress from the primitive, unorganic, self-governed *Landesgemeinde* to the highly complex organisms of the modern State. The important question always arises whether, having done so, it can then revert, *mutatis mutandis*, to the self-government of the *Landesgemeinde*. For several centuries England, and England alone, in the Teutonic Cosmos, successfully solved the problem. Shall we be able to continue to do so? If the Cobden Club can solve this question it will do good service to society.

With the King and the kingly office there appears a new social and political element distinct from the two classes above described, of the free and unfree, but combining to a certain extent the qualities of both—viz., the *Comitatus* or personal following of the King—the *Thanes* of English history, the *Ministerialen* of the Continent. At first this personal service undoubtedly affected the perfect freedom of those by whom it was rendered, excluding them from the assembly of the freemen, and from the jurisdiction of the Hundred Court, and placing them within the jurisdiction of the King's Court, as the unfree were within the jurisdiction of the Manorial Court. But as the service was in the highest degree honourable, the taint of unfreedom,

* The Swiss Cantons and the Republican Municipalities of Germany might at first sight appear as exceptions invalidating the rule. This is, however, not the case. They were both thrown out from a body which, in the Carolingian monarchy, had gone through the distinct phases of the Teutonic kingship.

though for awhile remaining as a political disability, was compensated by the notion of higher dignity. The important points to note are that the *Comitatus* look to the King in his private capacity and not to the State for their rewards: that the military service they render is not public service to the Head of the State, but private service to a very important individual connected with, but not yet identified with, the State: that in the assembly of the freemen the King is only *primus inter pares:* that he cannot exact the simplest service from one of these peers except with the consent of the rest: that over his *Comitatus,* on the other hand, he rules supreme: that they help him to fight out his private feuds, which are more and more losing their character of private feuds and becoming public wars: that they are rewarded out of the privy purse, and what is much more important where land is practically the only kind of wealth: that they receive grants as *beneficia, i.e.,* not as the *alods** of freemen, but as revocable *loan* estates, out of the lands which the King has to dispose of as public land, or which he obtains as his private share of the plunder of conquered nations or tribes: lastly, that the King, being able to select whom he pleases for his servants, all distinctions of class and rank, as determined by the conditions of the free community, are merged in the new honours of the *Comitatus,* so that later on in the Merovingian and Carolingian kingdom we find not only the higher kinds of unfreemen, but actually slaves, rising to the highest offices of the Court and State, side by side with the oldest blood in the realm.

We have thus concluded our analysis of the primitive elements out of which Teutonic society is composed.

Of these elements those acting centripetally, *i.e.,* in the direction of coherence and the keeping the body politic together, are, at an earlier date, the sovereign political *Gemeinde;* later on, the kingly office. The task clearly assigned to the community is to combine these two forces into harmonious and coherent action. The centrifugal disintegrating forces are—

* See note to p. 285 in the Cobden Club, "Systems of Land Tenure."

1st.—The *Comitatus* with its system of benefices in return for services which gradually exchange their private for a public character. In the old Teutonic society public duties conferred private rights. In feudal society, when the benefices have become hereditary, private rights give a claim to, and end by monopolising, public office.

2nd.—The jurisdiction of the *Dinghof* or Manorial Court.* In the earliest period it is the *public* Hundred Court, administering justice to the freemen on the *Mallstett*, that occupies the centre of the picture. This public Court recedes more and more into the background, and the canvas (especially after the church, with its immunities, appears upon the scene) becomes more and more filled with jurisdictions of every kind, having their roots in private and corporate rights, in their nature antagonistic to public rights.

The *Comitatus* is the disintegrator of the military, the Manorial Court that of the civil, unity of the Teutonic community.

Had some great convulsion of nature, in the second century of our era, submerged the continent of Europe to the west of the Rhine and to the north of the Alps, it is conceivable that Germany might, at the present day, be composed of an agglomeration of *Landesgemeinden*, similar to those of Appenzell and Uri, of which

* We commend as an agreeable puzzle to comparative philologists the task of determining the relations in which the following words stand to each other: *Ding, thing, saka, sache, chose, causa;* and to antiquarian legists that of ascertaining how the notion of *thing* or *chose* became permanently attached to the notion of a law Court. At the risk of putting our foot into a wasp's nest, we will throw out the following suggestion. The further we penetrate into the border land between historic and pre-historic times, the more the political business and the judicial business of the earliest Aryan assemblies melt into one common mass as *public* business, into *one* Court as *the* Court in which all business is transacted. Could not then the *Dinghof*, or *Thing-court*, or some analogous term, have originally designated *the* Court *par excellence* in which the public business, the *public thing, res publica* was transacted? The public business would very naturally get to be looked upon as "the business," the public things as "the thing," and the public Court as "the Thing-court." The analogy of *res publica* is, at all events, a curious one; and that *public* business generally, and not *judicial* business specifically, was the early idea connected with *Ding* and *thing* seems clear from the fact that the Scandinavian Parliamentary bodies have to this day retained the name (*e.g.*, in Denmark, the Upper and Lower Houses are respectively the *Landthing* and the *Folksthing*).

Mr. Freeman has furnished us with so graphic a picture, in the first chapter of his "Growth of the English Constitution;" for it was in the work of conquest and foreign occupation that the Teutonic kingship assumed its distinctive characteristics. The English kingship of our Alfreds, Edwards, and Canutes, and the Frankish kingship of the Merovingians and Carolingians, are the types that must be studied to understand the Teutonic community in the earliest of its transition stages towards the modern state.

Our space will not allow us to do more than glance rapidly at the shadows of the outlines of these institutions. During this period the elements of the old society and those of the new society are still balancing each other. On the one hand, the self-governing community of freemen is still doing the work of the State as *milites* in the field and as hundred-men in the Hundred Court; on the other hand, an official aristocracy, deriving its titles not from blood, but from its position in the king's *Comitatus*,* is daily increasing in power, and undertaking a larger and larger share of the public service, in return for the larger rewards which that service now confers. Underlying the great social and political change which is being rapidly effected, is an economic law of supply and demand, which must never be lost sight of.

Capital, in the modern sense of the word, does not yet exist, but the forces out of which it is to be ultimately evoked are there—land and labour; and the feudal system, or *lehn* system, as the Germans call it—the system of *loans*—is directly concerned with the practical forms under which this supply and demand are made to balance each other.

Labour, in the shape of personal services of all kinds, is being offered in exchange for land; land, and especially the *loan* of land, is being offered in exchange for every

* Though the Merovingian and Carolingian aristocracy is distinctly an aristocracy of office and not of blood, it must not be forgotten that noble blood and long pedigrees played a very important part in Teutonic society from the very earliest date. The combination of old nobility and large private estate (*alod*) with high office and large *beneficia*, or official property, gave therefore a marked pre-eminence to a certain number of families, which has been maintained to the present day.

kind of labour. There are two great classes of labourers, and two great classes of land-proprietors. There are the labourers in the public service—the soldiers, the churchmen, and the administrators—and there are the tillers of the soil. As long as these were one and the same, the State and Society were one; but as the public business and the business of husbandry become more complicated and more intense, a division of labour is necessary. The great problem submitted to the solution of European mankind in the middle period of the Middle Age, and solved in England only, was how to effect this division without the sacrifice of the unity between Society and the State.

The land is of two kinds, private land and public land (in England the *bocland* and the *folcland*), and is owned by two classes of proprietors, the allodial freemen and the State, *i.e.*, in England by the King and his Witan; on the Teutonic mainland, by the King. The king sells *folcland*, or rather the loan of *folcland*, to his *Comitatus*, in exchange for military and ecclesiastical, court, and administrative labour, *i.e.*, in exchange for public service; the freemen, by *commending* themselves, sell theirs to the same class, in exchange for immunity from the public service.

The kingly office assumes its definite shape when the King, *honoris causâ*, becomes identified with the Herzog; the ideal representative of the blood of the race with the real bearer of the political power of the race.

When the Franks make their first settlements in Gaul, the sovereign body is a tribal army—*exercitus Francorum in hoste*—presided by its Herzog, now King. They bring with them their laws and their institutions. The former, under the name of the Salic laws, are collected and published at a very early period; and the primeval law of the German forests comes down to us in the shape of a Latin code. Of the latter, the tribal assembly, corresponding structurally to the old *Landesgemeinde*,* after a while dies a natural death,

* When the migrations began, the *Landesgemeinden* composing a tribe coalesced into tribal units under a common king, and the tribal unit then became the political unit, and absorbed all the functions before exercised by the *Landesgemeinden*.

whilst the assembly of the Hundred, the Teutonic Court, retains a vigorous existence.

When the settlement in Gaul is completed, the popular wars, properly speaking, come to an end. After that period the wars are not tribal wars, but wars waged by the King for the purposes of territorial conquest. The *rice, Reich,* realm of the Merovingians and Carolingians is consequently a territorial, not a tribal kingdom. The subjects (*unterthanen*) of the realm, *i.e.*, the individuals who compose the political body answering to the realm, are the free Franks and other Teutons who are seated or domiciled in this territorial kingdom. Freedom is a personal status, an "estate," a *Stand,* conferring private rights and involving public duties. The rights are personal rights—immunity from the burdens placed on the unfree, the power of owning land, the right of the freeman to dispose of himself as seems good in his own eyes, and the right to be judged by his own personal (*i.e.*, tribal) laws. The *status* of freedom can be acquired and lost; but, in both cases, only by a formal process of law. It is a condition of the blood, and is inherited as long as both parents belong to the free condition. It is in every respect a caste, except, as stated above, that it is acquirable by a process of law. The public duties are military service in the *Hereban* and civil service in the Assembly of the Hundred, *i.e.*, in the public Court. The *civil* rights of the freeman, it will be thus seen, remain such as they were in the primitive Landesgemeinde. It is his *political* rights that have shrunk into a rudimentary form.

The Märzfeldt, in which for a while the sovereign tribe exercised, in a shadowy manner, rights identical in kind with those of the *Landesgemeinde,* is now a mere military parade, where the Franks are collected to display the splendour of their arms, "*jussit . . . . advenire phalangam ostensuram in campo Martio suorum armorum nitorem.*" The assembly of the freemen has been supplanted by the Council of the King's *men*—the great officers of the court, of the army, and of the administration, the bishops and abbots. Laws, under the

name of *Capitularies*, are now made by the king in council, and the only vestige left of the old political constitution is the form which requires that, before becoming law, these capitularies shall be proclaimed in the Hundred Courts, and there acclaimed by the assembled freemen.

Under the Merovingians the official hierarchy, grown out of the *Comitatus*, constituted itself into a powerful landed aristocracy, into the hands of whose representative, the *major domus*—the royal power passes. The king by blood, the representative of the ideal connection of the race with its Divine ancestry, is summarily disposed of, and his place is taken by kings, whose title to rule is that they know how to do it. The idea of the *State* in all its modern intensity is thus, as it were, prematurely revealed, and a gigantic effort is made to realise it—an effort only partially and momentarily successful, but which influences the whole future destiny of the race.

The realm of the Merovingians, though called a kingdom, presents features which in some respects give to it rather the character of an empire, for it is only in part governed directly by the officers, the *Ministeriales* of the king. In the other part it is ruled, in the name of the king, by tribal dukes, who are really *subreguli*. It is only Charlemagne who succeeds in getting rid of these hereditary *subreguli* and in extending the direct government of the Crown over the whole of his kingdom. From an early period, the territory actually occupied by the Franks had been mapped out into administrative districts. Under Charlemagne, the whole monarchy is thus divided, and governed directly by royal prefects.

The unit of Government is the *Gau*, or Shire—the county, *comitatus*. In the shire the king is represented by two officials, the *Graf* (*Comes*), and the *Domesticus*, afterwards called *actor*, steward, bailiff, reeve. The functions of the former are public. In his hands are concentrated the whole of the political business of the shire. In the name of the king, he musters the freemen, according to their several shields in the *Hereban*. He presides

as judge, *i.e.*, as president (in the sense above given) over the Hundred Court, and, with the co-operation of the officers of this court, he keeps the peace within the shire. Lastly, he collects the public revenue, the fines, amercements, dues, tolls, &c.

Thus, within the administrative competence of the *Graf*, or *comes*, are collected the four unities which make up the unity of the state—military unity, police unity, unity in the administration of justice, financial unity. All these functions the *Graf* exercises as the mandataire of the King, from whom directly he receives his commission. He is not a viceroy or *subregulus*, but strictly the King's servant, his *famulus*, *ministerialis*, *agens*, *Dientsman*, *Gesinde*.* He is removable at pleasure, and is, in fact, the counterpart of a French Préfet of the present day. In the earlier Merovingian period he is

* Had Professor Max Müller decided absolutely in favour of *graw*, *grau*, *grey*, *greybeards*, *elders*, as the etymology of *graf*, *gravio*, *geréfa*, we would, of course, submit absolutely to his decision; but as he still leaves a door open to conjecture (*see* Bottger's German Translation, Series II., p. 555), we venture, not, of course, on philological but on historical grounds, to suggest a doubt upon the subject.

The words *graf* and *geréfa* in Frankish and English history invariably convey the meaning of *subordination*: every office held by a *graf* or *geréfa* or *reeve* (*Gaugraf*, *Centgraf*, *Holzgraf*, *Scir geréfa*, *Boroughreeve*, *Portreeve*, &c. &c.) implies that the occupant is the subordinate officer, the mandataire, the *locum tenens* of another. The identification of *graf* with *comes* as a title of nobility belongs to an altogether later period. Amongst the Franks, the *graf* is not comes, quâ he is *graf*, but quâ he is the first *ministerial* in the *comitatus*. In England the Scir geréfa is *not* the *comes* at all, but the *vice comes*. It is the Ealdorman who is the *comes*. The scir geréfa, as will be shown later, is *par excellence* the *domesticus* of the King in the shire, the reeve charged with the administration of the King's private property. Not all *grafs* are *comites*, but only a particular kind of graf; but all grafs are *ministerials*.

On the other hand, all titles derived from age imply the exact contrary of subordination, viz.: authority over subordinates—presbyters, gerousia, senators, Elders, Ealdormen, &c., &c. We cannot, therefore, but think that it would be inconsistent with Professor Max Müller's own teaching to suppose that a word starting on its travels in pre-historic times with a distinct and strongly marked meaning should, when met with in historic times, not only have lost all trace of this original meaning, but have acquired in all its ramifications, and as its essence, *the exactly contrary meaning*. All the instances adduced by Professor Max Müller in the lecture in which he treats the subject, are cases of a steady and uniform *rise* in rank. The case of *graf*, if derived from *grau*, would be that of a word descending from the top round of the hierarchic ladder, down to the lowest round, in order to reascend and finally settle down half-way. We do not know what the philological objections are to Kemble's etymology from *refan*, *rofan*, *rufen*, *bannire*; but, historically, there can be no doubt that there is a close affiliation between the original office of *graf* and that of *bannitor*.

not even necessarily a freeman, the King appointing indiscriminately to the office such of his servants as he thinks best fitted for the purpose, and there are several instances of celebrated counts who, at the time of their appointment, were still *pueri regis*. As early as A.D. 614, however, the vassals are strong enough to insist on none but large resident proprietors, whose property lay in the shire, being appointed to the office, on the plea that there should be within the county some tangible pledge of the count's good behaviour, and that *si aliquid mali perpetraverit, de suis propriis rebus debeat restituere.* This is an important point to note, as it marks the first step in the localising of the office and its identification with certain county families, which afterwards becomes one of the principal elements in the disintegration of the kingdom. It is a proof of the power wielded by Charlemagne that he is able for a while to return to the old practice and to appoint his "*pueri*" to the office of *comes*.

The *domesticus* is not a public officer, but the agent and manager of the royal domains. He is the King's reeve or bailiff over the royal estates situated in the shire. After a while both offices are united in the person of the count, but they remain distinct notwithstanding.

The *Gaus* or shires are not arbitrary divisions, but old geographical units. In the eastern half of the Frankish monarchy, *i.e.*, in the Germany of the present day, they are the old areas of the *Landesgemeinden*.

The Shire is divided into Hundreds, in Germany the old Hundreds of the *Landesgemeinde*, with their immemorial *Mallstetts*, remaining intact. For each hundred there is a *centenar*, or *hundredor*, also termed *vicarius*, or *tribunus*, who is the subaltern officer of the *Graf* (but not his lieutenant, or *locum tenens*, the *vicecomes* being a totally different individual), and named by him.

There is no assembly of the freemen of the Shire in their totality; nothing, therefore, corresponding to the *shiregemot* of old English history; nothing, except the

local area, corresponding to the *Landesgemeinde* of old Teutonic history. And the reason is manifest. The political competency of the *Landesgemeinde* has been absorbed by the Crown. The *Graf*, therefore, as representative of the Crown, fills up the space formerly occupied by the *Landesgemeinde;* but the assembly of the Hundred, the judicial unit, the Teutonic Court, remains intact.* It continues to assemble at its old *Mallstett*, for this is an essential condition of the due constitution of the Court; and it is of necessity presided over by the *Graf*. This necessary presidency of the popular Court, the Volksgericht, by the king's lieutenant, is a Merovingian innovation, and marks the moment at which the only living and vigorous remnant of the old Teutonic organisation was brought into living and vigorous connection with the Crown. Previously, according to Salic law, the president of the Hundred Court, under the name of *thunginus*, had been elected by the people, and his office and that of the *Graf* could not be united. From the day the *thunginus* is supplanted by the *Graf*, the organic union between the local government and the imperial government is effected.

Neither the procedure of the Court, nor the laws administered by the Court, are affected by the change. The procedure is roughly such as we described it above. The *Graf* presides; the *Centenar* sits on the bench, but can never preside *ex officio*, even in the absence of the *Graf*, because he is not the king's officer, but only the Count's officer. He is the *Schultheiss*, the executive officer, who has to see to the carrying out of the sentence, who *apportions* to the guilty man his punishment, *Schuld heissen*. In this respect he is to the *Graf* what the sheriff of the present day is to a judge on circuit. If the *Graf* cannot preside, his *locum tenens*, the vicecomes, presides.

A body of sentence-finders (*Urtheil finder*), the *Rachinburgen* (= *rathiburgen, rathgebers*, councillors), elected by the freemen, act as a jury upon issues of law and

* Compare Dr. Rudolf Sohm, *Altdeutsche Reichs und Gerichts Verfassung* p. 146 *et seq.*

issues of fact. The Court—*i.e.*, the freemen of the Hundred *in corpore*—pass the sentence when found.

