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ENGLISH SANITARY INSTITUTIONS.

ENGLISH
SANITARY INSTITUTIONS,

REVIEWED IN THEIR COURSE OF DEVELOPMENT,
AND IN SOME OF THEIR POLITICAL
AND SOCIAL RELATIONS:

BY

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ETC., ETC., ETC.
FORMERLY THE MEDICAL OFFICER OF HER MAJESTY'S PRIVY COUNCIL,
AND LATELY A CROWN MEMBER OF THE GENERAL MEDICAL COUNCIL.

SECOND EDITION.

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PREFACE

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THE SECOND EDITION.

IN preparing this later edition of my *ENGLISH SANITARY INSTITUTIONS*, I have made in the text only a very few corrections and slight additions, so that, thus far, the work is in substance almost textually a reprint. At various places, however, I have inserted (in brackets) a few words of notice with regard to former fellow-workers, chiefly those who have died during the past eight years; and also I have added two Appendices. The first of these is a paper which I wrote in 1894, for the purpose of somewhat extending the short reference I had made (at page 5 of the book) to our knowledge of the Early Relations of Human Life in the world. The other is a paper which I wrote in the autumn of 1890 on the then state of the Law regarding Testamentary Dispositions of Property; and this, though written for other than sanitary purposes, may, I think, perhaps be of interest in connection with the subject-matter of Chapter XVI.

A misfortune, which in the summer of 1896 seriously lessened my powers of eyesight, might well have frustrated my desire of issuing the present edition; but the great kindness of my friend Mr. George Ashburner has helped me over the difficulty of press-correction; and I can hardly say how grateful I feel to him for the power he has thus given me to complete my undertaking.

J. S.

19th October, 1897.

PREFACE
TO
THE EDITION OF 1890.

By way of Preface to the following pages, I desire to offer a short explanation of the circumstances in which I found my motive to attempt the work, and of the spirit in which I have made my endeavour.

In 1876, on my retirement from official connection with the public sanitary service, flattering wishes were expressed to me that I would re-publish in collective form the Reports, or the substance of the Reports, which, during some twenty-eight previous years, I had written in various official relations to the business of Sanitary Government. It was my intention, if possible, to give effect to those wishes; but causes not within my control delayed me year after year from making any real progress in the matter; and, with each postponement, it of course became more and more likely that the advancing disqualifications of age would finally close my hopes of accomplishing the task. In that dawdled state of the case, as it stood in 1887, I was very pleasantly surprised and honoured by an invitation from the Sanitary Institute of Great Britain that I would assent to their re-publishing the Reports. On my ready acquiescence in that proposal, the work was speedily put in hand, with the advantage that Dr. Edward Seaton, one of the foremost of our present health-officers, undertook to be its Editor; and in the autumn of 1887, the two volumes of that re-publication were issued by the Sanitary Institute.

During the years when I thought I might myself be the re-publisher of the Reports, I had always had in mind two accompanying hopes: first, that I might be able to prefix to the publication some kind of historical introduction rendering homage

to those who, before my time, had attained the standpoint where my work began; and secondly, that, when I should have strung the Reports into series with some sort of running commentary on the occasions and conditions to which they had related, I might be able to append to them, as in outlook towards the future of the Sanitary Cause, some reflections of more general scope on the principle and methods of Public Health Government. While the latter of those hopes represented no more than a personal aspiration, the former would, in the circumstances, have corresponded to a debt of honour. In the first words of the famous Oath which bears the name of Hippocrates—an oath which in great matters deserves to be for all time a law to the Medical Profession, the acolyte swears that he will ever hold himself under the obligations of filial duty towards the Master from whom he learns his Art; and I should have thought it disloyalty to the spirit of that oath, if, in setting forth my own very humble contributions to the cause of English Sanitary Reform, I had not striven to prolong the grateful memory of elder times: had, for instance, not told of Sir Edwin Chadwick's great campaign in the first ten years of her present Majesty's reign; or had been silent as to the men who, from more than a century before that period, had been pioneering forward, some of them in lines of scientific study, and others in lines of political principle, towards the day when state-craft and medical knowledge should sincerely take counsel together for the Health of the People.

In 1887, such preparations as I had made towards the collateral intentions just described were not nearly advanced enough for immediate use; and, as I therefore could not hope to fulfil their purpose by way of graft on the object which the Sanitary Institute intended, I had to reserve it for fulfilment by postscript. So soon, however, as I attempted to proceed on this resolution, I found that the limits which I had thought convenient for my original plan would not be equally suited to a work meant for separate issue; and that the publication would be comparatively meaningless, unless I gave it wider and more systematic relation to the history of sanitary progress; not only beginning as far back in time as where stages of English progress can first be marked, but also extending my record and commentary to the proceedings of our latest years. It was of

course evident to me that I could not attempt to make so wide a survey and criticism of sanitary progress, except with almost exclusive final regard to the mere practicalities of the case; but I ventured to hope that my survey of the ground, if only in that practical sense, might be contributive to purposes of public opinion—the more so, as hitherto there had not been any published general study of the matter; and I accordingly made up my mind to the endeavour which the following pages represent.

Giving overleaf a List of the Chapters of the volume, and then a detailed Table of their Contents, I need not here dwell on what is mere matter of *Plan* in the work. The reader will observe that, after some necessary but brief mention of times and influences which in this context may be classed as pre-*Anglian*, I have endeavoured to show in sequence the chief steps of English progress, from early to present times, in Laws and Administrative Organisation regarding the Public Health; and that together with what is of mere narrative as to the steps (and particularly in proportion as the narrative comes into recent years) I have combined more or less of commentary on the steps, and sometimes more or less statement of my own opinions on them.

To readers already familiar with the subject-matter, it will not occasion surprise that, though the volume opens with references to early historic, and even to pre-historic times, considerably more than half of it is occupied with the achievements and questions of the present Victorian reign. This period's unexampled productiveness in acts and thoughts which will be of permanent historical interest in our subject-matter has particularly called for that fulness of treatment; and it has also seemed to me an imperative reason for endeavouring to bring into just connection with it the too-often unappreciated importance of the great incubatory centennium which preceded.

The Local Government legislation of 1871–2, and the action immediately consequent upon it, have been treated as belonging rather to present politics than to past history; for the shapings of these later years are hitherto but imperfectly solidified, and are still from day to day undergoing modification, or

awaiting it. It has been chiefly with thoughts towards the future that I have dwelt on those comparatively recent passages of the past; discussing them in a spirit of free criticism, and using them as a text on which to argue somewhat fully the points of principle which I think have to be considered in the statesmanship of Sanitary Organisation.

That I have given a special chapter (as well as many passing reflections) to the subject of Poverty will, I believe, be found in harmony with the general purpose of the volume; for, though Disease and Destitution are treated under different headings in the statute-book, their reciprocal relations, their relations as cause and effect to each other, are among the most important facts which the student of Sanitary Science has to remember.