The law continues to be the old tribal law of the German forests. This local, customary, tribal law, however, is being gradually shaped into a Common Law—*i.e.*, into a law common to the whole kingdom—(1) by the decisions of the *Comites missi*, to whose Courts there is an appeal from the Hundred Courts; and (2) by those of the Palatine Court (*i.e.*, the King's Court, presided by the *Pfalzgraf*, or *Comes Palatii*), to which cases are referred by the *Comites missi*. Side by side with this tribal law, which is being thus gradually shaped into Common Law, there is a new law growing up—viz., the Statute law of the *Capitularies*, and the *jus honorarium*, or administrative law of the Carolingian bureaucracy.

The public Court of the Hundred, *mallus publicus legitimus*, the *Echt Ding*, must be held twice a year; but besides the *Echt Ding*, which all the freemen must attend in the summer and autumn, there is the so-called *Gebotenes Ding*, the court convoked at the *Graf's* will and pleasure, to try particular cases. It is also attended by all the freemen, and in the one case, as in the other, non-attendance is punished by fines and amercements. As perpetual attendance on these public duties was, however, beginning rapidly to ruin the smaller freeholders, and it was found that the *Grafs* used their right to summon these extraordinary Courts in excess, with a view, by repeated fines and amercements, to ruin the small freeholders, and thus to get their alods into their own hands, Charlemagne introduced a radical law reform, by which the *Echte Dinge*, or ordinary sessions of the Hundred Court, were raised to three in the year; but the great body of the freemen were released from attendance at the *Gebotene Dinge*, at which, from thenceforth, justice was to be administered under the presidency, *ex officio*, of the *Centenar*, by the seven *Rachinburgen*, now re-christened under the name of Schöffen, or *Scabini*, *échevins*. These Scabini, or permanent jurymen, are to be chosen *de melioribus*—*i.e.*, from

the more well-to-do freemen—so that the smaller free-holders should not be borne down by the weight of the public service.

The *Gebotene Ding* has not the same jurisdiction as the *Echt Ding*, having only competence to try smaller kinds of offences, and to decide on lesser kinds of civil suits.

The Shires themselves form parts of a larger organisation, the districts of the *missi regis*, or *comites missi*, or *Sendgrafen*. But these districts are not administrative districts: the shire still remains the administrative unit. The *Sendgrafen* are Commissioners of the Crown, who hold regular circuits through the shires of their district, and keep the administrative machine in repair and working order on the spot. Being hierarchically the superiors of the *Graf*, though, *ejusdem generis*, they can *ex officio* sit as judges in the Hundred Court, and see how business is carried on. They hear complaints, and, holding larger powers than the Counts of the shire, they can on the spot redress grievances.

Besides these assizes, held by them in the shires themselves, they hold regular Sessions at the central place of their district, which the *Grafs*, the *Centenars*, the *Schöffen*, and all other public officers of the local administration of the district, as well as all the important proprietors of the shires, lay and clerical (all of them necessarily in some way connected with the public business), have to attend. At these Sessions complaints are lodged, appeals from the Hundred Courts are heard, and, if necessary, cases sent up to the Palatine Court for ultimate decision; administrative improvements are also discussed and adopted, or prepared for submission to the Great Council at its spring meeting.

Lastly, the shires are, in some parts of the kingdom, mainly on the frontiers, grouped for military purposes into *ducal* districts. These dukes, *duces limitis*, are, however, not to be confounded with the tribal dukes. They are merely generals of division, commanding the *Herebann* in the Shires comprised in the district.

The following points, in connection with the above account of the Carolingian Constitution, must be clearly apprehended and fast laid hold of:—

1. The political sovereignty of the free Teutonic community has been absorbed by the Crown. The *plenitudo potestatis* of the *Landesgemeinde* is exercised by the king through the instrumentality of his *Comitatus*.

2. The *Comitatus* develops into an *official* hierarchy of large landowners—*i.e.*, men who at first held revocable grants of crown land, but who are rapidly becoming hereditary *tenentes in capite*.

3. The King in Council makes the laws. The laws thus made have a concurrent jurisdiction with the tribal laws, the *Volksrechte*, and overrule them when necessary.

4. The members who compose the Great Council are men whose lives are spent in the public service. They are an aristocracy of office, not of birth. They make the laws which they themselves will be called upon to execute. Twice a year the Council meets: in the autumn to discuss the outlines of the next year's programme; in the spring to settle the political and military details of that programme. The Council held in spring is attended, *ex officio*, from all parts of the kingdom, first, by the great military and administrative officers, the *majores*, *seniores*, *optimates*, the *comites missi*, and the *duces*, the *grafen* of the shire, the bishops and the abbots —in a word, the *generalitas universorum majorum*, who alone have a seat and a voice; secondly, by the lesser officers, the *juniores*, who come, not to give advice, but to receive instructions—*non propter concilium ordinandum, sed propter concilium suscipiendum*—but who, nevertheless, on any question which more specially concerns their particular duties, have the right to treat and discuss the matter, and to see how far, without the *potestas* of a vote or seat, the sharpness of their wits and the soundness of their opinions will carry the day, *interdum propter pariter tractandum et non ex potestate, sed ex proprio mentis intellectu vel sententiâ confirmandum*.

5. Within the Great Council there is a lesser council, or privy council—the *Consiliarii*, properly speaking—

who enjoy the king's particular confidence, and prepare the measures to be submitted to the Great Council—a body something between a *perpetual* council and a cabinet council.

6. The public life of the community, of the Commons of the realm, is fully taken up by constant participation in the business of the Courts, and the judicial and police duties which this imposes upon them.

Thus, although there is no direct participation on the part of the Commons in the political life of the kingdom, nothing answering to Parliamentary institutions, the entire community, from the king down to the poorest freeman, is held and welded together by the common living interest of the public service. The State and Society are one, and though the burdens and the rewards are now more unequally distributed than before, still private rights and social honours are everywhere balanced by public duties—public duties find their equivalents in private rights, and their rewards in public honours. There is a never-ceasing circulation of the public blood —upwards from the ever-busy Hundred Court, through the Graf, the Sendgraf, the Sendgraf's Sessions, to the Great Council and the King, downwards from the King through the official hierarchy to the Hundred Court. The Graf of the shire, who is at once the King's representative and the judge of the popular Court, is the link which gives to the realm of the Franks that organic unity which is the *conditio sine quâ non* of the State. The sovereign attributes of Government have been absorbed out of the *Landesgemeinde* into the Crown, but they have been radiated back from the Crown and reabsorbed by the elements of which society is composed. The Frankish monarchy is a self-governed community in the old English sense of the term.

There are, it is true, no Parliamentary institutions, but it is interesting to note what a very slight addition to the existing constitution would have sufficed to call into life a rudimentary Parliament, not indeed of the modern French, Belgian, German, or Italian type, but almost identical with the English Parliament as it first

came into existence. Two knights from each shire, *legales et discreti milites*, elected by the Hundred Courts at their ordinary sessions, from among the *Centenars*, or even the *Scabini*, and summoned by writ to attend the great spring Council (there *ex proprio mentis intellectu vel sententiâ*, to take part in the deliberations regarding such matters as appertained unto the king's service in their several counties), would have invested the *magnum concilium* of Charlemagne with the essential characteristics of a Parliament under Henry III., and have thus called into existence a Parliament in the English and not the Continental sense of the term—*i.e.*, a national committee of the public working men of the nation.

But it was not to be. The Frankish monarchy falls to pieces by its own weight, *mole ruit suâ*, is sundered by the centrifugal forces everywhere at work within its heterogeneous body; but the great political conceptions which it embodied remained, and as the robber-barons of Rome built their castles out of the fragments of the Coliseum, so out of the single stones of the mighty fabric the Middle Age everywhere endeavoured to shape for itself political habitations. The single stones, however, taken out of their architectural connection only produced misshapen and monstrous buildings. In England alone, the importation of Frankish types by kings who, though not French in blood, were French in political education, and the adaptation of these types to a Teutonic society, whose Teutonic sap was still vigorously driving upwards, resulted in the harmonious fabric of the English constitution, and in a form of government as yet new to the annals of the human race—a self-governed realm, *i.e.*, a society of imperial proportions, governed by imperial laws which the society itself administers, and by administering learns how to make.

The Frankish kingdom was made up of heterogeneous parts, was torn to pieces by centrifugal forces; but amidst the chaos which supervenes after the great master-mason of the Carolingian race has been laid to rest in his Aachen

grave, two groups detach themselves from the picture, radically differing from each other in the political tissue of which they are composed, and in the historical antecedents to which they owe their tissue—the Eastern half and the Western half; the one made up of composite Teutonic and Romanised-Celtic elements, with barbarous codes and Teutonic customs, Roman laws and Latin customs, in a state of constant action and reaction on each other, with a violent break and interruption in the political life both of conquerors and conquered; the other, consisting of pure Teutonic elements, who have not been called upon by a great and sudden effort to adapt themselves to, and fuse themselves with a foreign nationality, in whose life therefore there has been no violent break or interruption, and upon whom the great social, religious, and political changes of the early centuries of our era came, as it were, "par ricochet," and as the rebound of the "Gesta Francorum" and other Teutonic tribes west of the Rhine.

This radical difference in the constituent parts of the Frankish realm finds, after a while, its natural expression in the breaking away of the Western from the Eastern half, and in the creation of the French and the German kingdoms.

In the former the feudal system marches onward with giant strides, the kingship at first following the impulse, then mastering it, and finally establishing itself firmly on its own legs in the shape of the absolute modern monarchy of the seventeenth and eighteenth centuries.

The centralisation and concentration of the political forces of the community necessary to the unity of the State have been re-acquired, and by re-acquiring them at an earlier date than any of her continental neighbours, France establishes her predominance and pre-eminence on the European continent. Nor can it be said that this concentration has been effected by illegitimate means. The government by the king is built up on the ruins of the government by *Estates*, and the govern-

ment by *Estates* means the anarchy of castes and corporations fighting for their respective rights and privileges at the expense of the realm. The government by the king asserts its right of existence by really doing the public business, and doing it infinitely better than it would be done by the local bodies as these were constituted. It establishes military unity, legal unity, police unity, financial unity, and it does all this with the vigour and momentum of a centripetal force. The active and self-conscious State definitely emancipates itself from the passive, unconscious Society, but the misfortune is that in doing so it leaves no bridge across which the two can come together again. *L'état c'est moi*—the King and the State are one, the desired unity is there, but the state unit is separated by an impassable gulph from the social unit. The State has become a state machine, and having no life of its own, and therefore no power of growth, its action, when the impelling force from above ceases, grows weaker and weaker. The initiative of the crown dies out when Louis XIV. takes to chatting with Mdme. de Maintenon on religious subjects. For a century there is a standstill. The machine works on automatically, society looks on and makes epigrams. At last the great revolution comes, and society turns upon the State and rends it.

By the time this last great climax is reached the idea of the correlation between social rights and public duties has entirely died out. Society only sees in the governing classes privileged bodies, parasites living on the body politic, and forgets that badly as these did their work, it was nevertheless public work that they were doing. It sweeps the privileged classes away from the face of the earth, and with them the existing machinery of political life, the concrete institutions of the State, and sets up in their stead the abstract rights of man under the form of the celebrated trilogy, Liberty, Equality, Fraternity.

In dealing with the German half of the Frankish realm, we have to trace the exactly converse phenomena.

Instead of following a process which leads to an absolute Crown as its logical conclusion, we note one of disintegration and decomposition, leading to a painted simulacrum of a Crown as its logical conclusion.

The same period of history which sees the French monarchy culminating in the dictum *l'Etat c'est moi* of Louis XIV., witnesses the dying agony, politically speaking, of the German Crown.

In the Germany of the Peace of Westfalia the unities necessary to the existence of the State have, it is true, been once more re-united in one hand, for an analogous process to that which was going on in France has been going on in Germany; but that hand is not the King's; the process has gone on, not in the realm, but in the Territories which now compose the realm. Territorial sovereignty as distinct from imperial sovereignty has now definitively asserted itself. Cæsar's crown has been left *honoris causâ* on the head of the German King, but the kingly office has been monopolised by the Territorial Lords. But before this work could be accomplished, a strange and eventful history has been traversed by the Teutonic society occupying the seats of the race. Voluntaryism has celebrated its triumphs on the largest scale, but its Nemesis, the want of stability which sovereign State institutions alone can give, has, with no limping gait, followed in its track.

The first important step in the process of disintegration is the infeudation and consequent hereditariness of public office. The earlier Carolingians, and Charlemagne especially, harnessed the great men of their kingdom to the State, and made them do the work of the public, paying them by loans of land (*beneficia*), to be held during life-time—the only kind of salary then possible. Under the successors of Charlemagne, the great men of the kingdom are strong enough to harness the State to their own private demesnes. For it must not be forgotten that, although in the western—*i.e.*, the conquered half of the Carolingian kingdom—feudal or loan estates were the rule, in the unconquered German half, with which we have now exclusively to occupy our-

selves, alodial or free land was the rule. Now in regard to this land—his "eigen" or "own" land—the Teuton freeman was the peer of his king; he held it on the same conditions, and surrounded with the same sacred rights and privileges as the king held his domain. When the great alodial proprietors, therefore, whom Charlemagne had employed as dukes of the frontiers, or as *comites missi*, or as Counts of the shire, had succeeded in obtaining these offices, together with the official estates attached to them, in fee—*i.e.*, as hereditary possessions subject only to the laws of the feudal courts, they wielded a power, made up partly of private and partly of public elements, which made them formidable rivals of the king. Moreover, it was in the nature of things, that as the new society gradually displaced the old, this power should go on increasing, whilst that of the king diminished. For of the two forces which the Frankish crown at first disposed of, the public service of the independent freemen who served the king (to use modern phraseology) as head of the State, and the private service of the *Dienstmannen*, or thanes, who served him as their lord, or loaf-giver; the former, from the moment that these same *Dienstmannen* could take other freemen into their service on this condition, went on diminishing, till at last it died out altogether. By the end of the 11th century the entire service of the *Herebann* was done by the *vassi* and *vassali*, that is, by the tenants *in capite* and the after-vassals. The οἱ πολλοι of the freemen, unable to find the means of themselves taking the field, either entered the service of a lord, and took the field at his expense, or remained cultivating their *mansi* as small freeholders, clubbing together with associates in the same case to pay for the equipment of a *miles*. After a while, the feudal *milites* form a distinct caste, or class, and the remaining freemen melt away into the servile agricultural disarmed class.

When one of these great vassals had succeeded in getting the office of *comes missus*, or duke, as an hereditary possession, with the appurtenant estates in fee, in addition to his former benefices and to his

allodial property, he possessed large and important powers over an important geographical area; but, as reference to the former part of this essay will show, he had not yet got the true political or public power into his hands; that power was in the hands of the *Gau Graf*, or Count of the shire, for it was he who concentrated into one focus the four unities we described as making up the *plenitudo potestatis* which constitutes the State. To obtain the fee simple of the *Grafen Rechte*, *i.e.*, the exercise of the public office of the count of the shire, was therefore the object for which the great men, whether lay or clerical, the *proceres, optimates, seniores*, the archbishops, bishops, and abbots, of the kingdom did not cease to strive.

It will at once be seen that when a duke, holding property both allodial and feudal (now all lumped together in great estates in half a dozen counties, and invested as an hereditament with the military command of the *Herebann* within those counties, and with the duties of inspection and control of a *comes missus*, finally succeeded in acquiring the *Grafen Rechte* themselves), *i.e.*, the entire administration of the public service within those counties, all the elements of a future territorial sovereignty were already collected together into one hand. Then all that was required was the formal recognition of the *Landeshoheit*, or territorial sovereignty, as an integral portion of the public law of the empire.

But there is another point on which the later constitution of the German Empire is directly affiliated with Carolingian institutions; we mean the yearly Sessions of the *comes missus*, by which all the Counts of the shire, their *Centenares*, *Schöffen*, and other officials, had to attend. These were continued after the public service had become monopolised by the great feudatories, and formed the nucleus of the later Stände, or Territorial Parliaments, of which more hereafter.

We have taken an imaginary dukedom to exemplify the process that was going on and the laws at work in the decomposition of the German Kingdom and the reconstruction of the kingly office under the name of

territorial lordship. But we need not observe that the general scramble for the various rights which made up this sovereignty required centuries of internecine wars, of the struggles of class against class, of a Darwinian struggle for existence, before the work was effected. Nor need we add, that the great dukedoms and the corresponding archbishoprics and bishoprics where the process went on more or less normally, only covered a portion of the territory comprised within the German Kingdom. There were many smaller territories where an analogous process was going on. Shires whose Counts had obtained their office and with it important feudal tenures into their own hands with or without the *Herebann*, so that they were placed in a mixed position towards the duke who had the *Herebann*, and the emperor from whom they held their *Grafen Rechte* as a fief; then again great allodial proprietors who had obtained *Grafen Rechte* in parts of different shires, and so on *ad infinitum*. These combinations of cross rights and cross duties are endless. We must only try to keep the great landmarks unobstructed before our eyes. And amongst these one must not be lost sight of, and that is, that though the political power of the king (except here and there where a mighty emperor, by the impact of a great personality for a generation or so, seems on the point of restoring the national unity) grows less and less, yet that as a great allodial proprietor in every part of the empire, in addition to his privileges as head of the feudal hierarchy, and with such remnants of his kingly office as he still retains, he is everywhere able to make a certain opposition to the process of disintegration, and to rally around him such elements in the realm as are opposed to the local centralisations of the territorial lords. Thus, instead of commending themselves to the bishops, or to the dukes, or to the counts, whole communities place themselves under the protection of the king's *Vogt* (*advocatus*), and within the immediate jurisdiction of his courts. So also a large number of knights—*i.e.*, free *milites* who have neither sunk into the condition of rustici, nor placed themselves under the protection of an

over-lord, the gentry of English history—by associating themselves together are strong enough to resist the process of absorption into the large territories, and remain the immediate subjects of the king.

Of the bodies which continue to look upon the Crown as their only lord by far the most important are the cities, a wholly new element imported into the political life of Germany after the Carolingian period.