In referring to critical stages of modern progress, I have generally gone somewhat into the details of the struggle; and now and then, where it has served to illustrate the position, have given incidents which are but of anecdote size. My story, too, I have rejoiced to know, is not exclusively of the deeds of the dead. I have found it due to many persons still living, who are identified with the progress of our Institutions, that I should make more or less mention of them by name; though in their case often somewhat hampered by the fact, that among them in pretty large proportion are former fellow-workmen, still close friends, of my own; as to whom I cannot but fear that my consciousness of the personal relation may probably have imposed too much restraint on my expression of the praises which I think due.

As regards the general intention and spirit of the work, I would first observe that I have not addressed myself to medical more than to non-medical readers; and I trust that, if the work is so fortunate as to find readers of the latter class, they will acquit it of being inconveniently technical. There no doubt is a sense in which it may be catalogued *medical*; but such Art of Medicine as it purports to discuss is an Art which the laity is now under legal obligation to exercise; and every educated layman is well aware that, in proportion as Medicine has become a Science, it has ceased to be the mystery of a caste. In relation to all doctrine which this volume discusses, there is no

distinction of outer and inner schools. To trace the process by which Preventive Medicine has grown into scientific form, and has given life to an important branch of Civil Government, has been an essential line in my record; but the non-medical reader will, I daresay, not find me more medical than himself in respect of the standard I apply to measure the merits of the development. As *sanitary* laws and *sanitary* administration mean to me laws and administration for the saving and strengthening of life, so the worth which they have or promise in outcome of that sort is the only worth I have cared to measure in them; and if there be separate interest in the mere "leather or prunella" of the case, I leave it for others to enjoy and expound. That standard of mine no doubt is primarily medical; but not medical in any sectarian sense; nor of such novelty, or such refinement, that only professional observers can be deemed masters of it. It is of the province where Medicine joins hands with Common Sense; and I appeal only to Common Sense for its recognition.

The argumentative parts of my work, I need hardly observe, do not in any degree pretend to be contributory to the *Science of Medicine*. Their ambition, if I may apply so large a word to the very modest hopes with which they have been written, relates principally to the *Practices of Government* in the great national interest concerned. With much diffidence I offer them, as contribution of the only sort I can make, towards counsels which are now being taken on all sides as to ways of promoting the Welfare of the People. My endeavour relates essentially to but one section, and for the most part only to one sub-section, of that great enterprise of our time. That even the sub-section is of immense public importance, that to procure for the life and happiness of the nation the utmost possible Freedom from Interruptions by Disease is a task well worthy to engage the best energies of many best minds, are considerations which members of my Profession may rightly contemplate with peculiar gladness. But even within that field, and still more in the fields which intermingle with it, Medical Science is only joint-worker with other powers of knowledge and action for the national interests which are in question; and a spirit of exclusiveness is surely least of all the spirit in which

it would seek to exercise for those interests the technical powers which are distinctively its own. In parts of the endeavour, it can work sufficiently well by itself; but in other parts, it eagerly looks around for allies. In every moral influence which elevates human life, in every conquest which is gained over ignorance and recklessness and crime, in every economical teaching which gives better skill and wisdom as to the means of material self-maintenance, in every judicious public or private organisation which affords kindly succour and sympathy to the otherwise helpless members of the community, the Medical Specialist gratefully recognises types of contribution, often not less necessary than his own, towards that great system of Preventive Medicine which is hoped for by Sanitary Reformers.

J. S.

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APPENDIX I.

ON THE ETHICAL RELATIONS OF EARLY MAN.

[A Reprint, with the Editor's permission, from the *Nineteenth Century*, April, 1894.]

WHILE the Human Race in successive remote ages had been learning its early lessons of self-preservation against the Physical Influences which it could recognise as destructive and morbid in common surrounding Nature, that class of influences had not been the only one in relation to which Human Life had had to struggle. Not less real than the relations of the race to surrounding things had been, within the race itself, relations which may be distinguished as ETHICAL; the relations in which each man had stood to his own self-government, and to the fortunes of other men; and in these relations, not less truly than in respect of physical surroundings, struggle against hostile influences had been a familiar experience of human life as long as human experience had been commemorated.

Definite thoughts regarding this portion of the human struggle for existence become possible to us only in proportion as the times to which our thoughts refer are times more or less historical; times, that is to say, from which the observations and recollections of man as to contemporary matters of fact have in some form or other been transmitted to us; and where no such historical basis for thought is given, compensation for its absence cannot be supplied by abstract theories of the constitution and movements of the human mind. The line of thought, indeed, is peculiarly one in which mere speculation cannot make way. We have no independent means of setting before ourselves an embryological view of early human ethics; we cannot, except from experience, bring into view a primeval ether of man's self-consciousness developing its faint first lines of vibration and ripple where reason will afterwards come to regulate conduct; cannot exhibit by what subtle nucleolating process conceptions of justice and prudence and duty, and standards of personal and social merit, first tended to take definite form in the mind of our race, and to become the lights and the fates of man's advancing career. The psychologist of to-day, who from his own particular basis would peer into the darkness of pre-traditionary times, hoping to see there some image of the mind which was in his earliest ancestors, soon discovers that the would-be telescope of his endeavour is in effect but an opaque mirror, and that the only image it can bring before his view is practically but a reflection of himself. In the imagination which he strives to exercise, he no doubt can conceive a mind differently endowed from his own in mere degree or proportion of the faculties he himself possesses; but faculties essentially other than those known to him as parts of his own self-consciousness he is absolutely unable to conceive. The only primeval being he can figure to himself as answering to the name of MAN is one whose Mental Mechanics (if the phrase may be allowed) would essentially have been the same

with his own; a being, who would have categorised, as he himself now categorises, in forms predetermined for him by Nature; one, whose grammar of thought would have had for its nouns and verbs essentially the same cases and moods and tenses as are current in the rational language of to-day; one, who would have had the same aptitude as he himself now has for thinking *ought* or *ought not*, *is* or *is not*, *can* or *cannot*, *will* or *will not*; one, whose every voluntary action would have corresponded to some consciousness of motive or intention, and whose motives and intentions, however limited as to their objects, would in their kinds have corresponded to the motives and intentions which at present determine human conduct. Such (more or less) is the only type under which present man can definitely think to himself of the mind of previous man; it is one which no doubt he can in theory project to an infinitely remote distance in pre-historic time, and can set in motion there as his own will shall direct; but the *Protanthropos* which he thus creates and animates from within himself is no more than the reflection of his own human mind.

Regarding the ethical relations of man in times which kept no written or other tangible record of the acts of contemporary life, information can to some extent be derived from the recitals which various early writers afterwards gave of such oral traditions as had reached them from their predecessors; traditions which, when they related to the comparatively near past, would often have been fairly valid as statements of fact, but which, when they related to any remote past, and more and more in proportion to the remoteness, would tend to be exaggerative and generally mythical. Traditions as above, which after longer or shorter periods of oral currency obtained permanent record in the opening chapters of those written histories and illustrations which the earliest writers afford with regard to human conduct in their own times, constitute the only direct evidence on which the ethics of early man can be judged by us; and it may be doubted whether even the oldest portions of this evidence reach back proportionately far in the past duration of mankind on the earth. The record, thus necessarily imperfect and often ambiguous, is not of such sort that indirect evidence is likely to make large positive additions to it; but undoubtedly there are comparisons and analogies which may somewhat assist us to appreciate its facts. Generally, the archaeology of the life of mankind is but a section of the Natural History of the Animal Kingdom, with sidelights thrown on it from other sections of that great province of study; but also it has outlines specially human which require to be collated with subsequent and present human experience, while in parts it peculiarly claims for context the knowledge which travel during the last four centuries has acquired of populations in infant stages of ethical development; and with interpretation assisted from such collateral sources as those, the very limited evidences of positive history and tradition can be constructed into a fairly consistent notion of the ethics of man during the later times to which the evidences relate.

In the ethical scheme by which Nature provides for the self-preservation of living races, it appears to be an essential, and is perhaps logically the first condition, that each individual of the race shall, within its appointed limits of space and time, struggle individually as it best can to continue and benefit its own separate life, and shall be free in last resort to sacrifice the lives of others to its own. The Free-will which Nature under that condition allows to individual egotism appears to be subject to no other limit or control than that which

individual conscience (when conscience comes into work) will impose; the possibility of its being exercised against the interest of the race does not appear logically excluded from the scheme; but the condition which assigns it an essential place in the ethics of Nature is obviously not to be understood as more than one part in a system. Side by side with the selfish condition, that individual egotism shall be a chief security for the life-interests of the race, is the not less essential altruistic condition, that each living generation of the race shall breed succession to itself, and shall minister to the early needs of its progeny; while also, in wide extent, Nature imposes the general altruistic condition that individuals of a race must be helpful to each other in the struggle which they severally wage for survival. The importance of the last named condition is very great, as qualifying what might otherwise seem to be the absoluteness of individual egotism in the system of Nature. When the two conditions are considered together, we see that *Egotism* and *Altruism*, exercised in due mutual control, and each of them with regard duly proportioned between immediate and ulterior interests, are to be the two equally indispensable joint-factors of progress, and that every *prima-voce* discord between them must sooner or later find its solution either in silence or in harmony.

While man has constituted no exception to the general experience of living Nature, that they who would live must struggle, he has strikingly exemplified the further experience (which various recent writers have brought into important relief) that, in the struggle of different races for survival, the success of any given race greatly depends on the degree in which the individuals of the race combine for their struggle, and are helpful in it each to the other.* That each living thing tends first of all to struggle for its own life and satisfaction may be assumed as fundamental law; but Nature teems with illustrations of the widespread second tendency—the tendency to exertions of individual effort for objects which are larger than those of the individual; and in the best-studied parts of the animal kingdom, the cases where individuals of a species accept ties of common duty, the frequent instances of kindness from individual to individual, and above all the care of parents for their offspring, are facts almost as well known as the readiness of individuals to combat for themselves. The conjunction of these two tendencies is a leading fact in the psychical constitution of man, and has been all-powerful in determining his development. For human life, it is the function of what we term *Morality* to deliberate and determine how the two impulses may work with most concurrence for the common good, and may waste themselves least against each other; and social institutions, developed in vast variety during successive ages of time, and under different conditions of stock and circumstance, have been the steps and forms of our slow experimental training in that great study.

The aggregations of mankind which receive earliest mention in history may be deemed to have been essentially consanguineous; that is to say, they were

* The doctrine that "mutual aid is as much a law of Nature as mutual struggle" was set forth for English readers, with learning and vigorous thought, in a most interesting series of articles by Prince Kropotkin, in successive numbers of this Review from 1890 to 1893. He quotes *La lutte pour l'existence, et l'association pour la lutte* as the title of a lecture in which M. Lantessan, in 1883, taught to the effect of his title; and he cites various earlier like teachings, as particularly those of M. Espinasse in his *Sociétés Animales*, 1877, and those of M. Kessler in an Address to the Society of Russian Naturalists, St. Petersburg, 1860.

tribes which respectively declared themselves to be of descent from single domestic stocks, and were such as might have grown up (with or without exogamic admixture) in proportion as any ancestral family-circle, procreating new procreators, had enabled special kinship to express itself in successively larger and larger spheres of connexion. Of like effect with what thus appeared regarding the aggregations which first became historical, have been the teachings of modern ethnology regarding innumerable aggregations unknown to ancient history; for in proportion as explorers in comparatively late times have gathered exact knowledge of the lives and traditions of those multitudes of mankind which had been outside the main areas of advancing civilisation, it has become evident that among them, as among the previously historical parts of mankind, the essence of each existing aggregation has been the cohesion of kinsfolk as tribe; the tribe having for its declared or implied principle of identity that it is conscious of one common descent, distinguishing it more or less from other multitudes. This, of course, is not tantamount to saying, what evidently would be too much to affirm, that each tribuary aggregation arose from "family" and "domestic life" in the sense which the latter terms now bear. Question is not here raised with regard to the early marriage-customs of mankind; no question whether, at specified times, the sexual relations of our ancestors were of the stable and "sole-proprietary" type which Milton paints to have been "in Paradise, where all things common else,"* or whether, on the contrary, they were more or less shifting and promiscuous. No other point is here in view than the physiological point of heredity. Whether at a given early time the bi-sexual human home with offspring was of simple or of confused constitution, equally in either case it was a nucleus with defined possibilities of evolution, and would furnish growth after its type. Within that nucleus, more or less, as in Milton's imagining, "relations dear, and all the charities of father, son, and brother, first were known"; in heritage from it, all which had been instinctive in those relations would continue to work in the same sense in the enlarging tribuary sphere; and so long as the sphere remained unbroken, there would be diffused in it a spirit of family-tie and a tradition of family-custom binding together the aggregated units. Thus, in remote antiquity when thoughts of duty first began to shape themselves in the human mind, distinction of the world into *Tribe* and *Not-Tribe* would have been among the tribuary casuist's first principles; till, in time, as the original tribe broke into parts with more or less impulse to dissociation, each of such parts, now becoming an individual whole, would have inherited (so to speak against the world at large) a distinct tribuary conscience for itself; wherewith, and with further time and separation, it would rapidly grow into strangeness towards all others, including, sooner or later, even those who originally had been of its nearest kin.

It cannot be supposed that the human race, distributed into tribes, would be as a homogeneous field for common exercise of human influences and motives, or that those influences and motives, with the balance between them, should be as one harmonious impulse for the whole. Egotism and Altruism, omnipresent as joint-factors in the moral constitution of all human beings, and everywhere under appeals to operate according to circumstances in the struggle for existence, would soon find wide apparent differences between tribuary and

* *Paradise Lost*, iv, ll. 751-752.

extra-tribary interests, and would be apt to proportion themselves to the cases accordingly. They who would proceed to read what history has to say on the differentiation of effect produced under that difference of circumstances may advantageously first pause to consider with attention the pathology of the moral factors, and the (so to speak) fated meaning of any failure of balance between them. Especially it is of interest to reflect as from beforehand, though with the additional light which all human history affords, on the significance which attaches to the egotistic factor if in unbalanced intemperate operation. Of enormous meaning in the history, both of tribes and of individuals, have been the crude facts of unbalanced impatient egotism; of an egotism claiming to be free from exterior and ulterior limits, an egotism not content within such rules as are common to itself with others, an egotism which not only is without thoughts of altruistic duty, but often also disdains even the self of to-morrow as another than the self of to-day. This egotism—so passionate for its own expansion, so ravenous towards the narrow near, so ruthless towards all which is not immediate self, this has been the evil genius of our race's development; this, the aboriginal Cain, the familiar blood-stained figure which stalks conspicuous in the dawning of history.