The *City* is altogether unknown to ancient Teutonic society. We started as landfolk, not townspeople, and all our political institutions were moulded on agricultural types. It was not till the eleventh century that cities began to play a political part in Germany, and then it was to the rapid decomposition of the old Teutonic society that they owed their sudden and important rise.

The constitution of the German city is undoubtedly affiliated to that of the Roman municipality. In some few towns on the Rhine, remnants of these municipalities had lived on, and it was in these that the civic spirit first began to revive. Burgs, *i.e.*, fortified places garrisoned by *Dienstmannen*, arose at an earlier date, but are not to be confounded with the cities (*civitates*), which consisted of a "*gemeinde*" of freemen within an immunity, usually that of a bishop, but also that of the king. The peculiarity of the immunity was that it took the person domiciled within it out of the jurisdiction of the public officers, *i.e.*, of the *Gau Graf*, and placed them under the protection of the lord of the immunity, whose *Vogt* (*advocatus*) exercised the prerogatives of the *Graf*. When once a community of freemen had obtained the right to fortify a city, and to constitute themselves into an armed association, it was comparatively easy for them to shake themselves clear of the jurisdiction of the *Vogt*, to obtain a jurisdiction of their own, to elect their own government, and to extend their jurisdiction over a portion at least of the surrounding country. We have no space to enter into the early constitution of these cities, except to note that the nucleus out of which the old Imperial cities (*Reichs Städte*) is composed, consists of

a body of *free* milites, *i.e.*, of persons belonging to the *Stand*, or *Estate*, of knights, and that it was these nuclei out of which the patrician orders in these corporations grew up. The point of importance to note is, that at the moment when all the forces at work in the German community were tending towards the destruction of individual and local liberty, these cities arose in a very literal sense as cities of refuge, and acting as a sponge in the districts in which they sprung up, rapidly absorbed all those classes of society who were striving to withdraw themselves from the tyranny of the feudal lords of the soil, and to extricate themselves from the social anarchy which everywhere prevailed.

All the older cities of Germany were free corporations, with no superior over them but the emperor. Later on, the territorial lords took to building cities in their territories, and granting them large corporation rights and privileges.

We must now rapidly glance at the changes going on in the social and political tissue of which this teeming restless Teutonic commonwealth of the Middle Age is composed.

1. At the commencement of its political career the castes which divide Teutonic society are essentially blood-castes. Freedom is a quality of the blood, and all men born free constitute *the* caste *par excellence*, and make up together the sovereign community. The other castes are varieties of unfreedom, according as the blood is more or less tainted with servility.

The principle of the *Comitatus*, and of service rendered by freemen to a lord in accordance with the rules of an ideal code of honour and fidelity, breaks up these blood-castes, and during the Middle Age a process is steadily at work by which these blood-castes are being replaced by castes determined by a man's occupation, "the *state* of life to which it has pleased God to call him," his *Stand* or Estate. Nothing is more characteristic of the different turn taken by our English institutions when compared with those of our kinsmen in the seats of the race, than the fact that it is impossible to find an

English word exactly to express the word *Stand*. The English people remained one and indivisible, the German people broke up into iron-bound castes.

The law which governed the change was an economic law, that of a division of labour; but the important thing to note is, that this economic law was supplemented by the old and indelible law of the blood-caste, so that when once the economic process had been accomplished, and society had been partitioned off into its various *Stände* or Estates according to their occupations in life, the blood-law stepped in and stereotyped the *Stand* or Estate into a blood-caste. The knight mounts his war horse, the peasant sows his seed, the burgher sells his cloth because his father did so before him, and the rights and duties of his Estate are carefully determined by his genealogical tree.

It is easy to see how the process took place. When the service in the *Hereban* had been entirely monopolised by the *Dienstmannen*, the *esprit de corps* of the military associations (*Genossenschaften*), which grouped themselves round the feudal lords, great and small, soon obliterated all traces of inferiority of blood in the members of the association. The military class became a guild with its regular hierarchical gradations—the page, the squire, the knight; but when this new caste once established itself and became set, then the old blood tendencies appeared again, and no man was eligible to it who could not prove his descent from knightly lineage.

So again in the agricultural class, the tillers of the soil began by being either freemen who could not afford to serve in the field, and compounded for these services by a money payment, or the unfree who had no military service to render, and occupied land either as the lowest class of *Leibeigenen*, or as tenants according to an endless variety of tenure. The freemen either still occupied their own free *alods* or became tenants of the landlords. All these gradations made a considerable difference in their legal status, and the Courts in which they had to stand to right; but, socially and politically speaking, the rural non-military population occupied in the cultivation

of the soil was after a time stereotyped into an estate shut off and cut off from the other estates as the *Bauern Stand.*

So also with the burghers, originally free *milites,* the peers and equals of the knights, whose occupation as merchants and business men after a while stereotypes them into the citizen caste or *Bürgerstand.*

Between none of these castes can equal marriages take place. The blood caste has regained its full force.

Lastly, there remains the clerical caste or *Stand,* which alone, except in the Chapters and other close ecclesiastical corporations, remains unaffected by blood.

2. In the next place we must not forget to bear in mind that the great impelling vital force at work in all the changes that are going on is the spirit of free association, which may be looked upon as the *differentia* of the Teutonic race. Inherited from primeval times—when side by side with the *public* association of the *Landesgemeinde* and the Hundred Court, to which we have alone been able to refer, the *private* associations of the Mark, the township, and a hundred others, lived a vigorous life—this spirit dominates the whole of German mediæval society. Charlemagne, well knowing the disintegrating tendency of this force, had made stringent laws against associations on oath (*Eidgenossenschafften*), the only one of the kind allowed being that of the *Comitatus,* the feudal oath of the *Dienstmann* to his lord.* With the atrophising of the kingly power, however, the capitularies of the Carolingian period lose their binding force, and the old tribal law, which allows of every kind of oath association amongst freemen, except such as are against the law of God, resumes its undisputed sway.

We need but advert to the Hansa and the Swiss *Eidgenossen,* to the great confederations between Imperial

* For instance: Associations for the purpose of fire insurances, insurances against shipwreck, charitable associations, &c., are all distinctly allowed, but may not take the form of guilds, the members of which are bound to each other by oaths. Compare Capitularies, A.D. 779, cap. 16. *De sacramentis pro gildonia invicem conjurantibus, ut nemo facere præsumat. Alio vero modo de eorum eleemosynis aut de incendio aut de naufragio quamvis convenientiam faciant, nemo in hoc jurare præsumat.*

cities and their Leagues *inter se*, as well as the Leagues of the knights of the Empire *inter se*, and in joint-association with the towns, to say nothing of the Leagues between the *Reichstände* themselves, to show the political proportions which these *Eidgenonenschafften*, or oath associations, outside the political framework of the kingdom took, as well as to the guilds and *Innungen*, the Knight's guilds and the *Bürger* guilds, to demonstrate their social importance.

As we before observed, German society of the middle age presents on a scale of singular grandeur the principle of voluntaryism with all its strength and all its weakness—now acting centripetally in the creation of mighty organisms, now centrifugally in the disintegration of those same organisms.

That the centrifugal disintegrating forces of voluntaryism, unrestrained by the framework of great and solid State institutions, borne upon the living shoulders of the community, must sooner or later get the upper-hand, appears to us to be the great lesson of German history.

The genius of association, great as were its momentary victories, finally begat that *monstrum informe ingens*, the Holy Roman Empire, and its successor the impotent Germanic Confederation. It required the exaggerated assertion of the contrary principles, and the almost fierce subjection of all the forces of society into one all-powerful hand, to create a State strong enough to recover the disintegrated unity of the realm of the Carolingians. The Hohenzollerns were equal to the task, but they have had no light time of it. Association is the best of servants, but a questionable master.

3. Lastly, we must glance at the judicial life of the community during these great periods of transformation.

As the old Hundred Court remained standing under the Frankish monarchy after the disintegration of the Teutonic *Landesgemeinde*, so it remained standing after the disintegration of the Frankish shire constitution.

The shires were torn to shreds, and distributed amongst the territorial lords, but the old *Mallstetts* continued to be the meeting-places of the freemen assembled

"to give and take" justice. ("*Recht zu nehmen und zu geben.*") They became the *Landgerichte* of the Territories, and for a very long time the old procedure is followed, and the old laws are administered: the *Schöffen* find a verdict, the assembled commons pronounce it.*

It is not political change which destroys the old *Volksgericht*, but the displacement of the *Volksrechte* by the Roman law. The final reception of the Roman law in the 15th and 16th centuries was the death-blow of the Hundred Court, and with it of the last remnant of the old Teutonic community.

Up to that date the circulation of the public blood through the body politic had not entirely ceased. As long as the small freeholders in the rural districts and the towns still took their share of the public business in the public Court, there was left a bond of political union, an organic membrane, as it were, uniting the Emperor and the cottier, the Kurfürt and the compound householder.

With the reception of the Roman law this union ceased. The administration of the new law required the employment of trained and legal experts; and with the learned judges the sovereign freemen of the fifth century, after a thousand years of chequered existence, ceased to have a political *raison d'être*.

We have brought our sketch up to the period when the Territorial lords have definitively established their Territorial sovereignty, and when, as Reichstände, Estates of the realm, they assume the attitude of independent corporations, whose relations with the Imperial Crown are now determined by contracts and not by laws.

Around these Reichstände, however, are clustered *Landstände* or Territorial Estates, whose endeavours are quite as much directed towards the disintegration of the sovereignty of their Territorial lords as those of the latter

* Down to the thirteenth century we get glimpses of the old Hundred Court of Tacitus, with the *adstantes* still playing an important part as approvers of the sentence; *e.g.*, Henrici R., dipl., a. 1230. *Quod ad requisitionem talis a nobis lata fuit sententia et ab omnibus astantibus approbata, &c.* (*Vide* Eichhorn, *Deutsche Staats und Rechts Geschichte*, vol. ii., p. 199, ed. 1835.)

had been directed towards the disintegration of the King's sovereignty.

The *Landstände* are not in their nature public or political bodies, but private and exclusive guilds, petrified associations. They care nothing for the commonwealth or the public weal. All their interest is concentrated in the well-being of their association, and in the extension of their rights and their privileges, at the expense, on the one hand, of the *Landesherr* who now represents the State, and of their fellow-subjects, on the other hand, whether the rival guilds or the *contribuens plebs* not included in the guilds. The great mass of the population stands altogether outside the pale of the constitution by Estates; for the knights only represent themselves and their knight's fees, and the burghers in the cities likewise form a privileged class, outside whose pale are the unrepresented unprivileged masses. In the clerical Estate it is only the bishops, the abbots, and the chapters who are represented, and not the parochial clergy.

We must now glance at the development of local institutions in England, for it is to these that the present Prussian legislators have in part turned for their working models.

In comparing the institutions of the Anglo-Saxon—or, as Mr. Freeman more correctly terms it, the Old English Kingdom—with those of the Frankish Monarchy, we have to notice the following points :—

1. In the one case and the other the realm is built up of units, which bear the same name, *comitatus*, but which, when examined structurally, are seen to be radically different. The Merovingian and Carolingian Shires, though in many cases answering to the geographical areas once occupied by the old *Landesgemeinden*, are the official arbitrary divisions of a large territorial kingdom, mapped out for administrative purposes by a territorial sovereign. Thanks to the researches of Professor Sohm, we now know that in these shires there was no *Volksgemot*—no assembly of the totality of the freemen of the *Gau*—no organic tissue answering to the *Gau*. The unity of the Carolingian county was represented by the *Graf*—*i.e.*, by a servant of the king. The *Gau* was a mechanical contrivance, but contained within its framework organic units. The permanent organic unit, the original Teutonic cell, capable of living on through all merely political changes and transformations, was the Hundred, because, as a judicial unit, it was identified with the *Volksrechte*—*i.e.*, with the most tenacious and indestructible portion of the national life, and, more-

over, because this tenacious traditional Folk-law was immutably localised, owing to the Court depending for its legality on the members who composed it meeting at the old *Mallstett*. In Germany, therefore, the shire falls to pieces as soon as the Carolingian system of government falls to pieces; whereas the Hundred lives on down to the sixteenth century, when the *Volksrechte* are superseded by the Roman law.

The English kingdom, on the other hand, is built up of small tribal kingdoms, which, by a natural process, involving a considerable amount of intertribal fighting—but not wars of territorial conquest, like those waged by the Frankish kings against Romans and Provincials—coalesced into a united kingdom.

In the earlier stages of this process, it is the smaller kingdoms that furnish the shires, and though, when the larger kingdoms are annexed, these sub-divide into separate shires, still the constitution of the shire throughout the united *English* kingdom takes its distinctive features from the small tribal kingdom. It is an old saying that the kingdom is only a large shire—the shire only a small kingdom.

Now, as we previously stated, when the Teutons left their ancient homes in quest of new ones, the tribal unit coalesced with the unit of the *Landesgemeinde;* in other words, the *tribe* became the *Landesgemeinde*—the political unit, the *civitas*, the State. The important point to note, therefore, is that the English county is, through the tribal kingdom, directly affiliated to the *Landesgemeinde*, and that the permanent organic unit, the original Teutonic cell, capable of living on through great transformations, was, in England, not the *judicial* but the *political* unit. In the genealogical tree of Teutonic politics, therefore, the English county stands more closely related to the *Landesgemeinden* of Appenzell and Uri than to any other existing political formation.

This difference of origin will at once account for the difference between an English earl or ealdorman and a Frankish *Gau Graf*, or *comes*. The ealdorman was never the *famulus*, *ministerialis*, *domesticus*, *gesinde*, of the king—his revocable prefect—a mere link in an official hierarchy; but a *subregulus*, a viceroy, exercising a *potestas* of his own, and not a merely delegated *potestas*, and named by the king *and his Witan—i.e.*, by the nation. Professor Sohm, in incidentally calling attention to the fact, adds that the sheriff, or *Graf* of the shire, *scir gerêfa*, originally answered not to the Frankish *Gau Graf*, but to the Frankish *domesticus*, or actor (*vide supra*, p. 376)—*i.e.*, to the king's bailiff, or reeve, whose business was functionally restricted to looking after the king's private estate in the shire; but that, owing to the comparatively independent position of the English ealdorman, the king naturally sought more and more to invest the sheriff, his own special servant, with public functions (which the Frankish *domesticus* never exercised), and thus to give him a *quasi* concurrent jurisdiction with the earl.

2. The second important point of comparison to note is the different position assumed by the *Comitatus* in the English and in the Frankish body politic.

In the Frankish realm the *Comitatus* detaches itself at a very early period from the body of the freemen. The Great Council of the king's *Dienstmannen*, or Thanes, meets for a while concurrently with—but as a distinct body from—the old free assembly of the Franks; but the latter wanes away and atrophises whilst the former grows and becomes supreme. After a while the only remnant of the old constitution left is the formal acclamation in the assemblies of the Hundred Courts of the capitularies passed by the king and his Thanes.

With us, on the contrary, the thanes from the first appear imbedded in the free community, bearing the same burdens with the common freemen, with no generically different political rights from theirs, standing to right in the same *Volksgericht*, taking a prominent but not an exclusive part in the public business of the locality. They swear an oath of personal fealty to the King, and the King can in consequence exact military service from them at his will and pleasure, and without consulting the *Volksgemot;* but as yet there is no necessary connection between this oath and a *beneficium*. Alfred succeeds, amidst the dire necessities caused by the Danish wars, in introducing the rule that all proprietors of five hides shall swear this oath and become his thanes, so that the regular military service of the country is henceforth more and more done by the thanes and their followings, when they have any, whilst the *Herebann* takes more and more the form of a reserve of militia, of a Landwehr.

These five-hide or county thanes are the lineal ancestors of our county gentry, and from the days of Alfred until now their *status* and their functions in the body politic have remained substantially the same. They are not a privileged class, politically separated from the rest of the community; they are not a titled class, socially separated from the rest of society; but they occupy a prominent place, politically and socially, because they take a prominent part in the *public* business of the community. They do more of the fighting work, more of the judicial work, more of the administrative work of the community than the common freemen; but in the assembly of the shire and in the Hundred Court they have no exclusive place or voice. The neighbouring freemen (the *vicinetum* or *venue*) take part in the proceedings with them, form a part of the "adstantes," whose verdict is the sentence of the Court, just as in the great National Assembly, the *Mycel Gemot*, the citizens of London or Winchester stand shoulder to shoulder with the *Witan* of the kingdom, and though they do not sign their names to the charters, with the big earls and the bishops, exercise their constitutional right of acclamation. *Vota ponderantur non numerantur*, but an uncounted vote need, especially if there are many of them, not necessarily be a vote of no account, and the mere presence of the common freemen in the Witenagemot marks the gulf betweeen the Frankish constitution under Charlemagne and that of England under Edward the Confessor. But the thanes of the shire, having the time and the leisure and the means, can attend regularly the monthly meetings of the Hundred Court, the six monthly meetings of the Shire Court, and this regular attendance

gives them the *knowledge* required for active participation in the administration of an unwritten law that lives on from generation to generation in the traditions and the memory of the people. It is a necessary incident of a *Volksgericht* that a nucleus of specially well-informed men should detach itself from the rest. We have seen this class in Germany under the name of the *Rachinburgen*, *Rathburgen*, Counsellors, at last petrifying into the *Schöffen* or *Scabini* of a later period. The analogous process takes place in England, only on a much larger scale. The Witan, *wissende*, those who *know*, detach themselves from the great bulk of the freemen. The thanes *know* more than the others, because they have the knowledge of the public service, which serving can alone give, and they take their place in the *Volksgemot* of the shire, and in the great *Witenagemot* of the nation, not as the *Dienstmannen* of the King, not as a noble "*Stand*" or estate, or caste, but as men who *know* more about the public service than their neighbours. Duties and rights—rights and duties balance each other. In the old English community, during the so-called Anglo-Saxon period, Society and the State have remained united by the common bond of public duties. From the humblest freeman, looking after the public peace in his francpledge, to the king on his throne, the circulation of the public blood runs freely through the arterial and venous system of the body politic.

We must now turn to the changes brought about by the Norman Conquest.