As evidence tending to throw light on the moral characteristics of early man in respect of the life-interests of his kind, incomparably the most striking of all material is that which ancient history presents in its various narratives and descriptions of War. Of the creature Man it has been said with every possible emphasis (and there undoubtedly are senses in which the saying is true) that War is his state of nature.* History more or less authentic, regarding Assyrian, Egyptian, Hebrew, Greek and Roman civilisation, in ages perhaps from two to five thousand years ago, is a terrible record as to the quantity and quality of the wars which in those ages were habitual to leading branches of mankind already more or less emerged from savageness; and traditions which join on to that history, and are commonly read as its first pages, carry back the significance of its record to times which are incalculably more remote. Along all the line of retrospect, unmeasured mutual slaughter of human beings repeats itself as with the regularity of Nature. To the same effect is the testimony of those innumerable streamlets of myth and fable which descend from the pre-historic distance to join the current of true history: they ever bear the tall-tale colour of human blood. War, mercilessly cruel and destructive war, between populations within reach of each other, is the common ancestral tale. Always and everywhere, whether the clue purports to reach back to the first aggregations of mankind, or dates only from the far subsequent times when nations have begun to take form, and have caused their reciprocal lusts of conquest to become main currents in history, equally, whichever way we look, the one dominant feature is War. In proportion as the periods are remote, the achievements are more stupendous, and the personages more heroic and imposing; till

* A mathematician, speculating on the mode in which given creatures would struggle for existence, might perhaps assume a mathematically equal diffusion of the struggle; so that every struggling unit concerned would be in impartial hostility to every other struggling unit; but history has shown nothing like this in the struggle of human beings for existence. The record never suggests as our "state of war" the uniform and indiscriminate fighting of man with man throughout the community of the human race; it tells only of the conflict of opposed multitudes of men with organisation of each multitude for its hostile purpose, and introduces to us each such organised multitude only as a consanguineous tribe.

by degrees the individuality of man is lost in a myth-world which itself teaches the same lesson. Hybrids and giants and titans are the nebular looming of early human strugglers for victory; and war is the pastime of immortal gods. From the only heaven which the conceiving power of early man was able to construct, anthropomorphic gods were ever ready to rush down for participation in the battles of men; and that legendary heaven, torn by wars and hatreds of its own, reflected as a contemporary mirror the pre-historic savage discords of earth.

It, of course, is not possible to set forth in actual numbers the quantities of mutual slaughter and ruin which the constant warfare between early aggregations of mankind involved; but that the quantities, proportionately considered, must very often have been more than enough to make periods of long arrest in social development may be assumed as certain; and instances in which particular aggregations were almost or quite exterminated must certainly not have been infrequent. With what destructiveness of intention the wars of ancient barbarous races were waged is in part matter of actual history; while in other part it may be sufficiently inferred from the nature of the case, with such aids to inference as have been furnished in comparatively late times, in proportion as the exploration of countries previously unknown has brought to light the continuing mutual cruelties of savage populations. The ordinary incidents of warfare—the hot-blood mutual slaughter of combatants, with destruction of homes and harvests of the conquered, and with the deadly destitution to be endured by fugitives, would be at their worst in savage war; and then, in sequel of success, and in furtherance of the exterminative intention, would come the massacre of prisoners, commonly with studied tortures, and amid rites of religious sacrifice to the gods who had given victory; the only exception being, that prisoners whom it might be found desirable to keep alive for concubinage or other servile use would be exempted from massacre, but if males would be subjected to mutilation. When wars had become large, the captives for slaughter might be hundreds or thousands at a time, and it is certain that, even down to comparatively late times, the victors in celebrating their success would generally, on a proportionate scale, crown their triumph with feasts of cannibalism.

Yet, while it is virtually certain that the state of nature of man included a perpetual state of war as above described, and that enormous pressure was thus exercised against the survival of the race by the murderiveness which so largely expressed in collective action the dominant egotism of man's nature, no reason exists for supposing that, even in the remotest and most savage period of man's development, individual egotism operated at large as a sole power. In generalising just now on the moral influences which are giving to the human race its continuity of life and development, we saw that egotism and altruism in proper exercise are the two equally indispensable joint-factors of progress; and so far back as the figure of man can be discerned in the field of history, always he can be distinctly recognised as acting under that compound influence. Thus, even in respect of the records here under review, as to the universality of war among the early inhabitants of the earth, we find that, in every spectacle of war exhibited to us, the concords as well as the discords of men are brought to light; the tributary concords, namely, which have organised multitudes of men into single wholes for the respective common purposes of aggression and defence. Concords, however, for purposes of war were but a part of the common

spirit of tributary life; and, inasmuch as the tributary spirit included and expressed all which was highest in pre-historic man, the significance of that spirit in its most general sense deserves extremely careful consideration. It needs hardly be noted that, over such parts of the earth's surface as were known to ancient history, the tribes then historical have now long since, under the conquests of war or otherwise, passed indistinguishably out of sight into the miscellaneous composition of modern nations; but explorations of other regions during the last four centuries, and especially within the last hundred and fifty years, have brought to light in their stead innumerable previously unknown tribes still existing in virgin savageness, with immemorial traditions of common descent and common custom; and study of these new-found tribes is not less instructive than that of ancient history, to illustrate what have been the universal governing principles in tributary aggregations of mankind.

The point which clearly must stand first in any such consideration has already been indicated in an early passage of the present paper—the point, namely, that “tribe” in its historical sense is but the enlarged equivalent of “family,” and that the sentiment of special family-tie, binding together the units of the tribe in submission as it were to one household-law, and individualising the tribe as against other tribes in the struggle for means of subsistence, was the main determining influence for the sympathies and antipathies of early man, and for the particular channels and forms in which his egotism and his altruism respectively tended to express themselves. This, which ancient history told of such early savage tribes as had become known to it, has been generalised without limit by analogous knowledge accumulated since then, in proportion as new explorations of the earth's surface have brought under ethnographical study the customs and traditions of previously unknown tribes still subsisting in primeval savageness. Everywhere the characteristic of the tributary spirit has been to potentiate and sanctify as against individual egotism the (so to speak) joint-stock egotism of the tribe. Its tendency has been so to merge each merely personal ipseity in the collective self, that the man has had no apartness from his tribe; that within the tribe, struggle between man and man, except as by accident, has had no place; and that mutual help has been the general law.* Thus, while inter-tributary wars, expressing the respective tributary egotisms and hatreds, were causing enormous waste of human life, probably there may have reigned within the limits of each separate tribe as perfect a peace as the world has ever known.