No Englishman, especially after reading the glowing pages of Mr. Freeman, can help wishing that that fatal Senlac arrow had had another billet, or can resist indulging in sterile speculations as to the ultimate shape which the pure, unalloyed Teutonic English kingship would have eventually developed into, in the hands of such a king of men as Harold. But no Englishman, who has been reading German history, can fail to admit that in all historical probability it was the methodical, systematic, politically creative absolutism of the Norman Conqueror which saved us from that running riot of the free associative Teutonic spirit, which in Germany, after luxuriating in the manifold creations of the Middle Ages, ended by drifting the German nation into an archipelago of little despotisms.

For it is to the Conqueror directly, and to his successors either directly or indirectly, that we owe the unities so often referred to in the preceding pages—military unity, police unity, unity in the law and in the administration of the law, financial unity—all four concentrated, as they never were before, in administrative unity. This we have to thank them for. What we owe to them, without the necessity of returning any thanks, is the fusion of the two nationalities into one free people, by joint resistance to common oppression, and the consequent reversion to English constitutional types after the framework of a State fitted to fulfil imperial destinies had been solidly built up for their reception.

In tracing the steps by which these unities were first attained, and then free institutions adapted to them, it is truly marvellous to observe how, partly owing to the statesmanlike genius of the Conqueror,

partly to the free instincts of the English race, partly to their tenacious hold on what was old, partly to their adaptability to what was new, partly to exceptional good fortune in getting not only our good kings, but our no less useful bad kings, just when we wanted them,* to say nothing of other apparently fortuitous circumstances, we succeeded in avoiding all the blunders made by our Continental kinsmen.

We must just glance at the unities above enumerated, as far as is required for the purposes of comparison.

As might be supposed, the office of the English ealdorman, with a *potestas* of its own, has no place in the system of the Norman king. The earl consequently disappears from the scene, except as a titular dignitary; and the sheriff, under the name of *vicecomes*, takes his place. The Norman *vicecomes*, not only in his English name of Scir Geréfa, but in his functions, corresponds exactly to the Carolingian *Gau Graf*. All the unities are concentrated in his hands. He presides as judge in the County Court and the Hundred Court; he is responsible for the peace of the county, and is therefore the head of the police; through his hands pass the writs summoning the tenants to their military duties. He is the executive officer of the crown in all its functions, only as under the Norman system the whole of the military force of the country is feudalised, he does not lead the *Herebann*, there being no *Herebann* to lead.

Like the Carolingian *comes* also he is looked after by commissioners sent directly from the Curia Regis. The *justiciarii errantes*, who afterwards develope into the judges on circuit, are the counterpart of the Carolingian *Comites Missi*, or *Sendgrafen*.

In the outward configuration and administrative machinery of the kingdom, under the rule of its Norman kings, there is consequently a very distinct reminiscence of the kingdom of Charlemagne.

It is when the social and political elements composing the mass thus administered, and the central machinery of government, are examined, that we perceive the difference which 250 years have made in the art of government, and that we become aware of the politically creative genius of the Norman race as it was potentialised in the person of its greatest statesman.

In the Carolingian kingdom, the military force was still made up of the heterogeneous elements of the national levy, the *Herebann*, and of the *Dienstmannen* and their followings mixed up in confused promiscuity.

According to the theory of the *Comitatus*, as it was beginning to crystallise into feudalism under the Carolingians, the *Dienstmannen* of the *Dienstmannen*—*i.e.*, the sub-tenants composing the great mass of the fighting men of the kingdom—personally exchanged their allegiance to the king for their allegiance to their lord or loaf-giver, became therefore merely *mediately* the king's subjects, were withdrawn from the unity of the State, and thus reduced the hold of the king over the State which he represented to the personal fidelity of a few great vassals.

In England, by a masterpiece of political genius, William the

* Compare *Growth of the English Constitution*, Freeman, p. 68.

Conqueror exacts from the sub-tenants an oath of fidelity to himself as King, *in addition* to their oaths to their feudal lords proper, and thus at one stroke drives the centrifugal forces of feudalism into a centripetal direction, changes eccentric into concentric lines, and metamorphoses a feudal into a national army.

By the creation of 60,000 knight's fees, the entire real property of the country, without the exemption of a single acre, lay or clerical, is mortgaged to the military service of the crown—*i.e.*, to the State —an absolutely unique phenomenon in the eleventh century.

In the Carolingian kingdom the police functions of the State are still of the most embryonic kind: the breach of the peace as a felony against the king—*i.e.*, as a crime against the State—is a thing unknown; nay, the very idea of a King's Peace is directly opposed to the immemorial right of the freeman to settle his wrongs by private feud.

In the kingdom of William the Conqueror the dire necessity of finding a *modus vivendi* between two such nationalities as the English and the French, the handy machinery of the old English franc-pledge combined with the summary power of amercing breaches of the peace as breaches of discipline in a population mainly composed of the King's "men," and the grasping, money-making spirit of the Norman administration, which looked on these fines and amercements as a profitable source of revenue, resulted in the creation of a system of police for the maintenance of the king's peace—*i.e.*, the public peace—which stands alone and *sui generis* in mediæval society, and would have done honour to a Polizei Staat of the nineteenth century.

In the matter of the unification of the law and of the administration of justice, the difference is not so marked; one might almost say that the Norman system takes up the Carolingian system where the latter is broken off by the collapse of the political power of the German crown. For the Palatine Court of Charlemagne, acting through the instrumentality of the Comites Missi, had been trying to do for the Franks very much the same thing that the Court of King's Bench and the justices of assize did so effectively for the English.

It had been gradually assimilating the *Volksrechte* into a body of law capable of uniform application, and thus creating a Common Law—*i.e.*, a law common to the whole kingdom—the material elements of which were being furnished by the traditional laws of the nation, whilst, by the decisions of experienced judges, a framework was being formed which would, in time, have moulded ancient customs into an authoritative case law. But, as before stated, the process was suddenly and irretrievably interrupted by the atrophising of the Crown. The *Volksrechte*, left standing alone, lost the power of adapting themselves to the new requirements of society, and at last becoming perfectly useless, had to be replaced by a foreign code, with which they stood in no connection, and which required a body of learned judges to administer it, wholly separated from the lay elements which till then had been essentially necessary to the constitution of a Teutonic Court. The separation between the "law-givers" and the "law-takers," whose organic union is one of the

great pivots of Teutonic self-government, was thus in Germany hewn asunder in the sixteenth century.

It is one of the great advantages we owe to the Conquest that this necessary process of the assimilation of the *Volksrechte* into a common law, which every Teutonic community has had to go through, was carried out in England more rapidly, at an earlier date, and in a more normal manner, than in any other country of Europe. We must have paid dearly for it at the time, and it has always seemed to us inconceivable how Normans and English could, even for six months, have together "stood to right" in the *Volksgerichte* of the Hundred and the county—how two kinds of customary law, so different from each other as the English and the Norman, can have been administered by those Courts, and how Courts, composed mostly of Englishmen, could have been presided over by Norman judges, who, in most cases, could have known nothing but French.

That the law thus given and taken was detestable is certain—that it was rendered more detestable by the arrogance, corruption, and venality of foreign sheriffs, who *bought* their places, is equally certain; but it was this which brought the remedy. The only possible alleviation of the evil was the wholesale power of drawing cases from the Hundred Courts, and the County Courts before the King's Court, and the constant supervision of the local Courts by commissioners, deputed specially from the *Curia Regis*, to see that some sort of justice was locally administered. We have not space to trace the various steps of the process, and can only call attention to the final and unique result—to learned judges, detached at stated intervals from the *Curia Regis* —*i.e.*, from the fountain-head of justice itself—to administer locally, and on the spot, the common law of the realm, that is, the law common to the whole kingdom, *in organic union and connection with local lay bodies.*

It is at this point that the great step was taken by which in England, and in England alone, the old forms of the self-governed Teutonic community were changed, whilst the substance was left. The *Volksgericht* dies out, but the members of the deceased *Volksgericht* reappear in the shape of jurymen. The monopoly of the knowledge of Case or Precedent law, in the hands of a class of learned judges necessarily very few in number, cuts off the competition of the learned lay elements in the *Volksgericht*—the *Schoffen* or *Scabini* of Germany, the English *witan*—who have only the old traditional law at their fingers' ends. Lay bodies, who have to find a verdict both on issues of law and issues of fact, become, at a certain stage of social development, impossible. It was our extraordinary good fortune that at this critical moment by a kind of happy accident, issues of fact were separated from issues of law, and, whilst the latter were definitively consigned to the hands of a select and highly instructed body of legal experts, the latter remained in those of the old free *adstantes* of the *Volksgericht*. Thus, whilst in Germany the knowledge of the tribal law became gradually monopolised by the learned lay class (who after a while shrink up into a caste, and are required to prove their pedigrees), and the *adstantes* the surrounding unlearned lay community who approved

the verdict—became less and less a necessary element, and finally disappeared altogether; in England the learned lay class died out, and the *adstantes*, the great bulk of the freemen, were suddenly quickened into a new life, and had public duties heaped upon them. Issues of fact do not require learned sense, but only common sense, and so far from a pedigree being necessary to the performance of the duty, laws had to be made to shelter the poorer freemen from being crushed and overwhelmed by the performance of this duty.

The institution of trial by jury in *criminal* cases, as the palladium of English liberty, has at all times met with the appreciation it deserved, but it hardly seems to us that sufficient attention has been paid to the direct connection in which the institution, in connection with *civil* cases, stands with that other palladium of our liberties—self-government. The maintenance of the organic union between law-givers and law-takers—the re-harnessing of society to the public service after the old harness of the *Volksgericht* had ceased to be fit for use—these are the gifts we owe to the almost chance application of a Norman institution* to the raw material of the County Court, the Hundred Court, and the Court Leet, at a time when it was still full of the judicial sap of the Teutonic *Volksgericht*, and therefore capable of feeding the new tree engrafted on the old stem.

But there is another law institution which the English and Frankish kingdoms had in common, and whose respective histories in the two kingdoms afford important illustrations of our subject.

We refer to the Manorial Court—the Frankish *Dinghof*, the old English *Saca et Soca*. In both countries these private Courts, existing side by side with the public Courts, were increasing in importance, extending their jurisdiction, and honeycombing the judicial unity of the shire.

In Germany the *Dinghof* grows more and more, and that which began as the jurisdiction of the manor over the vilains that ploughed the soil, grows to the portentous proportions of the great feudal Courts of the Middle Age.

In England feudalism, having been forced, by the genius of the Conqueror, to shape itself to the requirements of the State, which allows of no *imperium in imperio*, the *Saca et Soca*, in its Normanised form of Court Baron, after many efforts to grow and assert itself, gradually atrophises, and is absorbed by the King's Courts.

* We know that this is not the received opinion in England, and that it sounds like a kind of treason not to refer trial by jury to so-called Anglo-Saxon times, but we have followed Gneist because it seems to us that his account decides the question so far as the specific institution of trial by jury, in the English meaning of the institution, is concerned. The general right of a freeman to be tried by his peers was, of course, the common property, not only of Anglo-Saxons, but of all Teutonic races. The all important turning-point in our constitutional history is, not the trial by peers, but the leaving to those peers only issues of fact to decide upon, and *taking away from them* the decision on issues of law. The real innovation, therefore, was the introduction of juries in civil suits instead of trial by single combat, which English burghers had a great dislike to engage in with such masters of the art of fence as the Norman milites.—See Gneist, *Communal Verfassung*, vol. i., pp. 74 and 80.

Of the financial unity introduced by the Normans—of the stern equality, brooking no exception, lay or clerical, with which the whole property of the country was made to contribute to the necessities of the State—we need not speak. The great creation of the exchequer, as the central spring of the political machine, as the financial basis which William the Conqueror gave to his political creations, has not only nothing analogous to it in the Frankish kingdom, but remained for centuries an isolated phenomenon in the history of Europe.

When, after examining all these component parts of the English polity, as recast by the hands of the Conqueror, we turn to see what were the constitutional powers with which he worked, we are obliged to admit that he did without them, and that he was *de jure*, as well as *de facto*, an absolute ruler. There is nothing during the reign of William I. and his immediate successors really answering to the Magnum Concilium of Charlemagne; nothing to the inner Council of the Consiliarii; nothing to the Witenagemot of the old English period; nothing to the Parliament of a later period.

The great Court, the Curia de More, which meets three times a year, when the king wears his crown upon his head, is a court, in the modern sense of the word,—a splendid display of great barons, of archbishops and bishops, in their best clothes,—a kind of mediæval levée on a large scale; and though a good deal of official business of various kinds is transacted at these periodical meetings of the great vassals and their retainers, it is not a *Curia* in the later official senses of the term.

A sanguine Englishman, determined to see things *couleur de rose*, might have fancied that he traced in it some recollections of the Witenagemot; a *chauviniste* Frenchman might have sworn that he was attending a Cour de Baronie: but just because it could not be both it was neither. The king selected for the public work committees out of these barons; but the barons, as such, formed no corporate body. He might ask for their opinions; but was not constitutionally bound to ask for them. The laws of the Conqueror are proclamations—*jubeo, prohibeo*, I command, I forbid.*

For a while, then, England had to submit to be ruled absolutely. All the forces of the community, intensified to the utmost they could bear, were concentrated and united in the hands of a personal governor. When the personal momentum ceased, they congealed into the hereditary office of that governor—the Crown. And it was then that arose the question of vital importance, with which we began our essay:—By what organs, when the process was once effected, were these centralised, unified forces to be permanently exercised?—into what bodies were they to be radiated back?—into a caste, into a class, or into society

* We have again here implicitly followed Gneist, because his reasoning and his authorities appear to us effectually to dispel the ordinary view, which sees in the Curia Regis the legitimate child of the Witenagemot, and the legitimate father of our future Parliaments. But we do not, of course, pretend to have an opinion of our own on the subject. For our purpose it is quite sufficient that the Conqueror was *de facto* his own master and that of the English realm, and that his government was in the strictest sense of the term a personal government.

itself? The question is one of vital importance; for one thing is pretty certain, and that is, that the people who administer the laws will sooner or later, in some form or other, become the law-makers, and the law-makers, in some form or other, the body who hold in their hands the real power of the state.

In every European country except England, it was the caste first and the official class afterwards in which these forces were embodied—the *Estates* and then the bureaucracy. In England alone they were radiated back directly into the natural elements of which society is composed. So far is it from the truth that we were ever governed by castes that we never even knew the true meaning of the word *Estates;* and, as Mr. Freeman has pointed out, even in our official language we fall into the gross blunder of describing the Crown as an Estate, from a sort of superstition that there must be three Estates, and that this number three must in some form be made up.

But neither the House of Lords nor the House of Commons ever were Estates—*Stände*, in the true continental sense of the term—*i.e.*, close and exclusive corporations; they never ceased to be *public* bodies; they never assumed a private character. The English Parliament, therefore, not only never grew out of a constitution of Estates, but it owed its special character to the negation of that principle.

Nor, whatever the future may have in store for us, were we ever, since Norman days, governed by a professional bureaucratic class. Innumerable as are at the present day the offices connected with the administration of an English county, the *bonâ fide* professional officials connected with it would not fill a large-sized hall.

We can do no more than just glance at the process by which the organs of the supreme crown, called into life by our Norman kings, became identified with the society over which that Crown was called upon to rule.

The method to be employed in such an inquiry would be to analyse the elements into which the centralised functions of the Norman *vice comes*, or *Gau Graf* were ultimately decomposed. In the analogous case in the Frankish kingdom, we saw how the powerful barons and churchmen strove with each other to monopolise these functions whole and entire, and how they succeeded in doing so. The shires themselves having no organic substantial life of their own fell to pieces; but the *potestas* of the Count—the public office of the Crown—remained whole and entire, and passed as such into private hands. In England, the County having a tenacious vitality of its own, derived, as shown above, directly from the *Landesgemeinde*, through the tribal kingdom, remains whole and entire; whilst it is the office of the Norman Vogt which is decomposed.

The most important step in this process has already been described, and we need not again refer to it. The judicial supremacy of the *vice comes* in the County as President of the County and Hundred Courts, passes over to the judges delegated by the Curia Regis to hold their assizes in the county. He only retains the smaller jurisdiction of the sheriff's tourn.

The administrative supremacy of the *vice comes* is decomposed

into the Justices of the peace, that other great palladium of self-government; the county thanes, the *witan* of the former period, re-appear as landed gentry, and are adstricted to the public service in the Commission of the Peace. The former *adstantes* of the *Volksgericht*, the mass of the freeholders, are adstricted to the public service as jurymen; and thus, under totally new forms adapted to a totally different state of society, we return to the substance of self-government as it existed in the old English shire, and previously in the old English tribal kingdom.

On the solid basis of these two great institutions, trial by jury, and the Commission of the Peace, whose masonry underlies both the country and the town within the entire radius of the county, is built up the self-government of England, with the Parliament as its crown and top, and not as the necromancer that called it into life.

But there is another institution which must not be omitted.

The military system of the Conqueror had practically destroyed the old national levy of the *Herebann*. But it revives 100 years later by the celebrated Assize of arms, under Henry II.; not so much for the defence of the country against foreign foes, as for the maintenance of the public peace, and as a *point d'appui* for the crown against the powers of the great barons. The Assize of arms is the father of our militia, and of our special constables. And here again we must note an important divergence from the course which matters took on the continent.

We observed above that as soon as the knights had formed themselves into a close guild or caste, the doors of this guild were absolutely closed against the freemen who tilled the soil, and that the consequent general disarmament of this class hurried on, in giant strides, their descent into the stereotyped servile peasant caste. The Assize of arms, and the later creation of a militia, distinct from the professional feudal soldiery, from the first tended, more than anything else, to avert this danger.

When the militia definitively replaces the feudal system as the national army, England has reverted, under another name, to the Teutonic *Herebann;* and the creation of the office of lord-lieutenant, as the constitutional commander of the county militia, completes the organisation of the county as the self-governed unit of the kingdom.

As regards the internal government of this unit, the State and society are one. In the whole official hierarchy of the county there is not a single official. The work of the State, from the lord-lieutenant down to the juryman, is being done by members of society, in its natural layers, as determined by economic laws, not by statutes; and be it well noted, it is the king's law that they are administering, and in the king's name that they administer it—not self-made county laws, passed in little county parliaments; not the customary laws of private corporations. Further, it is public office that they hold, not communal office, in the continental sense—that is, private office on behalf of corporations to which the state has delegated some of its functions. Lastly, they govern according to laws—that is, their duties are marked out for them, in the smallest details,

by *Imperial laws;* they do not govern in obedience to *instructions* sent down to them from a Home Department.

These are the great foundations of Self-government, as far as they are determined by the nature of "office" (*Amt*) in the self-governing body.

The other great substratum, that of Local Taxation, belongs to a later period, and does not properly come within the scope of our article, which in the second part will have to deal with the modern organisation of the Prussian county. It will, however, have to be treated incidentally, as far as our space will allow.

To sum up:

In England, the paramount and permanent advantage that we obtained over our continental kinsmen and neighbours was, that we went through our absolute, personal, creative, centralising Kingship before Society had crystallised into Estates, when it was still buoyant with its primitive Teutonic life,—when the habits and traditions of Self-government were yet alive in the body politic,—and when (to use a curious expression we meet with in connection with mediæval tenures) the "air" was still "free," and not "servile." At a period when, everywhere else, the balance between public duties and private rights was being rapidly disturbed to the advantage of the latter, it was, in our case, violently disturbed in favour of the former. The period of our Norman Kings is one in which public duties rode rough-shod over private rights, in which the latter were reduced to a minimum, the former strained to a maximum. When we picture to ourselves what a never-ending succession of Courts Leet, or "views of francpledge," must have meant in those days, we see how constant and continual was the share which every individual member of society was called upon to take in the public business of the State. In a word, the fusive power of an omnipotent Prerogative was vouchsafed to us in a peculiarly disagreeable form, which in itself had potent medicinal properties, at a moment when the forces of the new feudal society had already set, but were not yet congealed, and when therefore they could still coalesce organically with the yet living forces of the old society.

Our continental neighbours passed through their

crises of creative Kingship either too early, when the feudal forces were still in so inorganic a state as not to be fusible with the old forces of society, or too late, when they had hardened into substances incapable of assimilation with the new forces of society.

Hence the fact that we got our Charlemagne two centuries after the Franks got theirs, and our Frederick the Great six centuries before the Germans got theirs, is a central fact, the true comprehension of which is of primary importance in the natural history of Self-government; for by it we escaped the double process which everywhere else had to be gone through—viz., (1) the decomposition of the State into social castes; (2) the decomposition of these castes back again into the State.

In France the second of these processes was only passed through at so tremendous a cost, that it required the Revolution of '89 to wipe out the debt incurred. The French Crown took the political power, *i.e.*, the *public duties*, out of the hands of the State, but left them in full possession of the *private rights* correlative to those duties. It relieved the privileged classes from the obligation of doing the work of the State, or paying for that work; and it provided for its execution by means of a professional class which it paid out of the contributions of the non-privileged classes. There was an *itio in partes* of the State and Society on a scale and with an amount of cynical ostentation never before witnessed in history; the State, *i.e.*, the Crown, the official class and the *misera contribuens plebs*, with the public duties and the public burdens on their backs, going into one lobby; Society, *i.e.*, a brilliant, *fainéant* nobility, with an unlimited right of enjoying themselves, but with no corresponding burdens on their backs, tailing off into the other lobby.

In Germany matters followed an analogous course. The nobility remained untaxed, and the business of administration was confided to a class of professional officials; but the process did not take place on the same scale as in France, and the natural forces of society

were, to a much greater extent than was the case there, absorbed by the professional class.

The problem of the present century, both in France and Germany, is how to *unprofessionalise* the State; how to restore the solidarity between the governors and the governed; how to build the bridge which is to re-unite Society and the State.

The attempts made to solve this problem in Prussia will form the second part of our essay.

PART II.

Frederick the Great took care that the social elements constituting the "States," which his ancestors had deprived of their political power, should not be brilliant *fainéants*, but should do their share of the public work, to which he devoted his own life, as "the first employé of his kingdom."

It was also fortunate for him that he had no great vassals to deal with—no *optimates*, *proceres*, *magni barones*—but a vigorous squirearchy, county thanes who, if they paid no taxes, at least paid *de leurs personnes*—did all his fighting work for him. They were looked after, in their private capacity as landlords, by a bailiff of the calibre of Frederick II., hence it was that the barren soil of Brandenburg and Prussia doubled its productiveness.

The government of Frederick the Great was a Personal Government, and one of the very highest conceivable type, but it could not escape the Nemesis which attends all Personal Government—the confusion and chaos which supervene when the governing person is removed.

The real test, however, by which to judge whether a personal kingship of this kind has been a positive creative kingship, or only a negative meteoric kingship, is not the more or less of confusion which ensues, but whether or not the confusion is succeeded by a period of organic reconstruction; whether living forces, capable of settling into permanent institutions, have been evoked, or merely "*verneinende Kräfte*"—negative, self-destroying forces.

The great period of organic construction with us was the period of the Edwards, but we may fairly ask whether that period would have been as fruitful as it was if it had not had under its feet the unities of William the Conqueror.

This test applied to the monarchy of Frederick the Great yields very favourable results. Confusion worse confounded succeeded his death, culminating in the great catastrophe of Jena; but this confusion was followed by the great period of the Stein reforms, abundantly testifying to the living forces which Frederick the Great had evoked from among the grave-clothes of the old society.

It had been no part of his mission, for the time had not yet come, to change the structure of that society; he had utilised it such as he found it, and obtained with the means at his command almost superhuman results, but the social structure and the private rights of the *ancien régime* remained untouched.

It was the business of Stein and his colleagues to effect the transition from the *ancien régime* into the modern state.

These great men had a double task to perform: first, to defeudalise society by defeudalising the conditions of property on which feudal society rested, and to establish a common citizenship with like rights and like duties; and, secondly, out of the individual units into which society was thus decomposed to reconstruct public bodies, capable of bearing upon living shoulders the strain and weight of the Commonwealth.

We gave a full account of what was done under the first head in our former Essay in the "Cobden Club Series."*

What Stein meant to do under the second head remained unfinished—a splendid torso and no more—and by a sort of irony the very excellence of that part of his work which he intended should be only transitory, was in a great measure the cause of the rest not having been continued until two generations later. He saw

* See "Systems of Land Tenure," Essay V., Agrarian Legislation of Prussia, during the present Century, by R. B. D. Morier, Esq., C. B.—[Editor's Note.]

quite clearly what was to be done—viz., that the nation was to be taught to govern itself by the lay elements of society being made to enter into the service of the State.

But such a process required time, and the pressing need of the moment was a strong and efficient Government. He therefore at once proceeded to remodel the executive machinery, and to substitute for the old and effete officialism that remarkable bureaucracy, whose very excellence has been a stumbling-block in more ways than one in the way of self-governing institutions. For good and cheap government is in itself such a very real and tangible blessing, that to exchange it for an inferior and dearer article, merely because the latter will incidentally bring with it healthy political habits, out of which, in due time, healthy political institutions may be expected to develope, requires a considerable amount of political idealism. Now there has certainly not been of late years a want of political idealism, perhaps rather too much of it; but, nevertheless, we think it may be fairly inferred, that if a quarter of a century ago in Germany as much had been known about the true nature of Self-Government as is known now, there would have been less unanimity and less persistency in demanding it amongst the bulk of the Liberal party.

As stated above, Stein only looked upon his bureaucracy as a provisional machinery to govern the country till self-governing institutions and self-governing habits could be called into life.

The only portion of the latter work which he succeeded in completing was the reform of the Municipal Government—the Städte-Ordnung, or Municipal Corporations Act of 1808, which with the excellent results which it yielded, became the model which, by a natural necessity, every organic attempt at introducing institutions of Self-Government into Prussia has had to follow.

Stein had scarcely had time to mark out the plan of his work, when he was driven into exile by a Napoleonic ukase. When he returned the tide had begun to ebb, and the period of organic reconstruction was passed. Rest and enjoyment was what the higher classes asked

for; good government, not self-government, was what the middle and lower classes cared for. Political idealism took refuge in the enthusiastic portion of the nation, in the poetic deposit of the war of liberation, amongst the comrades of Lützow in his Wilde Jagd, amongst the men who had at bivouac fires sung in chorus the patriotic hymns of Arndt and Körner, or amongst the students and the *Burschenschaften* at the Universities. But this idealism was of an unclear, dreamy, and fantastic kind, having nothing in common with the solid masonry of a reformer of Stein's calibre, whose official services were not again called into requisition. But the work that he had done remained standing, and the bureaucracy he had created to serve a temporary purpose lived on as an abiding institution, filled with his spirit, and with a noble kind of professional zeal for the public service, such as the higher sort of clergymen and physicians feel for their respective professions. It could not be a creating and initiating body, but it carried the ark of Stein's reforms in safety through the reactionary flood to a land, if not of promise, at least of promises; for such in the main is the characteristic of the Constitution of 1850, which is the next great landmark in the history of Prussian organic reforms.

It was through no lack of efforts on their part, however, that the old society failed in winning back from the bureaucracy the ground which had been wrested from them by the Stein reforms; and the tenacity and persistency with which the *Yunkerthum* or Squirearchy fought for the recovery of their rights show how vitalised all those social forces had been by the *régime* of Frederick the Great. These men felt that they did not belong to a fainéant caste, that they had borne their share in the heat and burden of the immediate past, and that what they esteemed to be their rights had always been equipoised by corresponding duties. But their efforts only partially succeeded. In the struggle for political existence, between 1815 and 1850, the bureaucracy held their own and remained *the State*, a close professional body outside of society. During the

period of the so-called Romantic reaction, the Squirearchy succeeded in galvanising back into a kind of somnambulist life "Estates" of the mediæval type. So-called Provincial "States" and "States" of the Circle were created in 1823; and ghost-like reminiscences of knights, burghers, and peasants met, at stated intervals, to be asked questions, and to volunteer opinions, on matters touching *their* interests. Their answers and their opinions, duly engrossed, and with fine Gothic seals, were then handed over to the Bureaucracy, and must have added considerably to the bulk of the bureaucratic archives, but that was all. As a political institution, the "States" remained pinned on to the outside of the bureaucratic constitution, and never really affected its *raison d'être*. The official class knew their work too well not to know that dilettantes could not shake them out of the saddle.

In 1847, the attempt was made to fashion a mediæval Parliament out of the assembled ghosts, the *Vereinigte Landstände*—with what result is known.

At last, in 1850, a parliamentary Constitution of the French type was *octroyé*. The country was divided into electoral districts; and the citizens, according to the ratio of their money payments to the State, were called upon to elect legislators; but still the bureaucracy held their own,—nor could it well be otherwise.

The paragraphs of the Chart of 1850 are, for the most part, Declaratory Acts of the Rights of man in his specific Prussian shape, &c. When they get on to solid ground—such as questions of Education, the relations of Church and State, Local Government, and the like—they announce, in most cases, certain excellent principles as being those of the Prussian Constitution; they then go on to say, that, on some future occasion, laws will be made to carry out these excellent principles, but that, until then, everything must remain *in statu quo*.

Now, it is clear that until these principles could be made into laws, in regard to the question of Self-government, the bureaucracy, in obedience to a *vis major*, could not but remain masters of the field.

For various reasons, which we need not now enter into, twenty years elapsed before the period of Organic Legislation—*i.e.*, of Legislation embodying in laws the promises of 1850—could be entered upon. That period has now commenced. The law of 1872, for the Organisation of the County, is the first serious attempt made to bridge over the gulf between the State and Society, by deprofessionalising the public service, and transferring the local administration from official into lay hands.

Before proceeding to examine it, however, we must have a clear idea of the professional machinery hitherto used by the governing class, as well as of the elements composing the classes governed. Without this knowledge we shall have no means of gauging the amount of reform actually effected.

The bureaucratic machinery of Prussia, then, is machinery fashioned with rare skill to carry out, in a systematic, rational, and legal manner, the will of a supreme Crown, and consequently not cabinet machinery for the purposes of personal government. It stands in no organic connection with the parliamentary machinery which not only did not grow out of it, but was called into existence by forces antagonistic to it. The parliamentary roof was superposed over the bureaucratic roof, and both abutting directly on the edifice of the State—each remained independent of the other, with no connecting rafters between them.

Until now, therefore, Prussia has been *governed* absolutely; the laws, it is true, have, since 1850, been made by laymen in the great parliamentary bodies, but their execution has remained entrusted to a professional class, bound by an iron discipline, within the framework of an official hierarchy, the members of which, in a graduated scale, are subject to the commands of their superiors, until the whole hierarchy culminates in the persons of ministers, not responsible to Parliament, but to the king.*

* We are, of course, describing the state of things existing *de facto*, and not troubling ourselves about the *de jure*. The Prussian Constitution lays down that for certain crimes ministers may be impeached, but this is not

The ministers are, of course, bound to govern according to laws, and their instructions must be framed according to law; but the subordinates are bound to obey the commands they receive from their superiors, and this brings us to the radical difference between self-government and bureaucratic government.

Self-government is government according to laws; bureaucratic government is government according to instructions. We, of course, do not mean to say that these instructions can in a well-ordered state like Prussia be contrary to the law, but merely that the officers charged with the execution of the laws in the one case are the *immediate* executors of the laws, in the other case only the *mediate* executors of the law.

The members of a bench of English magistrates are not the subordinate employés of the Home Office. They are commissioned directly by the Crown to carry out the laws of the Crown. Their jurisdiction, down to the smallest details, is determined by laws; in what they do and what they leave undone they have to look for their instructions to the statute-book.

In a self-governed State, therefore, the margin left to personal discretion is necessarily reduced to a minimum.

what is meant by ministerial responsibility in the constitutional sense. In this sense it means responsibility, not for criminal, but for political acts; and the sanction by which it is enforced is retirement from office when the majority do not approve of these acts. Ministerial responsibility is not the *differentia* of constitutional government, as distinct from absolute government, but the *differentia* of party government, and requires, as a *conditio sine quâ non*, the co-existence of two distinct ministerial teams—one actually drawing the government coach, the other ready harnessed in the stable, and capable of being at any moment substituted for the former. Paragraph 61 of the Prussian Constitution promises a law of ministerial responsibility, and all sorts of ingenious endeavours have been made to draw up such a law; but no law in the world can create the state of things which alone could bring about the reality of ministerial responsibility, and when the state of things is there, no law will be required. As long as the ministers of the Crown must necessarily be taken from the ranks of the professional official class, the double team system is impossible. As long as the professional official class have a monopoly of the knowledge of governing,—as long as they are the *Witan*, not only *de jure*, but *de facto*, government by ministerial responsibility is impossible. The force of Prussia lies in her bureaucracy: it is to her what Samson's hair was to him. If the political parties want to govern by party, they must first learn the trick of governing as a practical art, and not as a speculative theory. They must substitute themselves for the bureaucracy by doing the work of the bureaucracy, and learning to do it as well. As long as there is only one team, that team will be responsible to the king, and not to a parliamentary majority.

Every attribute of the magistrate, every conceivable use to which he can put his authority must be strictly defined by the Legislature, for the good reason that he has not got at his back what he would have were he the member of a bureaucracy—viz., an administrative Common Law, a *jus honorarium*, stored up in innumerable precedents duly labelled and registered, but of course only known and accessible to the profession.

In a self-governed State the governed are brought into immediate contact with the laws—can as it were touch them with their hands, see them with their eyes.

In a bureaucratically-governed State, on the other hand, the governed only come into mediate contact with the laws; what they touch with their hands and see with their eyes are instructions.

The margin unprovided for by the laws of the realm is large in proportion to the amount of this accumulated administrative Common Law; and though there is not much room for individual arbitrariness, there is much room for administrative arbitrariness.

In studying Prussian institutions, therefore, we must bear in mind that the legislative business of the country is done according to constitutional types, the governing business according to absolute types. The voice is the voice of Jacob, but the hands are the hands of Esau. The law we shall have to deal with is the first serious attempt that has been made to bridge over the two systems.

The central institutions of the Prussian administration, or law-executing machine, are:—

1. The King's Privy Cabinet (*Das Geheime Kabinet des Königs*).
2. The Council of State (*Das Staatsrath*).
3. The Ministry of State (*Das Staats Ministerium*).

The first two are now more and more atrophising and returning to a rudimentary condition. Their *raison d'être* ceased as soon as the form of the State was changed from the absolute to the constitutional. Before the introduction of the Constitution it was the special

business of the Council of State to make the laws which, when sanctioned by the king, after having been submitted to him by his Privy Cabinet, were published in the Gazette, and thus became the law of the land. Since the Constitution has established Parliamentary bodies for the business of legislation, and requires the countersignature of a minister for every public act of the Crown, both bodies have become functionally superfluous, though they still continue to exist, and exercise certain attributes.

The real centre of the entire mechanism is the Ministry of State, or Cabinet Council, as it might be translated, if it were not for the risk of confounding it with our own Cabinet Council, from which it is widely different.

The Ministry of State is composed of the following ministers:—

1. The Minister of Foreign Affairs, usually President of the Ministry.
2. The Minister of Finance.
3. The Minister for Divine Worship, Education, and Public Health.
4. The Minister for Commerce, Industry, and Public Works.
5. The Minister of the Interior.
6. The Minister of Justice.
7. The Minister of War.
8. The Minister for Agriculture.

It is usually, but not necessarily, presided over by the Minister for Foreign Affairs; but this presidency must not be confounded with the dominating position of an English Premier. The Prussian Minister President is functionally only the chairman of a Board. It is the Board which decides, by a majority of votes.

Whenever, therefore, an important question, such as a new law, or any other matter for which the Constitution requires the sanction of the Ministry of State in its corporate capacity, is brought before it, the Minister President runs the risk, in common with each of his

colleagues, of being out-voted, without this in any way constitutionally altering his position or requiring his resignation.

Each minister is strictly responsible for his own department, and for his own only: the presiding Minister neither more nor less than the others.

The Ministry of State is an association with limited liability. The solidarity of the concern does not centre in a Premier, but in the Crown. Now, it is this radical difference between the position of the Prussian Minister President and that of an English Premier which marks better than anything else the contradiction, to which we called attention above, between the Parliamentary and Absolute types respectively embodied in the legislating and governing apparatus of the State. The unit of Government with us is the Premier, and this position he occupies in virtue of his being responsible to a Parliamentary majority. Under an absolute form of government the unit of Government is the Sovereign, to whom each minister is *equally* responsible; for practical purposes, the decision of doubtful questions, and the settlement of conflicts *inter pares* can be left to a majority of these peers, but the last decision is necessarily in the hands of the Crown, which can dismiss one or more ministers, or all of them, as it thinks proper.