It of course is not to be supposed that under tributary law or custom the rights and immunities of individual life were the same as those which modern society concedes; for though, no doubt, the tributary law or custom may have purported (like modern police-law) to safeguard individual life against infractions of individual wrong, the individual life in the tribe would have been but an item of tribe-property, for the tribe at any time to expend as it judged best for the good of the tribe; and it is among the best known facts in history that, under the application of this system, very large quantities of human life were habitually sacrificed to the tributary theories of common good. The demands which were of all the most peremptory, and which have always stood first in ethnological interest, were those for sacrifices to the gods in every chief case of

* See the series of papers, by Prince Kropotkin, mentioned in the first footnote above; especially the paper, April 1891, entitled “Mutual Aid among Savages.”

tributary hope or fear. Different under different skies may have been the savage classification and naming of those unseen powers, and different the rituals which did them honour; but human hopes and fears related everywhere essentially to the same objects: to seasons and weather and harvests, to floods and tornados and earthquakes, to blights and famines and pestilences, to the energies of the living body with its passion of sex for sex, to the marvel of its self-continuance by offspring, and finally to the darkness which lies beyond death. The powers who awarded good or evil within that universe of human hopes and fears, and who would at every moment be the arbiters of fortune in whatever warlike or other enterprise the tribe undertook, were unplying gods whom only sacrifice of human life could conciliate. The sacrifice too (at least according to its original intention) must be the very best which the tribe, or its sacrificing family, had to offer; not some mere war-captive or comparatively unprized life, but the first-born of the sacrificing family, or the elect of the youth of the tribe; and the sacrificial victim's passage to death was as fulfilment of highest privilege and pride. To the tributary mind there would not have occurred any sense of special pathos in such scenes of sacrifice, nor any kind of protest against the ruthless gods whose priests dictated them; the leading thought would probably have been that the life was given with gladness for the good of the tribe to which it had been due; but more pitiful in these after-times of ours are the thoughts of those who read (for instance) the tale of Jephthah's burnt offering, or are thrilled by the immortal words in which Lucretius denounces the death of Iphigenia at Aulis. The quantities of human life which the early tribes of mankind expended from within themselves in expiatory and propitiatory sacrifices as above (to be distinguished, of course, from the triumphal sacrifices in which none but captives taken in war were immolated) were not such as we can now estimate with any approach to numerical precision. That compared with losses endured in war they were almost as nothing, and that in quantitative proportion to the total bulk of a tribe they would in general have had no great significance, may be taken as probably the truth; but that the actual numbers were always insignificant is not what history seems to tell. It, on the contrary, seems certain that at least in some cases, under particular uses of particular superstitions, the sacrificial consumption of human life would in mere numbers be of interest to the community; as, for instance, that wherever the Phœnician system of child-sacrifice had become current, there could be few families not bearing the scar which ablation of a first-born child leaves behind it.

Of equal stringency with the demands which the tribe made for human life as homage to the gods, and of amount probably in general very much larger, were the exactions which represented economical intention. In early ages of mankind a rising tribe could hardly have tradition of any more familiar fear than that of deficient food-winning in proportion to numbers; and probably no principle of tribe-life could have been deemed more imperative than that the tribe must not suffer through having bellies to fill, where service in food-winning could not be rendered in return. The struggling tribe must agree upon rough-and-ready ways of keeping down its number of mouths to such as the efficiency of its food-winning could well satisfy. Lives domestically unprofitable or burdensome must not be let run on. They whom age or disease was rendering useless and dependent must part with life by their own act or by the act of

others, and would often be gratified with the consciousness that in death they became food to their kinsfolk. Infants deemed superfluous for continuation of the tribe must be killed or cast aside; especially in large proportion infants of the female sex, and always such infants as showed sickness or deformity. Of the same ethical and economical meaning with infanticide in relation to the history of mankind, and probably more or less in association with it from the earliest known times, were various other endeavours to loosen the bond which Nature had instituted between the sexual and the parental instincts, and to set free the sexual appetite for indulgence without care of provision for offspring: endeavours which consisted sometimes in the employment of drugs to prevent conception, or of contrivances after the type of that with which Jacob's grandson (Onan) "displeased the Lord," or sometimes in the use of medicaments or mechanical means to procure abortion of the uterine fruit.

With regard to the fact that early tribe-life took upon itself to restrict by means which it judged appropriate the numbers of those whom the tribe should be required to feed, it has to be recognised that a tribe, waging difficult struggle for means of subsistence, would certainly find its difficulties lessened in proportion as it undertook only to feed such strong and effective members as would bring home more food than they consumed. In extreme difficulties of struggle, the question whether ineffective lives should be admitted to privilege of food might practically be question whether effective lives should starve; and thus the tribe, for its own preservation, might in last resort be summoned by Nature to apply the extreme rule of eliminating all life which could not support itself. The tribe, however, which thus exercised prerogatives of life and death could not exempt itself from the common conditions of morality, but must at least by degrees learn standards of right and wrong for its estimate of difficulties and its application of expedients; and to adjudicate between life and life, between expedient and expedient, would soon lead human thought into the depth of morals. When tribes or families had begun to consider under what pressure of exterior circumstances they would be ready to leave their weaker kinsfolk to starve, or would abandon first dictates of Nature in the relations of sex to sex, and of sexes to progeny, the moral questions before them were essentially of like kind with the questions which engage modern thought; and it may safely be assumed that, as soon as such questions arose, lines of cleavage, such as are now familiar to us, began forthwith to reveal wide distinctions in the moral structure of mankind. In contrast with the rude egotism which accepts at any cost to others the expedients it finds of service to its own appetites, natures of nobler type would practise and proclaim the altruism which identifies the welfare of others with its own; instincts of individual affection would plead in tributary councils against the ruthless putting away of old and young; and tribes of improving quality would more and more think it shameful to draw strength from the life-blood of the weak, or to thrive by cruel and obscene practices against Nature. Slowly, too, but surely, would come the time when considerations like the above must apply themselves to the relations of tribe with tribe; and for reasonable tribes a future could be foretold when many peoples would have as it were but one conscience, and would cease from inflicting cruelties on each other.

APPENDIX II.

CHARITABLE BEQUESTS FORBIDDEN BY LAW.

(FROM THE *British Medical Journal*, NOVEMBER 1, 1890.)