The public bodies subordinated to these ministries are:—

1. The Authorities of the Province.
2. The Authorities of the Government District (*Regierung's Bezirk*).
3. The Authorities of the County (*Kreis*).

The Province is an historical unit; each province representing a round in the ladder of Prussian aggrandisement. There are at present eleven of them. But we are only concerned with the six so-called Eastern Provinces.

The Government of the Province consists of an Upper President (*Ober President*) and of various Boards for education, ecclesiastical affairs, &c., in regard to

matters which affect the province generally. The Upper President has, besides his functions proper in regard to these matters, a general supervision over the District Government; but as these are not placed directly under him, but under the Ministries, and as it is in the focus of the District Government that the unities which make up the administrative unity are concentrated, it is to the latter that we must more particularly direct our attention.

We must refer out of courtesy to the Mediæval Provincial Estates alluded to above, and which, after having been abrogated in 1850, were revived in 1853. But inasmuch as, small as had been their sphere of activity before 1850, that activity had consisted in giving opinions about provincial laws, which laws are now made in Parliament, their *raison d'être* has for the present wholly disappeared.

The Government of the *Regierung's Bezirk* or Governmental District is, *par excellence, the* Government *die Regierung*. It consists of a *Collegium* or Board, composed of (1) a *Regierung's President, par excellence the* President, (2) of a certain number of *Dirigenten—i.e.*, Heads of Departments or Sections, with the title of *Ober Regierungsräthe*, and (3) of *Regierungsräthe*, Councillors, and *Assessors* or embryo *Räthe*. The *Assessor* stands on the second round of the official ladder. He must, before obtaining his nomination, have passed a public examination—the details of which we will not give, for fear of exciting the emulation of H.M. Civil Service Examiners—and have served his apprenticeship for some time as a *Référendar—i.e.*, on the first round of the ladder. As soon, however, as he has been appointed to a *Regierung*, he at once enters upon the serious business of his profession, and his work is generally of the same kind as that of the *Räthe*. The mechanical office-work—the business of copying, sealing, folding, &c., is done by a class of subordinate employés. There is a strange prejudice in Germany against keeping a man for the ten or fifteen best years of his life at mere mechanical drudgery; and a deep-rooted belief that training

of this kind not only does not fit a man but rather unfits him for the higher duties of a profession.

The Government Board is divided into the following sections:—

1. Interior.
2. Ecclesiastical Affairs and Education.
3. Direct Taxes, Domains, Woods and Forests.
4. Indirect Taxes.

Each section constitutes a Board of its own, presided by the Head of the Department, the *Dirigent*, with the title of *Ober Regierungsrath*. The other members of the Board are, the ordinary Räthe, or *Regierungsräthe* proper; the Assessors and certain additional technical Räthe, according to the business of the section —*Forsträthe*, *Schulräthe*, *Bauräthe*, &c.—according as the section is one connected with Woods and Forests, Education, Public Buildings, &c. Then there are a certain number of legal advisers under the name of *Justitiarii*, one of whom is apportioned to each Section, whose business it is to keep the Board legally straight, and to defend the legal interests of the Fisk against all comers. The business of each Section is divided amongst the members of the Board as much as possible, according to districts; but the decisions and resolutions, except in regard to such matters as can be settled off-hand by mere reference to exact instructions, or to mere routine, are decided after free discussion at the Board, by a simple majority; the Head of the Department only having a casting vote where the numbers are equal.

The Head of the Department, however, if he finds himself in a minority, and persists in believing that he is right, may appeal to the President of the Regierung; and the latter may decide either in favour of the majority or in favour of the Head of the Department, or bring the matter before the *Plenum* of the Regierung—that is, the full Board, composed of all the members of all departments.

This *Plenum* has to decide on all important matters, of whatever kind, and on all matters which affect the

district in its entirety. If the President finds himself out-voted he may appeal to the Upper President of the province, if such a course does not involve dangerous or inconvenient delay. If it does either the one or the other, he must submit to carry out decisions taken, however contrary they may be to his views. In the *Plenum* only the *Ober Regierungsräthe*—that is, the Heads of Departments, and the ordinary Councillors, *Regierungsräthe* proper, have full and perfect votes; the technical *Rathe* only voting on questions connected with their special business, and the *Assessors* on questions of which they have had the management.

It would be impossible within our limits to give the reader any adequate idea of the many-sided activity of a Government Board of this kind. The mere skeleton of the subjects falling within the competence of the first section, that for the Interior, fills a couple of pages—a few headings from it, therefore, must suffice, such as: *Police*—that is to say, the maintaining public safety and order; the securing of criminals and vagabonds; the looking after prisons and houses of correction. *Preventive Police*—such as seeing that no buildings, public or private, are built on dangerous principles. *Medicinal Police*—the seeing after the sale of medicaments; the prevention of cures by unqualified persons (*sic*); the rooting out of popular prejudices and habits injurious to health; preventive measures against epidemics amongst men or cattle, against the adulteration of food. *Agricultural Police*—including every kind of transaction connected with the item *Landes-cultur Angelegenheiten*—circumstances having reference to the cultivation of land. *Communal Affairs*—everything connected with communes not coming under the specific heads of church, schools, &c. *Poor Laws, Jews and Mennonites, Statistics,* &c., &c.

Every head of a department, as well as every *Rath* and assessor, is bound each year to make a tour through a portion of the district, to keep an official journal of all he sees, to be afterwards preserved amongst the records of the Board, and thus to make himself prac-

tically acquainted with the daily life and the daily wants of the governed in the smallest details.

When we consider the high standard of education which the members of these Boards begin their professional life with—the impulse and stimulus which the independent treatment of these matters must give—the control of this independence, not by the *ipse dixit* of a red-tape superior, but by the votes of peers, after full and exhaustive discussion, in a body partly composed of technical experts—the extraordinary general experience and knowledge of the public service which must be acquired by having to give a *responsible* vote on every one of the manifold subjects above adverted to, in addition to the specific knowledge on the particular subject entrusted to the individual *Rath* or assessor—the emulation and *esprit de corps* which such a system must bring forth—we need not wonder at the high position which the Prussian Bureaucracy has taken in the world, or at the greatness of its achievements.

The *Regierung* corresponds directly with, and receives its instructions from, the various ministries at Berlin, according to the subjects which they have to treat.

The district of the Regierung's Bezirk is divided into circles.

The executive officer of the Government in the circle is the *Landrath*.

The *Landrath* originally was an amphibious personage, and still retains something of that character. He was the organ through whom, after the "States" had been fully reduced to submission, the crown made these corporations do the work of the State. He was at first appointed by the "States," and was necessarily a leading personage amongst the *Ritterschaft* or holders of knights' fees in the circle; but, little by little, he became an officer of the Crown, pure and simple, and, by the Constitution of 1850, he was changed into the direct nominee of the crown.

When the Provincial States, and the States of the Circle, were revived in 1853, the old system of the

Landrath being selected by the king from a list of local proprietors was revived. But this has not altered his true character, which is that of the executive organ of the *Regierung* in the *Kreis*. As such, he is the most important personage in the entire hierarchy, and his office the pivotal point on which the administration turns; for in his own person he, as it were, collects into a single focus, as regards the *Kreis*—*i.e.*, as regards an area of from ten to twenty square Reichsmeilen, and a population of 20 to 70,000 inhabitants—all the unities concentrated in the *Regierung* as regards the *Bezirk*.

He is the *prepositus* or superior authority over all the communal authorities within his *Kreis*, and the responsible representative of the State within his district—for he is the last public officer of the hierarchy. It is true that he is to a certain extent assisted in his work by the concurrent activity of the resuscitated "Estates" of the Circle; but, though invested with public functions, these bodies, like the corporations they represent, are still in their essence private bodies; and, except as regards certain very limited powers of voting sums of money for purposes of general utility, their functions are consultative, not deliberative.

The point to note, therefore, is that with the *Landrath* we have arrived at the last of the organs of the government of the State properly so-called, and that we have now to examine the elements of which the governed society is composed, the corporations into which it is grouped, and the amount of co-operation in the work of government as yet accorded to them.

The *Kreis* or County contains three distinct elements or units of administration: Towns (*Städte*), Townships (*Landgemeinde*), and Manors (*Gutsbezirke*).

Towns (*Städte*).

The Municipal Government founded by Stein's great law in 1808 is as yet the only real and living piece of self-government in Prussia. It has, after nearly seventy years of a fruitful existence, driven its roots deep into the soil, and satisfactorily solved the great problem of local government, viz., the combining the administration of affairs which are partly private, partly public, in the same hands; it has established itself as the type which all future attempts at creating self-governing institutions must follow.

For it is this bifacial character, inherent in all communal or local bodies, which is the real stumbling-block. The economic (*wirthschaftlich*) management of the rights and property of private associations on the one side, the public (*öffentliche*) management of the duties which the State imposes on the other.

The following are the outlines of the municipal constitution of the larger Prussian towns:—

1. An executive magistracy.
2. An elective body of municipal deputies (*Stadt Verordneten*).

1. The magistracy consists of a Burgomaster, a Deputy Burgomaster, a number of *Schöffen* (our old friends the *scabini*, but with very different functions) or (*Stadträthe*) town Councillors, and one or more paid members, such as a chamberlain (*kämmerer*), whose functions are financial, a school inspector, a Baurath, or inspector of buildings, &c.

The Burgomaster and the technical members of the magistracy are salaried officers; the *Schöffen*, or town Councillors, receive no salaries.

The Burgomaster and the paid members of the magistracy are elected for twelve years, and may be elected for life.

The Burgomaster and all the remaining magistrates are elected by the municipal assembly (*Stadt Verordneten*

Versammlung), but the Crown has a veto on the election of the Burgomaster, whose assumption of office therefore requires the royal sanction.

2. The Municipal Assembly is elected by the whole body of the citizens (*Bürger*), divided into three electoral colleges, according to the amount of taxes which they pay. It represents the interest of the ratepayers, and has an absolute voice in all questions of expenditure. The municipal budget is fixed by them and voted by them. In a word, everything connected with the economic management of the rights and property of the corporation as a private association is absolutely under their control, *i.e.*, under the control of representatives elected directly by the ratepayers.

The public or State duties, *i.e.*, mainly the police functions, are primarily in the hands of the burgomaster, whose election therefore requires the sanction of the Crown, and who has to take an oath of office before a royal commissioner. The principle at stake is one *de force majeure*, viz., that the State, being responsible for the due performance of the public business, cannot forfeit its right of co-operation in the nomination of the agents entrusted with the performance of that business. In all executive matters connected with the police, the burgomaster therefore acts on his personal responsibility in virtue of the jurisdiction attached to his office. In everything else his position is the same as that of the President of the *Staats Ministerium*, or the President of the *Bezirks Regierung*. He is the chairman of a Board which decides by a majority of votes. It stands to reason that a vast amount of the public work, even of the police work (when not immediately of an executive kind), is transacted in this manner, which is the typical manner for the transaction of all public business in Prussia. Hence, speaking generally, the public business of the Corporation may be said to devolve on the Board of Magistrates, the economic business on the Assembly of Representatives; but it is in the nature of things that these two kinds of business should dovetail into each other, and this peculiarity is met by an excellent con-

trivance, that of *Deputationen*, or mixed permanent committees, composed of members of the magistracy and members of the representative assembly, whose business it is to undertake the executive management of the several branches of the administration, poor laws, schools, &c., &c. In this way the humblest and the highest members of the community can, in a practical and efficient manner, be associated in the every-day business of local government.

We must further note, that for the current general executive business, the municipality is divided into official districts (*Amtsbezirke*), placed under *Bezirksvorsteher*, or district overseers, who are the organs of the magistracy, and under their orders and those of the Burgomaster.

A point of some importance must not be omitted. The Burgomaster and the board of magistrates, *i.e.*, the Executive of the corporations are directly subordinated to the *Regierung* of the district, whose orders they are bound to obey. That is to say, that even the most real and living element of self-government in Prussia is still partly under the régime of *law*, partly under the régime of *instructions*.

Lastly, in regard to the important matter of the budget, we must remark that there is no standard of taxation, no unit of rating according to which local taxes are collected throughout the country. Within certain limits, and with the consent of the Regierung, corporations can impose on themselves both direct and indirect taxes of a fancy kind, and quite irrespectively of imperial taxes, or a visible real property in the borough.

The Township (*Landgemeinde*).

The most salient feature about the township is that it is essentially a private Corporation, an association for economic purposes, to which a minimum of public work has been delegated, from geographical necessity. A flood of light has been thrown on the whole subject by the discovery of Professor Sohm, that in the old Teutonic community the village community was a private not a public body, that its officers were private officers, not

public officers. Whenever we search for the unit of Government in the old society it is never the township or village community we come upon, but some such division as the tithing or the like.

When in England a local unit was required for the purposes of local taxation, the parish, as the only *public* corporation at hand, was naturally selected; and the parish has, of course, no ancestors in the old Teutonic Cosmos. In Germany, in the great majority of cases, the unit was the manor; but still a certain number of free villages remained, especially in the eastern provinces of Prussia, which were largely colonised at a comparatively late date, and under the rule of kings not friendly to the feudal system.

That technically the rural communes are public corporations, that they bear the name of *Politische Gemeinden*, or public communes, that the village authorities, the *Schulze* and the *Schöffen*, are officially described as a *Behörde* or public office, we are well aware; but, examined both functionally and historically, they are found to be *de facto* what we described them, private corporations with a minimum of public duties affixed to them.

This will be at once apparent when we call attention to the fact that this *politische Gemeinde* or so-called public corporation has, first, no police jurisdiction, is, secondly, not identical with the ecclesiastical commune (*Kirchengemeinde*) or parish, nor, thirdly, with the school commune or *Schulgemeinde*, which being in Prussia a *public* institution, is on that account distinct from the commune properly speaking.

When the school, the church, and the police, are subtracted from the sum-total of the business falling within the competence of communal authorities, it is pretty clear that what remains is mainly of a private character.

The townships in the eastern provinces of Prussia are mainly village communities of the typical kind described in our Essay on land tenures, *i.e.*, closely packed villages, situated in the centre of a parcelled-out agricultural area, which till a very late date was cultivated in common on the three-field system.

Except in a few very exceptional cases, these townships used to be connected in various ways with the manors adjacent to them—*i.e.*, manor and township were correlative terms. At the period we are describing, *i.e.*, the period immediately preceding the promulgation of the law of 1872, the principal points of connection that remained between the two were that the township continued under the police jurisdiction of the manor, and that where it had formerly been directly subject to the manor—*i.e.*, where the inhabitants had been the villeins of the lord of the manor—the latter still retained the right of appointing the village *Schulze*.

Where the lord of the manor had not this right, it was a proof that the village had been free; and in this case the office of *Schulze* was attached to one particular Hof, or freehold in the township, the owner of which was bound either to exercise the office or to find a substitute (a curious instance of a kind of undeveloped rudimentary manor). But even free villages were, for police purposes, under the jurisdiction of the manor.

For the rights they have to exercise, and the duties they have to fulfil, these townships are constituted into Corporations, with the rights of juridical persons. They can, within certain limits, and under the eye of the *Regierung*, draw up charters embodying their rights, which, when sanctioned, become a body of local law; or they are ruled by the customs and observances of time immemorial. The administration of the affairs of the community is vested in a communal assembly (*Gemeinde-Versammlung*), consisting either of an elected body, or of the entire community. The executive officers are the *Schulze*, and two or more *Schöffen*.

The assembly has duties analogous to those of the Representative Assembly in the town Corporations. It has to look after the economic interests of the corporation, to manage and control the property of the commune, whether this consists in land, or in communal rights, in debts or credits, it has to decide on the expenditure, to find the ways and means, &c., &c.

The *Schulze* and *Schöffen* have duties analogous to those of the town magistracy, and perform such public duties as are confided to them, the most important of which are the exercise of police functions, as the subordinate officers of the manor, and the constitution of a village court (*Dorfgericht*) for elementary acts of voluntary jurisdiction, such as the taking of affidavits, the witnessing of wills, contracts, &c.

The economic functions of the community are, on the other hand, of a very complicated and manifold kind, owing to the intricate nature of communal rights, servitudes, rights of common, and so on. One of the most important of its functions is, naturally, that connected with the maintenance of its paupers. This is a public duty, strictly regulated by law; but the funds required for the purpose form an important item in the communal budget; and here we are again met by the same fatal malformation which we referred to in connection with the municipal budget—the absence of a common unit of taxation for local purposes of a public kind.

The *Landgemeinde*, like the *Stadtgemeinde*, provides for all its expenditure promiscuously out of the funds at its disposal—first, out of its current income derived from property; then by means either of rates levied in addition to imperial taxes, or by self-imposed direct or indirect taxes; lastly, by debt.

In every one of these operations, however, as indeed in every part of its communal life, whether private or public, the township is under the constant fatherly surveillance of the *Landrath*, and of those busy ever watchful *Assessors* and *Räthe*, who travel about the country "takin' notes," and who constitute the Boards of the

Lastly, we should add, that though the *Schulgemeinde* is a separate corporation from the *Politische gemeinde*, the latter may, and if it can offer the proper securities, as a rule does, get the management of the village school into its hands.

The *Kirchengemeinde*, or ecclesiastical commune, the parish, always remains a distinct corporation.

The Manor (*Gutsherrschaft*).

The lord of the manor has for the villages within limits of his manor to fulfil the same duties and obligations, such as maintenance of the poor, keeping up vicinal roads, &c., &c., as are imposed on the townships, and their assemblies and executive officers; only, in addition to these duties, he has the rights and duties of a police jurisdiction, not only over his own manor, but over the townships which make up his police district. This police jurisdiction is exercised by him either in person or by deputation; if by deputation, his substitute must be approved by the Landrath.

This police jurisdiction is, or rather was—because it has been abolished by the law of 1872—the last remnant of the higher jurisdiction of the Manorial Court, *Patrimonial Gericht*, *Dinghof*, *saca et soca*, Court Baron, and Customary Court, which in Eastern Prussia only collapsed in 1849! And the point to note about it is, that it was exercised, not as a public office, but as a private right, adscripted to a particular kind of private property, and passing with that property into the hands of any one who acquired it. The lord of the manor was not one of H.M. Justices of the Peace, but a kind of preserved feudal lord, inheriting a jurisdiction with the family plate.