[In the summer of 1890, accident suddenly drew my attention to the extremely serious obstructions which had originally been imposed by the Mortmain Act of 1736, and had recently been renewed by the Mortmain and Charitable Uses Act, 1888, on various testamentary applications of private property to public purposes: interferences of such magnitude and stringency, that "over and above the masses of capital which were invested in agriculture and house-property as commonly understood, hundreds of millions sterling of our national wealth were in investments so related to land that the owner could not bequeath from them to Charity." With my mind drawn to this state of the case, I immediately took means to bring the matter under the notice of Ministers and official persons who were called upon to apply the law, and of public writers whom I thought most competent to deal with the evil. Among the latter, I sought the assistance of Mr. Ernest Hart, Chairman of the Parliamentary Committee of the British Medical Association, and of the late Dr. Bristowe, then President of the Hospitals' Association; and on the 1st November, 1890, I addressed to the *British Medical Journal* the following full statement of the case. At the commencement of the Session of 1891, Bills to amend the law were introduced; in the House of Lords, by Lord Herschell, acting for the British Medical Association, and in the House of Commons by Mr. Cosens-Hardy, acting for the Hospitals' Association; and eventually these two Bills were made one under Mr. Cosens-Hardy's proposal. On the last day of the Session of 1891, this Bill was passed, and thereby an incalculably great improvement was made in the public law regarding Bequests for Charitable Uses.]

THE Select Committee which the House of Lords in its last session appointed to consider the financial difficulties of our London Medical Charities will presumably continue its work when Parliament reassembles, and we may expect that, before the inquiry comes to an end, some of the charities concerned will draw the attention of the Committee to the obstacles which certain antiquated provisions of law are unnecessarily and injuriously maintaining in England against persons who desire to do charitable good by way of testamentary bequest. The question likely to be thus raised in relation to one particular class of charities is equally important in relation to other classes, is of no less concern to the interests of educational benefaction than to those of medical relief, and bears, indeed, upon every variety of public purpose, general or local, which depends on private liberality for its means of foundation or furtherance. Such being the case, the present appears a favourable opportunity for inviting public attention to the obstacles referred to: those, namely, which are represented in

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the second part of the consolidating Mortmain and Charitable Uses Act, 1888, and which were first constituted in 1786 by the Act 9th George III, cap. 36.

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In order to clearly understand the legal basis of those obstacles, it is requisite to remember what had been the state of the case before the legislation of 1786. From early in our feudal times England had always had its so-called statutes of mortmain, intended to restrict bodies with perpetual succession from an unlimited ownership of land by not allowing this corporate or amortised ownership except with special licence from the Crown; and in the reign of Henry VIII, when owners of landed estate were first permitted by law to make testamentary bequests of land, the statute expressly excepted that such bequests should not be to any corporate body. The reason for which the law first set itself thus against an unlimited mortmaining of land was essentially feudal. It concerned the very life of the feudal organisation to provide against those alienations of land which might withdraw from the immediate feudal superior, and thus eventually from the king, any such services or profits as were due from the ordinary tenant in fee; and in the demand which existed for that sort of security, not the comparatively personal questions of fines and forfeitures and other mere incidents of the system, but the question of safety to the State was supreme. During our early feudal centuries English loyalty was under constant solicitation to go astray; for there was habitual conflict of interest between the system of military lordships and knight-services, on which the kingdom depended for defence, and the intermingled system of ecclesiastical corporations which had its centre of command at Rome; and the experience of our then "chief lords" as to the issue of that conflict of interests had been that "the dead hand yielded them no service." In that experience England saw reason to begin its code of mortmain law, at first with regard only to ecclesiastical corporations; but in the year 1392-93 (fifteenth of Richard II) when the code received its last touches of completion, the same restraints were extended to civil guilds and fraternities, and to the corporations of cities and towns; and under the code thus completed it has for the past five centuries been unlawful in England for any corporation to acquire land or income from land, except under mortmain licence from the Crown, or under special privilege granted by Parliament.

While the code was in course of construction, and for nearly a century and a half from when it was completed, the ecclesiastical powers at enmity with it, though they could not contend openly against its plain provisions, succeeded nevertheless in contriving loopholes of escape from them by pleas more or less plausible on behalf of interests which they favoured. In the earlier times they commonly made arrangements under which they could plead that lands in question were not (strictly speaking) held by a religious body, but were held by others "to the use of," or—as we now say—"in trust for," the body; those other holders being bound in conscience to account to the religious body for all accruing rents and emoluments; and though this sort of plea, so far as concerned corporate bodies, had latterly been made ineffectual by the Act of Richard II, it, or some equivalent for it, seems to have survived on a large scale in other applications; so that, in the sixteenth century, when the Protestant Reformation began, very large quantities of land were found to be under such conditions of holding for perpetual "uses" as practically consti-

tuted mortmain without licence. Whether such holdings might fairly have been condemned by legal tribunals as evasions of the spirit of the mortmain law, is a question which needs not now be discussed; but the fact is, that they were not so dealt with; and the legislation of Henry VIII and Edward VI divided them for treatment into two classes. Those "uses" which the reformers classed as "superstitious" were suppressed, and the lands which supported them were vested in the Crown--how profigately, for the most part, to be misused, needs not here be said; while the remainder, thenceforth to be distinguished as "charitable uses," and at that time comparatively few in number, were at least provisionally let pass as not deserving forfeiture under the law. Protected at first by that sort of truce, and afterwards more distinctly condoned or legalised under Acts of Elizabeth, the virtual mortmaining of land and interests in land for purposes of perpetual charity seems to have been practised for two centuries after the Reformation, with little or no regard to the restrictions which had been enacted against mortmain in general, when at length, in 1736, Parliament came to be of opinion that the matter required more definite legal control.

It needs hardly be observed that, long before the period here reached England had become subject to political and social conditions widely different from those which had called the mortmain law into existence, and the rival forces of feudal times were at least no longer to be recognised in their old forms. Not only the foreign ecclesiastical system, which had been a chief factor on one side of the contest, had for two centuries been under ban of English law, but moreover, in the first year of the Stuart restoration, Parliament had brought to legal end the already half-forgotten knight-services of the feudal system; declaring that they and their consequents had "been much more burthensome, grievous, and prejudicial to the kingdom than they had been beneficial to the king." And while, with these and other changes, the old argument for the mortmain law had become obsolete in its original form, it does not seem that Government from 1660 to 1736 had found difficulty in obtaining from lands in mortmain any contribution reasonably due from them for the public service. For the present argument, however, it may be assumed (and the writer, for his own part, is nowise disinclined to believe) that, on permanent political grounds, the broad intention of the mortmain law, not to allow unlimited and unregulated mortmaining of land, is an intention which ought to remain represented in the laws of the country; and, if so, it may fairly be conceived that the legislators of 1736, when they referred to the old mortmain statutes as "wholesome" and for "the common utility," had in view other considerations than those which the progress of centuries had rendered obsolete. Assuming it to be intended as of fundamental principle, that the holding of land in mortmain ought to be under regulation by the State, clearly it is reasonable that the law of trusts should be brought into harmony with that principle; that pretexes of charity should not be let cover a system of unregulated mortmain; and that individual landowners, however charitable, should not be free to grant or devise their lands to persons corporate or other for objects of continuing trust, except within the limits up to which the respective grantees or devisees should have lawful authority to hold land.