To sum up the foregoing:—

1. The only direct and immediate organ of the central Government, or, as we should say, the only officer holding the King's commission in the county, is the *Landrath*. His jurisdiction is superior to all other jurisdictions. He holds in his hands the constraining power of the State, the "*jubeo*" and "*prohibeo*." He is the superior officer of all persons exercising public functions in connection with the administration of the county. He has one feature in common with an English justice of the peace, viz., that whilst holding a direct commission from the Crown, he must at the same time be a member of the landed gentry of the county, and hold

property in it; but he is functionally different in this, that he is paid, that he has to pass a very severe examination before the Civil Service Examiners, and above all that, he is not the direct but only the indirect medium through which the laws of the realm reach the lieges, for he has to act in obedience to the *instructions* of the *Regierung*. He bears a much closer analogy to the *Vice Comes* of our Norman kings, and to the *Gau Graf* of the Frankish kings, for like them he is the local representative of all the administrative prerogatives of the Crown, the local converging point for all the unities. The principal difference would lie in this, that he has the *Bezirk's Regierung* between himself and the Crown; but then the *Bezirk's Regierung* is only a consolidation of the office of the *Comites Missi* under Charlemagne, or of that of the *Justiciarii errantes* under Henry II.

2. The units which make up the county are: the town —the township—the manor. Of these, only the magistrates of the town and the lords of the manor exercise a jurisdiction: the former receiving their police jurisdiction directly as a delegation from the Crown—the latter exercising theirs as a private right inherent in the estate they own. The townships have no jurisdiction, and must in no way be confounded with English parishes; they are not integral portions either of the Church or State, but fragments of old autonomies.

3. Grouped round the *Landrath* are the so-called *States* of the *Kreis*, *Kreis Stände*, a little mediæval parliament, composed of all the larger landed proprietors, *i.e.*, the lords of the manor in their own persons, and of a certain very limited number of representatives of the towns and townships. The proportions between the two will best be seen by the fact that out of a total number of 11,954 members composing the county parliaments, 10,000 are squires, and only 1,954 are the elected representatives of the towns and townships.

The business of the *Kreistag* is to give advice and to express opinions, and, where the *Kreis*, as such, has any funds of its own, to dispose of them (more or less under the control of the *Regierung*) for purposes of general

utility. They also elect two so-called *Kreis Deputirte*, whose business it is to help the *Landrath*, and do all he tells them, and one or other of whom takes his place when he absents himself.

4. As regards the question of finding the ways and means for the purposes of local expenditure, towns and townships suffer alike from the radical defect of being able, within certain limits, to tax themselves as they please, though, of course, always under the bureaucratic supervision of the *Regierung*. In the towns the evil has grown less, because, by the mere force of things, a tolerably uniform system of direct taxation has grown up. But in the townships the evil is enormously aggravated by immemorial usages, communal personal taxes being paid according to old social divisions of the rural hierarchy into whole peasants, half peasants, gardeners, booth-men, cottiers, &c. This defect arises from the fact of these corporations having their roots in old private autonomies, and, as such, claiming the right to do as seems good in their own eyes with that which they believe to be their own; and it is one of the greatest difficulties which the legislation is met with in its attempts to found a rational system of local government.

In England, and in England alone, local taxes have assumed their true character, viz., that of *public* taxes imposed by the *State*, for *State* purposes, in the localities where they are raised. Poor rates, highway rates, police rates, are *public* taxes for *public* purposes; they do not come out of the pocket-money of the ratepayer, but out of the money which he owes to the State; they are not imposed by a local parliament, but by the Imperial Government, and they are levied according to a uniform standard upon the "visible profitable property in the parish."

It cannot be too often repeated that it is this *public* character of *local* taxation which has made self-government possible. The *selves* of a local community can only be entrusted with the duties of government when the laws according to which they are to govern are made for

them by the State. They cannot be entrusted with the double function of making the laws and administering the laws. *Self*-government and *autonomous* government are contradictory terms.

The British ratepayer little knows what "a cynosure of neighbouring eyes" is that same uniform rating of the "visible profitable property in the parish," of which at present he possesses the happy monopoly, or what wakeful days and sleepless nights have been passed by statesmen in trying to secure this seemingly forbidden fruit.

We are now in a position to estimate what is the work that the law of 1872 proposes to accomplish.

Self-government is the object it aims at—that is to say, the shifting of the public functions connected with the administration of the locality out of official and professional hands into lay hands; in other words, the decomposition of the *potestas* of the *Landrath*, and of the jurisdiction of the manor, and the distribution of the decomposed elements amongst the representatives of society according to its natural gradations.

The types it has to follow are the constitution of the municipal government, that is to say: first, a representative body with an exclusive control over the economic portion of the communal business; secondly, an executive board with an exclusive control over the public portion of the communal business; thirdly, mixed committees, composed of members of both bodies, for the ordinary management of the affairs of the community; fourthly, the division of the communal area into administrative districts under overseers responsible to the executive board.

The materials it has to work with are: first, the lords of the manor, the 10,000 squires who have hitherto composed the ten-twelfths of the county parliaments; secondly, the assemblies of the townships, with their *Schulzen* and their *Scabini*; and, thirdly, the ready-made materials of the municipal corporations.

We will now in reference to all these points proceed to examine what the law has done and what it has left

undone. Only we must premise that the law itself is as yet but a fragment. It does not touch the constitution either of the township or of the town. Both will have to be greatly modified, especially in the matter of taxation, to fit in with the structure in course of formation. All the present law attempts to do is to furnish a typical framework in which reformed units of Local Government will feel themselves at home.

1. The law abrogates the hereditary jurisdictions of the manor, and the hereditary office of the village *Schulze*, and thus sweeps aside the last feudal remnants which had survived the Stein reforms, and establishes for the entire county an equal citizenship based on domicile. The *Schulze* is henceforth an officer elected by the township.

2. It decomposes the office of *Landrath* into local magistracies, confided to the hands of unpaid lay magistrates nominated by the Crown.

3. It maintains the principle of Board government by attaching these magistrates to small executive boards, composed of the local officers of the town, the township, and the manor.

4. It places these local magisterial Boards in direct and organic connection with a central County Board, consisting of the *Landrath* as president, and six members elected by the county parliament.

5. It entirely recasts the county parliament, changes it into a *bonâ fide* representation of the various social elements of the county; cancels its *dilettante* advice-giving character, and endows it instead with substantial and important attributes.

6. It leaves the *Landrath* at the head of the Government of the county, and constitutes him chief executive officer of the county; but, as regards his administrative functions, he is no longer an autocrat, giving orders and listening to opinions which he need not be guided by, but the president of an executive board.

7. It lays down a uniform system of taxation, as far as the taxing powers of the county parliament and the district boards are concerned.

THE LOCAL MAGISTRATES AND THEIR EXECUTIVE BOARDS.

The law does not lay down any precise rules as to the size of the magisterial districts into which the county is to be divided. It only provides that they shall be large enough to allow of the duties imposed upon the boards being properly fulfilled; yet not so large as unfairly to tax the resources of men whose services are involuntary, but unpaid.

In the instructions, however, from three to four square *reichsmeilen*, and from 800 to 3,000 inhabitants, are taken as a kind of average for the magisterial district, *Amtsbezirk*. The towns, of course, constitute districts of their own.

As a rule, the townships and the manors are reunited into single magisterial districts, unless either a township or a manor is large enough to constitute a district of its own.

The local magistrate or *Amtsvorsteher* * is named by the Upper President of the province on behalf of the Crown from a list presented to him by the county parliament.

The board over which he presides consists of representatives of the townships and manors which compose the district, that is to say, of the *Schulzen* or *Schöffen* of the township, and of the overseers, bailiffs, or reeves of the manor. The number of these representatives is in each case to be determined by the statutes of the county, and to be fixed according to the size of the localities; but every township and every manor must have at least one representative.

In the townships which compose a single district the assembly of the township constitutes the board.

* Literally, "one who presides over an office." It is impossible to render these terms exactly in English, because they have reference to a totally different system from ours. Every higher kind of office in Prussia is, as it were, permanently in commission, and consists of a board; and the idea of a higher kind of administrative officer implies the presiding over a board; of the lesser kinds of officers, that they are councillors sitting at these boards; hence the never-ending presidents and räthe, who meet us in every portion of the Prussian public service.

Where the district is composed of a single manor there is no board.

The business of the board is as follows :—

Control over the whole expenditure connected with the administration of the district, and the right of voting that portion of it which has to be raised in the district.

The drawing up of such police regulations as the magistrate, in conjunction with the board, is empowered to enforce.

The appointment of commissions for special purposes, &c. &c.

Townships and manors within the district are empowered to place a portion of their communal affairs in the hands of the district board, and in that case the board has the right of voting the funds required for the purpose.

The magistrate (*Amtsvorsteher*), as distinct from his board (as in the analogous case of the burgomaster), is entrusted with the executive police of the district, subject however to the concurrent jurisdiction of the *Landrath*.

The exact functions of the *Amtsvorsteher*, whether in his public or in his communal capacity, have not yet been definitively fixed, and some experience of the working of the institution will probably be required before the necessary laws on the subject can be passed; however, Sec. 64 of the present law announces that it is intended that he shall be eventually invested with *judicial* police functions, *polizeirichterlichen Befugnisse*, in which case he will assume his definite shape as a justice of the peace.

Towards the payment of the costs of the district administration the Government contributes out of the public taxes the sums which this administration has hitherto cost under the bureaucratic system.*

* For this purpose a sum of 480,000 thalers (about £72,000) a year is voted, and besides this an annual subvention of 1,000,000 thalers (about £150,000), which, divided *pro ratâ* of the population of the six provinces, yields from about 6,000 to 4,000 thalers, or from £900 to £600 a year for the current expenses of each county, *i.e.*, about one pound per hundred head of the population.

THE COUNTY PARLIAMENT (*Kreistag*).

The magisterial districts together make up the county. The county in its entirety is governed by the *Landrath* in conjunction with a county board, elected by what, in the absence of any other word, we are obliged to call a county parliament, inasmuch as its functions in regard to finding ways and means are certainly parliamentary, and the affix *tag* has an undoubted parliamentary ring (*Landtag*, *Reichstag*, &c.).

For the elections to the *Kreistag* three distinct electoral colleges are formed, which, with the peculiarities of the method of election, betray a certain affiliation to the superseded mediæval parliaments and to government by Estates.

The first college comprises the towns; the second the larger properties, *i.e.*, such properties as pay not less than seventy-five thalers a year in land and house-tax; the third the townships and such properties as pay less than seventy-five thalers a year land and house-tax.

Each college elects its own representatives.

The municipal assembly and the municipal executive board together elect the town representatives. The proprietors of the large estates elect theirs by a process of direct voting.

In regard to the townships, the system of double election in use in the elections to the Prussian Parliament has been introduced.

The village assemblies elect the electors, and these, with the owners of the smaller properties paying less than seventy-five thalers land and house-tax, whose votes are direct, together elect the representatives of the townships.

The way in which the proportion between these three colleges is established is the following:—

In circles with only 25,000* inhabitants, or less, the *Kreistag* consists of twenty-five members. In counties

* Towns with 25,000 inhabitants and more have the option of constituting themselves into *Kreise* (counties) of their own.

with more than 25,000 inhabitants, and less than 100,000, for every additional 5,000 inhabitants there is added one representative. Where the population of the county exceeds 100,000, one representative is added for every 10,000 inhabitants.

In estimating in any given case the numbers of representatives to be sent by each of the three electoral colleges, the numbers of inhabitants in the town and rural districts are compared, and the town districts get their quota of members on the basis of population—that is, *e.g.*, in a district of 25,000 inhabitants, one for every 1,000. The number of seats which, after the town representatives have been thus eliminated, remain to be appropriated, are divided into two equal parts, and one part allotted to the proprietors of the large estates, and the other to the townships; only, under no circumstances, can the towns send more than half of the total number of representatives, and, if there is only one town in the county, more than one-third. We said that this distribution of the electorate retained a certain reminiscence of the old Estates, in which the knights, the burgesses, and the peasants formed into close but unequal ranks, assembled to bicker about their respective rights and privileges; but on the whole, and given the materials which had to be worked up, it seems to us that this mode of representation very fairly embodies the utilizable forces of society for public and communal purposes. It is true that the representatives of the larger properties are our old friends the lords of the manor, reappearing under another form; but, in the first place, their qualification being a property, and no longer a caste, qualification constitutes in itself a great difference; and, in the next place, they appear as one to three, instead of as ten to two. Again, the uniting, with the townships, the small independent proprietors above the peasant class, many of them belonging to the small gentry, breaks up the peasant caste by mixing it up with the rural middle class. Lastly, by the system of boards and mixed commissions, all classes are, for the practical every-day work of self-

government, harnessed and coupled together to the public and the communal business according to the measure of their capacities.

THE COUNTY BOARD (*Kreis Auschuss*).

Next to the district magistracies, which we are inclined to consider the most important of the new creations, is undoubtedly to be ranked the County Board; for to it—*i.e.*, to a lay body—is really confided a large bulk of the business which is now in the hands of the *Regierung*, so that if the new system succeeds it seems to us that it must in the long run lead to the decomposition of the most important and the most vital portions of the bureaucratic system.

The County Board consists of the *Landrath*, and six members elected by the *Kreistag*, though not necessarily out of their own body.

The administrative functions of this board comprise all that is represented by our county rates, and a good deal more besides, in so far as these matters do not fall within the competence of the local boards, or of the *Regierung* of the district. It would be impossible within the limits at our disposal to give an idea of the public and communal business which respectively falls to the share of the local bodies, and to that of the central bodies of the county. Nor, indeed, do we believe that this could as yet be done even by a Prussian *Oberregierungsrath*, because the system has only been working two years; the final distribution of work between the two must be the result of the experience of this working to be ultimately embodied in a law for the reorganisation of the township, and in a revised code for municipal corporations. We can only therefore give the following headings of the subjects into which the work of the county board is divided.

1. Poor laws.
2. Highways.
3. Dykes, drainage, &c.

4. Field police (*Feldpolizeilichen Angelegenheiten*).—The matters included under this heading have mainly reference to a system of agriculture in large, open, *commonable* fields, parcelled out amongst a number of proprietors.

5. Industrial police (*Gewerbepolizeilichen Angelegenheiten*).—Everything connected with the regulations to be observed by trades and manufactures—such as the size of steam-boilers, public nuisances caused by bone-boiling, &c.

6. Police regulations connected with buildings, and precautions against fire.

7. Settlements on waste lands.

8. Dismembrations (*Dismembrations Angelegenheiten*) —*i.e.*, matters connected with the land register, and the breaking up of properties, the re-partition of the land-tax, and other dues, on the disjointed parts, &c.

9. The communal affairs connected with the magisterial districts, the townships, and the manorial districts.

10. Educational affairs.

11. Public health.

12. Matters connected with justice—*e.g.*, the setting up of lists of jurymen, &c.

The Landrath.

The *Landrath* remains at the head of the adminstration of the county, and his functions are what they were before, except so far as they are modified by the present law.

County Taxation.

No taxation is to be raised for county purposes, otherwise than in the shape of additional percentages on existing direct imperial taxes.

These taxes are (1) the land-tax, the house-tax, and trade licenses (*Gewerbesteuer*); (2) the income-tax (*Klassen und Klassificirte Einkommen Steuer*).

The percentages added to the land-tax, the house-tax, and licenses are never to be less than half or more than the whole of those raised from the income-tax.

For instance, supposing that 4d. in the pound (for convenience sake we use English phraseology) represents the amount of income-tax raised for imperial* purposes, and that the *Kreistag* determines that an additional 2d. in the pound is required for county purposes, then the land-tax, the house-tax, and the license-tax, have to follow suit with their additional percentages, but in such fashion that these shall not be less than 1d. or more than 2d. in the pound.

It will at once be seen that this is a great step in advance of the old autonomous taxation, with its independent income-taxes, its personal taxes on half peasants, cottiers, and dwellers in booths, its indirect taxes on dogs, game, &c.; but it will be equally evident that the sliding scale, according to which the adjustment of the proportion between the additional percentages on taxes on real property and those on income-tax is to be left to the county parliament, has thrown a bone of contention between the two elements of which all modern society is composed—viz., the landed interest and the moneyed interest—which augurs ill for the smooth working of the new institutions.

Hitherto the chaos of autonomous taxation has been kept in some kind of cosmic order by the stringent law that the authorities (*i.e.*, the all-seeing district *Regierung*, with its ever-watchful Presidents *Oberregierungs Räthe*, councillors and assessors) shall decide in every doubtful case how the ways and means for the *public* requirements of the local units are to be raised, and that in doing so they shall be solely guided by "what they deem is necessary for the good of the public service."

Under the new system the mode of raising the money required is left to the chance majorities of local parliaments, with the pretty certain result that in counties where the landed interest is the stronger the income-tax will have to do most of the public work, and where the moneyed interest is the stronger (as in counties with large town populations) real property will

* We use the word *imperial* in its English sense, in contradistinction to local, not in the German sense, as contradistinctive of *royal*.

be saddled to the utmost. It is clear that under these circumstances the constraining power of the State to get the money it requires could not be relaxed; and the law accordingly provides that where an agreement cannot be come to by the *Kreistag* as to the proportions in which rates shall be levied, they shall, until such agreement is arrived at, be raised in equal proportions on real property and income. And we must confess that it appears to us that a loophole is here kept open through which, under favourable circumstances, the bureaucracy may re-enter and win back all the ground they lose by the present law.

General Dispositions.

All the offices above described, that of the *Landrath* alone excepted, are unpaid offices. Refusal to accept such office, except on certain specific grounds determined by the law, entails, for three to six years, the loss of the right to take part in the business or the representation of the county, and a higher assessment (from one-eighth to one-fourth additional) to the county rates.

The whole of the new organisation remains under the supervision of the district *Regierung*.

Such is a very meagre outline of a law which, with the clouds of ministerial instructions which accompany it, fills up a closely-printed volume.

The peculiarity of the system which it embodies is, that it represents a compromise between the three systems in regard to local government, now striving for the mastery in every modern society.

1. The social system.
2. The bureaucratic system.
3. The system of self-government.

1. The modern social system, the system of social philosophy, as Gneist terms it, places society above the State, and, so to speak, seeks to clothe *public* servants in the livery of social corporations. These corporations are no longer close castes, like the mediæval "Estates" or

"Guilds," but represent so-called *interests:* the landed interest, the manufacturing interest, the moneyed interest, the labour interest, and so on *ad infinitum.* All these interests are taken up with their own prospects in life, and view the State either as a means to obtain their ends, or as an impediment in their way, and as such, to be thwarted and hindered. They are not close castes, but the spirit which animates them has a very distinct tendency to degenerate into that of the Estate or Guild; nay, more, when it becomes transfused with political passion, as in the case of the Continental International Labour League, a portentous step is taken in the direction of disintegration, and we stand face to face with the old Greek ἑταιρία—that diseased outgrowth of the associative principle, which sees in the association something higher and more sacred than the ties of country, or even of blood, when, in the words of Thucydides, τὸ ξυγγενὲς τοῦ ἑταιρικοῦ ἀλλοτριώτερον ἐγενετο. The social system looks upon man, not as the subject or citizen of a particular State, but as a unit of the human race, equipped with certain inalienable congenital rights, and no corresponding duties. Liberty, equality, fraternity. Everybody is free. Everybody is everybody's equal. Everybody is everybody's brother. Duties are indeed put forward, rhetorically, and for decency's sake, and find their expression in such ludicrous caricatures of public duty, as national guards, and the like, but they are merely the paint and feathers of the system, not its war weapons. For exercising these rights there is one uniform method—Voting. Man comes into the world a higher kind of political marsupial, with a pouch full of blank voting-papers, and his political activity through life consists in filling up these papers. He is to get himself and his interests *represented,* and his representatives are to do *his* work. The *mandat impératif* is the logical culmination of the system. The Representative becomes the *mandataire.* He is to be left no discretion. He is not to be swayed by the interests of the State, or of the community at large, such as they naturally rise to the surface in the deliberations of a

public assembly. He is to remain the mechanical mouth-piece of the will of a social or political coterie.

The boldest, and, in some respects, the most logical form which the system takes is that of a Cæsarism based on *plébiscites*. At certain intervals Society is called upon to decide by universal suffrage who its head servant shall be, and what are the principles by which he is to be guided. When the vote has been taken, Society returns to its usual occupations, and leaves the business of the State to Cæsar, and to Cæsar's Prefects, sub-prefects, and deputy sub-prefects.

The milder Teutonic form of the disease aims at disintegrating the State into autonomies—Parish Parliaments, Municipal Parliaments, County Parliaments. The typical form of this kind of government is taken from that of the great industrial undertakings: railway companies, trading companies, &c. &c.

The electors, *in corpore*, elect a board of directors, and lay down certain principles according to which the work is to be done. Once a year they meet to abuse or vote thanks to the directors—to confirm or to dismiss them. Once a week the Board meets to superintend the work, to sign letters written by the secretary, to talk about the weather, and to lunch. The actual hard work—the real personal labour—is done by the employés, the secretaries, &c.

A local voting body, a talking superintending body, a paid executive body—such is the modern social idea of self-government.

The logical franchise of the social system is universal male and female suffrage.

2. The bureaucratic system places the State above Society, looks upon itself as the State, and Society as the raw material to be administered. The principles which are to rule this administration must be recorded in a few organic statutes; the rules of administration are contained in an immense body of unwritten, or rather, unpublished, administrative case law.

The bureaucratic system is profoundly indifferent about the franchise. It looks on representative law-

making bodies as debating clubs, in which a good deal of nonsense is talked by the well-meaning laymen who occupy seats in their own right; while a great deal of wisdom is poured forth by its own representatives, who, though having no seats in such bodies, have the right, as Government commissaries, to be respectfully listened to whenever they give the world the benefit of their professional views. It knows very well that, in the long run, the laws will have to be made on the patterns which it furnishes, because law-making is an art which cannot be practised by *dilettantes*. Those who administer the laws make the laws; and if the administration of the laws is left as a monopoly in the hands of a professional class, that class will be the law makers.

3. The system of self-government looks upon society and the State as one and indivisible, as together constituting one body, only looked at from different sides. The object it endeavours to attain is that, in some form or other, all the governed shall, according to the measure of their ability, take a personal share in the public work (not necessarily in the public talk), and that all the governors shall fall amongst the ranks of the governed.

The Teutonic *Landesgemeinde* realised this ideal, and the generations brought up in this school went forth from their forests and founded a new world. The greatest political thinker arrived at this ideal, as the result and sum total of his political philosophy. "The virtue of the perfect citizen," says Aristotle, in the third "Book of the Politics," "is this: that he is able both to govern admirably and to be governed admirably." And again: "Wherefore this also has been rightly said, that they only can govern well who themselves are governed."*

The ideal franchise of the self-government system would be household suffrage, in which every householder should have a distinct share of the public work assigned to him, and rigorously exacted at his hands.

* Καὶ πολιτὸν δοκίμου εἶναι ἡ ἀρετὴ το δυνασθαι καὶ
And again: Διὸ καὶ λέγεται καὶ τοῦτο καλῶς ὡς οἱ

It is now easy for us to see in what way these three systems have been utilised in the law of 1872.

The County Parliament, with its unlimited power of talking, its right to elect the County Board, and to determine by a vote in what proportions the incidence of local taxation shall be divided between income and real property, clearly has its affinities with the social system, and with government of the railway company type.

The supervision and control of the entire county organisation by the bureaucratic machinery of the district *Regierung*, and the right of the latter to determine what the local taxation shall be, if the County Parliament cannot come to an agreement, are clearly the points on which the system maintains its coherence with the bureaucratic system.

Lastly, the altogether new creation of the local magistrates (the *Amtsvorsteher*), the investing these magistrates with the jurisdiction of justices of the peace, and their nomination by the Crown, as well as the Magisterial Boards—the members of which have themselves to do the work of overseers of the poor, relieving-officers, &c.—are a distinct and conscious reversion to self-government of the old English type.

It is on the success of the latter experiment that the debureaucratising of the Prussian State depends; and the experiment appears to us therefore to be one of extreme interest, and worthy of being followed with attention. The great difficulties to be overcome, and which may very possibly result in the failure of the scheme, are: (1) The dislike of a population which has been well and cheaply governed by professionals to undertake the work themselves. (2) The tradition, still alive in the agricultural population of the Eastern Provinces of Prussia, of the days when the Lords of the Manor ruled over them for their own purposes as villains adscripted to the glebe. The King's *employés* represent to these Prussian peasants the force which emancipated them from their thraldom; and it will, we suspect, be a long time before they get used to the idea that the squires whom they now see resuming, under another form,

the business of local government, are the servants of the King, and not their old lords merely painted black and white. (3) The immense sacrifices of time and labour required at the hands of a squirearchy, whose time and labour are already taken up by the administration of their own properties, which, as a rule, they cultivate themselves, and do not let into farms.

We have thus brought our very imperfect sketch to a very imperfect conclusion, and it would perhaps be wiser for us to stop here. Living out of England, and necessarily unacquainted with the detailed working of English local institutions, it may appear presumptuous to venture on the application to them of the principles dwelt upon in this essay.

Nevertheless there are certain general facts on which even an outside looker-on may claim to have an opinion.

There are two important streams of public opinion in England respecting the relations between Society and the State, both of which appear to us to be wrong, and wrong because they start from abstract principles which stand in diametrical opposition to the concrete historical foundations on which our English Commonwealth has been built up.

The one looks upon the State as a necessary evil, to be thrust as much as possible into the background, its wings cut, and its claws trimmed. It pins its faith on voluntaryism, and believes that all that is required for the attainment of the highest social and political ideals is the most absolute *laissez faire*, the most uncompromising liberty of cooperation and association for every conceivable purpose, whether of a public or of a private kind.

It ignores the centripetal forces of the State, the incomparably greater reserve forces which the State exercises as the collective *Ego*, than any which can be exercised by even the most powerful associations of individual *Egos*. It only sees in the State a gigantic jobmaster.

The other stream, fully recognising the forces in-

herent in the State, wishes to utilise them to the utmost, and to thrust upon the State the business of society. It sees in the State an incomparable maid-of-all-work, and wishes to secure her services for the benefit of society. It strives to harness the State to social interests in exactly the same fashion that the mediæval corporations endeavoured to do in their day.

Both systems have this in common, that they altogether ignore the obligation of society to do the work of the State. The one is full of energy, and wishes to do everything itself, and to be bound by no constraining *jubeo*, or *prohibeo*. The other is lazy and phlegmatic, and wishes to throw its own business on the shoulders of the State. The one leads to disintegration, the other to bureaucracy.

Both are the determined enemies of self-government of the old English type. For self-government is a hard task-master; it expects every man to do his duty, not optionally and according to his views of the way it ought to be done, but as a public obligation and according to the views of the State upon the matter.

Far be it from us to disparage the great results that have been obtained by voluntaryism; it is only the abuse, not the use, of the force that we deprecate. We regard it as an invaluable servant but as an indifferent master. We have pointed out what the running riot of this principle led to in mediæval Germany. We need only point to the London charities to show the mischief it is capable of working amongst ourselves.

Far be it likewise from us to disparage the efforts made by the Central Government to bring order into the chaos of local administration, but we cannot but believe that the tendency of the present day, which hates trouble and cares about nothing so much as self-indulgence, may drive us on far too rapidly into bureaucratic ways. We cannot, for instance, regard it otherwise than as a real danger, that such important classes of society as the moneyed classes and the wage-earning classes, should be wholly left outside the sphere of obligatory service to the State. The hold that the State has over all

proprietors of land is so great that it can at any time force them to do its work. Not so with the people who have money and nothing else. When they have paid their income-tax they fancy they have done all that the State can require at their hands, and that they have acquired a vested right to do nothing.

Then again, amongst the wage-earning classes the idea that they owe a duty to the State is one that has never even had the chance of being developed. That they have rights plenty of people take care to tell them, but of the public duties corresponding to those rights they hear very little. When at the time of the Reform Bill the franchise was extended to the classes who had so long been unjustly kept out of it, no corresponding lowering of the qualification for the duty of juryman took place, and the principle that the franchise was a public right correlative to the performance of a public duty was tacitly abandoned.

We have no space left to enter upon this great subject, but two instances may be adduced to show the direction in which it seems to us that a return to the true principles of self-government might be attended with the most advantageous results.

The relief of the poor, and the maintenance of the public peace, are clearly two of the most important branches of local public business. They were those which used to be the most typical of English self-government; they are those which the tendencies of modern Society have the most completely bureaucratised.

That a root and branch reform of the Poor Law administration was imperatively called for, and that the reformed Parliament did its duty manfully in grappling with the difficulty, is, of course, not open to a doubt. It is the manner of the reform, the departure on all important points from the principles of self-government, and the adoption of bureaucratic principles, pure and simple, which appear to us so open to criticism.

For our present purpose, it must suffice to say that that portion of the administration of the Poor Law

which, on the principles of self-government, ought most specially to be confided to the organs of self-government—to unpaid lay members of society—we mean, the actual business of poor relief, the visiting and the becoming acquainted with the individual and particular cases of pauperism, is confided to bureaucratic organs—*i.e.*, to paid employés dependent on a central unseen office—but controlled by a palpable and visible Board, whose duty it is, in the first instance, to look after the interests of the ratepayers.

Now it seems to us that without in any way interfering with the system of a central administration, or with that of a local board, elected to look after the interests of the ratepayers, a considerable step would be taken in the way of returning to the principles of self-government, if the office of Relieving Officer were decomposed, on the model of the Prussian mixed municipal *Deputations*, into minute local committees, presided over by "substantial householders," but the members of which should, in great part, be taken from the wage-earning classes, *i.e.*, from the classes best acquainted with the circumstances and the wants of the persons to be relieved. By means of minute subdivisions the work could be easily so apportioned as not to be too great a burden on the persons employed upon it. We have seen the system at work, with our own eyes, in Prussia, and it seemed to us to act smoothly and effectively. The "substantial householder" who presides, has, of course, most of the labour thrown upon his shoulders. He keeps the accounts, manages the correspondence, has the custody of the strong-box, furnishes the room in which the committee holds its weekly meetings. His district is sub-divided into minute sub-districts, consisting of one or two streets at the most. Each of these sub-districts is confided to the care of one member of the committee who resides in the street, or in the immediate vicinity. In a very short time his official position, joined to his social position, enables him to become perfectly acquainted with the circumstances of all his neighbours, most of whom are in the same rank of life

as himself. Whenever a case of relief presents itself (and under such a system there is great scope for preventive relief, and for the "stitch in time which saves nine"), he reports it to the President of the committee, who names two other members to inquire into it. If the case is one requiring immediate relief, he relieves it out of the funds at his disposal. Once a week he attends the Poor Law committee of the municipality (the body which, in the English system, answers to the Poor Law Guardians), reports all his cases, with his opinions upon them, and leaves the ultimate decision regarding them in their hands.

We need not point out all the advantages of such a system. Apart from those which would accrue from that minute search and accurate personal knowledge of the particular cases which is the great desideratum of all poor law administration—and the want of which is so much felt in England, and often causes so wasteful an expenditure—the great, and in our eyes, the invaluable point gained would be that in one most important branch of the public service the wage-earning classes would be harnessed to the work of the State, would be brought under the sobering and educating influence of public responsibility, would feel within them the animating spirit of all true citizenship, viz., the sense of belonging to a ruling, not less than to a ruled class, would have a chance of realising, in one department at least of the public life, the virtue of the perfect citizen, the καλῶς ἄρχειν καὶ ἄρχεσθαι. Voluntaryism, even of the highest kind, cannot yield these results, for it is based on enthusiasm, which, after a time, dies a natural death, and is incapable of sustained effort from generation to generation. It is the education of the unenthusiastic people who would not volunteer to do the work, but whom the law forces to do it, which is the most valuable part of self-government. Lastly, one other great point would be gained, the smelting of classes in the furnace of public duty. In mixed committees of this kind the millionaire and the mechanic are yoked together to the same work, and have to do it on the same terms. They

are together admitted as brothers into the great guild of the State.

The other great branch of self-government which we heartily desire to see, in part at least, restored is that of the maintenance of the public peace. We know too well the requirements of modern society to propose a return to the petty constable system of a former age, or not to recognise the justice of the demand for a paid constabulary, but we do not see why the one system should not be made to supplement the other.

An excellent law, the Parish Constable's Act (5 & 6 Victoria, cap. 101), was passed at the beginning of the present reign, for the revivifying the office of petty constable on the true principles of self-government, with the compulsoriness of the office, &c.; but, by simultaneously giving to the bodies to which the law was to apply, the option of appointing paid constables instead, its efficiency was in a great measure neutralised. We believe that the right system consists in a division of labour between a paid constabulary for the ordinary active routine business, and of unpaid petty constables for extraordinary occasions and for the purposes of preventive police.

We have the materials at hand in the institution of special constables, which, however, we only use as a *levée en masse* in cases of great and imminent political peril.

We do not see why a certain number of householders in each parish, and, in our big towns, in each street, should not be yearly sworn in as special constables, and be bound to assist the paid constables in case of need, to act as a kind of reserve, or *Landwehr*, to the police, and to interfere on their own responsibility in manifest breaches of the peace. We cannot but think that the constant presence of such a force in those lanes and alleys where wife kicking and playing at football with the quivering bodies of fellow-citizens is becoming a national pastime, would have a calming and moderating influence. We believe that in the worst alleys there are some persons who dislike this kind of thing, and would, with a

proper force at their back, be quite ready to interfere. What they require is the *prestige* of a higher kind of public opinion than that present "in the air" of the alley, and this higher kind of public opinion could not take a better shape than that of a stout truncheon with the Queen's crown and the lion and unicorn emblazoned upon it. Make these men into officers of the Crown and we believe that their mere presence would go a long way in preventing those scenes of brutality for its own sake which make us a byword amongst nations.

At present, in these same lanes and alleys of ours, Society and the State are divided by a very palpable gulf. Society drinks, curses, kicks its wives, and vivisects its children. The State, at measured intervals, tramps slowly on its rounds, turns its bull's-eye on Society and passes on. For a moment all is hushed. The wives and children have a few minutes' respite. Then, as the footfalls of the State die away in the distance, Society returns to its ordinary avocations.

Establish in each locality an overseer of the poor, as a public officer, and half a dozen petty special constables, selected *de melioribus hominibus* of the classes who dwell in these lanes and alleys, and the State and Society are once more re-united; the omnipresence of the State is once more restored.

We do not doubt that persons practically acquainted with the facts of English society will be able to demonstrate the unfeasible and Utopian nature of all such plans; and to the verdict of such we are, of course, ready to bow our heads. But against the principles themselves we maintain that no valid objection can be entertained, except on the ground that the age we live in has too completely yielded itself up to the lust of self-indulgence, is too soft and luxurious, too selfish and too sensational, to revert to that manly daily public life which made the greatness of our ancestors.

That the relations between the State and Society are not satisfactory, even objectors will admit. That the forces of Society are driving away from each other in centrifugal directions, that the so-called social in-

terests are glaring at each other with envious and angry eyes, who will deny? That a cementing force is daily becoming more necessary who can doubt? The cement which in days gone by prevented us, and us alone, of all the nations of Europe, from breaking up into hostile castes, and made us a strong and united people, was the cement of the public service; and it alone, we believe, has, even in these latter days, strength sufficient to unite class with class, interest with interest. True Teutonic equality, like true Teutonic liberty, consists in this, that all members of society shall, each in the measure of his ability, be equally enrolled in the service of the State, shall equally submit to the constraining influence of public responsibility.

For the evils that loom in the distance, and whose shadows, cast before them, are already beginning to disturb the day-dreams of the enjoying classes, many quack medicines are daily advertised. For our part, we believe that it is by looking back into the concrete past, and not by trying to extract *à priori* theories out of an abstract future, that the remedies may yet be found.

For this purpose, at the risk of appearing to indulge in the mere pedantries of antiquarian lore, we have endeavoured to show to our readers how it was that our ancestors went right whilst our Teutonic kinsmen went wrong; and how it comes to pass that the latter, in trying to go right, have been forced to revert to types, which, though the outcome of our own national life, we are ourselves daily more and more discarding.

The task is one we believe well worth the doing, if it could only be done well, and we heartily hope it may yet be attempted by more competent hands than ours.

R. B. D. M.

THE END.

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