It is to be regretted that the legislators of 1736, instead of merely integrating

the mortmain law by provisions such as those in regard of charitable uses, initiated a policy which the late Sir Francis Palgrave (before the House of Commons Select Committee of 1844) described as the "proscription" of charities. Their statute, commonly termed the Mortmain Act of George II, was, indeed, described by them only as an "Act to restrain the dispositions of lands by which the same become inalienable"; and its preamble professed no other intention than to remedy mischief which had arisen in that respect through wills made in favour of charitable uses;* but the provisions of the Act were made far more widely restrictive than any objects of the mortmain law could be deemed to require. From the date of this new departure, living gifts of land or of money to be laid out in purchase of land, for any use which the law should deem charitable, were to be lawful only under certain strict conditions which need not here be discussed; † and all testamentary assurances of land or purchase money for land, or of any estate or interest in land, or of any charge or encumbrance affecting or to affect land, for any charitable use, unless under special statutory privilege, were to be unlawful, null, and void. The extreme comprehensiveness of those prohibitions, as interpreted for present times by judicial authority, constitutes the grievance which it is now desired to bring under public notice; the fact being, that they operate in restraint of individual charity, and are opposed to the fair claims of charitable institutions, in ways and degrees not paralleled in any other passages of English law and not justified by any requirements of public advantage.

For what particular reason it was, that so severe a complexion was originally given to the Act, is a question which history does not answer; ‡ and the House of Commons Select Committee of 1844, when adverting to this point, observed

* The preamble of the Act of 1736 took as its ground, that the "public mischief" of mortmain had of late greatly increased through alienations improvidently made by languishing and dying and other persons in favour of uses called charitable; and on that ground the Act proceeded to entirely forbid charitable bequests of the particular sort of property to which it related. To suppose that this extreme course was necessary in regard of one sort of property and one sort of purpose was to impute radical untrustworthiness to our whole system of law regarding wills; as if the general law had taken no account of possible "improvidences," or would admit wills to be valid without reference to questions of competent and uncontrolled discretion on the part of testators. Moreover, as regards the closing words of the preamble, which mention "the disinheritance of lawful heirs" as something incidental to the testamentary mortmaining of land, the fact has to be remembered that in 1736, as at the present time, the "lawful heirs" of anyone who made a valid will were none but such persons as he in his will might choose to be his heirs.

† The conditions for those gifts were in substance three: first, that each gift must be made by formal specially attested deed, enrolled in the Court of Chancery, within six months of its execution; secondly, that the gift must confer immediate absolute possession without any sort of revocability or any sort of reserve or encumbrance in favour of the giver or any person claiming under him; and, thirdly, that every deed of gift must have been executed at least twelve months before the end of the giver's lifetime. This third condition emphasised importantly the intention with which the Act disallowed testamentary bequests; the general policy of the Act being, that gifts to charity must give against themselves living rather than against the estates they would leave at death. It could not but be seen that enforcement of this policy would tend to reduce very largely the number and amount of gifts to charity, and would, indeed, often render the giving impossible.

‡ The first Earl of Hardwicke, at that time Lord Chief Justice and a little later appointed Lord Chancellor, was the principal parliamentary promoter of the Act; and when he afterwards judicially administered it in the Court of Chancery, he referred to the part he had taken in framing the law as a ground on which to claim

that "indeed the insufficiency of the reasons assigned in the reported debates is such as would rather lead to the inference that some apprehensions, which it was not thought wise to make public, must have operated in addition to the avowed motives of the legislature." Not improbably there may have been some incitement of a merely partisan kind, perhaps some essentially temporary and now long-forgotten scare of early Hanoverian politics. From the debates on the Bill, and from the somewhat claptrap phrases of its preamble, as well as from the texture of the Act itself, and from the language afterwards used by judges who expounded it, one gathers that the promoters of the Act were in a state of angry suspicion towards interests which they believed to have been in undue favour as legatees for charitable bequests; but the suspected interests are nowhere named. One eminent authority (Sir Francis Palgrave) has said that the Act was dictated by a spirit of resentment against Queen Anne's Bounty Act, and the favour therein shown to the Church of England; while, on the other hand, Roman Catholics of authority have assumed that the aim of the Act was to prevent benefactions to their Church: witnesses of this class, however, always explaining that the Act has been futile for its imputed purpose, and that futile must always be any such endeavour to circumvent by Acts of Parliament the facilities which the organisation of their Church affords for receiving donations in secret and so-called spiritual trust on conditions deliberately contrived to be outside the law. Without drawing invidious distinctions between hostile camps, it might from the first have been taken for granted that, in proportion as the measure was one of partisan warfare, partisan means of evading its provisions were likely to be found; and that, in proportion as its prohibitory terms should be enlarged to the scope of partisan suspicions, their operation could hardly fail to be oppressive towards the generality of the charitable interests they would affect. And such, in truth, are the effects which have come. The House of Commons Select Committee of 1844, appointed "to inquire into the operation of the laws of mortmain, and of the restrictions which limit the power of making gifts and bequests for charitable and religious uses," concluded in the following terms their temperate and judicious report on the matters referred to them: "Although your Committee do not feel authorised by the terms of reference to report in favour of any specific alterations of the laws of mortmain, they feel bound to state, from an attentive consideration of the evidence

confidence for his interpretation of it. On various most important questions of construction, his judgments have been of permanent authority, and virtually constitute much present law. As regards the very severe bearing of the law on the interests of charitable institutions, an eminent commentator (Bridgman, page 284) observes that "the construction of this statute has been extremely rigorous, and many determinations upon it have been thought to carry it even beyond what the Legislature had in contemplation at the time;" but, in view of the personal record, it can hardly be said that the severity was beyond the intention of the immediate promoters of the Act, even though it may have been far beyond what the public of the time understood as their intention. It is important to notice that, with progress of time, misgivings seem to have arisen in our courts of justice as to some of the earliest judgments which have had authority of law, and that ingenious attempts have frequently been made to escape more or less from their control. The observation of Lord St. Leonards in the leading case of *Myers v. Perigal* was, "It is impossible to deny that the current of modern decisions is against the older cases, and that, while there is to be discovered an intention formerly to carry the provisions of the Act beyond the intention of the Legislature, the tendency of modern decisions has been the other way;" and that observation of his has a suggestiveness of its own among present arguments for reconsidering the terms of the statute.

submitted to them by witnesses whose means of information and authority must be held to be great, that the operation of the laws is most unsatisfactory, leads to doubt, expense, uncertainty, and litigation, and frequently defeats good and pious purposes which the present aspect of the country would induce all men to wish fulfilled; while, from the existing facilities for evasion, they cannot be regarded as serving the main purpose for which they are supposed to be maintained, by securing the heir from the unexpected alienation of property to which he might reasonably have hoped to succeed." It is to be regretted that, in face of the strong condemnation thus expressed by the Committee of 1844, and in spite of further condemnatory evidence which was given in 1851-2 before a second Select Committee then again considering the law of 1736, this law still stood practically unchanged at the date of the Consolidating Act of 1888, and is therefore the law now in operation. In the interests of particular favoured institutions or favoured purposes, exemptions and privileges, larger or smaller, as against the general law, have, from time to time, been granted by Parliament; the first within fifty years from the date of the Act, and the last in this current year; * and the various exceptions, if the main law were itself good, might in great part be arraigned as arbitrary and invidious; but, in the opinion of the present writer, critics who examine the law as a whole are likely to find those terms of censure more appropriate to its common effect than to the partial escapes which are allowed from its stringency; and in this point of view the reader is invited to consider carefully, first, the nature of the purpose expressed in the restrictions of the law, and, secondly, the extent and heterogeneity of the field over which the restrictions are made operative.

In the branch of law to which the restrictions belong, the kind of interference which they represent is in principle an absolute solecism. Our general rule regarding dispositions of property, that each man may give his own to whom he will, has in the present case been made subject to the grotesque

* The Act of 1736 has been judicially construed as not meant to interfere in the City of London with any testamentary "custom" which had had sanction from the Great Charter; and the Act itself declared that none of its invalidations were to apply to dispositions of land, or of money for purchase of land, if in favour of Oxford or Cambridge University, or of any college of either of them, or if in favour of Eton or Winchester or Westminster College, and for the benefit of its foundation scholars only. By subsequent statutes, special as to the particular institutions, dispositions in favour of the British Museum, or of Greenwich Hospital, or of the Science and Art Department, or vesting property in the Ecclesiastical Commissioners for certain purposes within their jurisdiction, are allowed absolute privilege against the Act of 1736; and privilege, up to fixed limits of annual value, is likewise allowed to dispositions in favour of the Bath Hospital, the Seamen's Hospital, St. George's Hospital, the Middlesex Hospital, the Westminster Hospital, and the University College, London, which includes a hospital. Part III of the Consolidating Act of 1888, while it continues all previous exemptions and privileges, extends to London, Durham, and Victoria Universities, and their colleges, and to Keble College, Oxford, the exemptions which had been allowed to Oxford and Cambridge Universities and their colleges. It may be added, though not of much concern to our main question, that, before the Act of 1888, various special Acts relating to churches and chapels and burial-grounds, or to schools and museums and libraries and other institutions for promoting literature, science, or art, or to places of public recreation, had provided certain relaxations of rule for cases where stated amounts of land should be strictly intended to provide sites for the particular purposes; and that in the spirit of those relaxations (which the Act of 1888 had continued) one of the like nature was granted in last session of Parliament for cases where the purpose shall be to provide in any populous place for the house-accommodation of the working classes.

exception, that what men may lawfully do with their own for any other object whatsoever they may not do for objects of charity. Our law of wills, as compared with the laws of other countries, is extreme in the general liberty which it concedes. It leaves to the discretion of courts of justice, that they, according to their rules of action, shall disallow such particular wills as may be shown to have been made during unsoundness of mind, or under any undue influence; but, except as subject to that condition, and as subject to the Mortmain and Charitable Uses Act, the will of the testator is law. It is under no restriction in favour of family ties, not even in favour of wife and children; it may lavish wealth, as good or bad discretion suggests, in every direction but one; it may bestow augmentation of riches where riches are already more than enough; may multiply vain mausolea; may enrich prostitutes and other parasites; may in any but one respect indulge unlimited caprice. Only, as regards the sorts of property to which the Mortmain and Charitable Uses Act applies, the object, to which no testamentary assurance can lawfully be made, is Charity. And the provision, be it observed, does not confine itself to securing, in the interests of the mortmain law, that wills which devise land to uses of charity shall cease to be valid at the points (if any) where they go beyond the particular legatee's authority to hold land; the provision unconditionally is, that every devise of land for charitable use shall in its entirety be null and void.

Under the terms of that exceptional law, as interpreted by judicial authority, the interference with charitable bequests has been on a scale of such dimensions and such severity as to account for its having been protested against as proscription. In the Act of 1736, wherever gifts of "land" are forbidden, gifts of "any interest in land" are equally forbidden; and the Act of 1888 has retained that double prohibition by defining that its word "land" is meant to include anysoever "estate or interest in land." The effect of the words "interest in land" has during the past century and a half increased immeasurably beyond anything which could have been foreseen in 1736, and immeasurably beyond what can be deemed the immediate practical province of mortmain law. At present, everywhere in England, more or less of financial interest in lands and buildings pervades our whole system of local government loans, as well as innumerable branches of commercial enterprise; and an untold amount of the wealth of the country is invested in mortgages or bonds which are secured either on lands and buildings, or on the rents or rates derived from them. Except where Parliament has granted particular indulgences to particular sorts of property,* or where courts of law have judged that particular absolving conditions exist, all the above described forms of investment are at least *prima facie* land-interests in the sense of the law, and the funds invested in them therefore unbequeathable for uses of charity.

Of the exceptions which consist in judicial abolutions from the general rule, some have now come to be recognised as law within law; but they form only part of the case; and on the exact boundaries between law and presumable exceptions, legal advisers often express much uncertainty. They refer to judicial decisions which sometimes are not easily reconciled with each other, or

* As, for instance, in the case of shares and other interests of members in joint stock companies registered under the Companies Act, 1862, since they, even in some cases partaking of interest in land, are expressly declared by Section 29 of the Act to be only of the nature of personal estate, and can therefore lawfully be bequeathed to charity. See Tudor's *Charitable Trusts*, by Bristowe and Cook, p. 408.

are distinguished in terms of almost metaphysical subtlety; and disputed cases are so constantly in litigation at serious cost to the interests concerned, that the layman derives a strong impression of absence of settled principle, not to say a sense of hopeless confusion, as he contemplates this section of English law. So far, however, as judicial decisions have been given in the far too copious litigation which that state of law has occasioned, it appears clear that, over and above the masses of capital which are invested in agriculture and house-property as commonly understood, hundreds of millions sterling of our present national wealth are in investments so related to land that the owners cannot bequeath from them to charity. Thus, for instance, as regards merely one class of such investments, whereas the local government loans of the country have of late years been increasing at the rate of some ten millions a year, and are now reported as amounting altogether to little less than £300,000,000, these loans almost universally are in some form or other secured by mortgage of the local rates (with or without land) on conditions which, generally speaking, constitute them interests in land, and bring them within the prohibition referred to. A special case of this class is that of the Metropolitan Consolidated Stock, amounting now to some £20,000,000 sterling, as to which the present judicial ruling is that none of it can be bequeathed to charity.

That the above described wide extensions of prohibitory law are utterly unnecessary and unreasonable as precautions against the mortmaining of land, may be fairly judged from their incongruity with the provisions of the special Act (33 and 34 Victoria, cap. 84) which regulates the investments of charitable trust-property; for while by the first-named law bequests of land-securities to charitable trusts are indiscriminately and unconditionally declared null and void, the other Act expressly authorises the trustees of charities to invest their trust-funds in those same securities, and provides the one needful condition for avoiding clash with the law of mortmain.

In further illustration of the severity with which the law against charitable bequests of so-called "land" is enforced, one more fact has to be mentioned. There is a prohibition which, in the sense of the mortmain law, can hardly not be deemed paradoxical, but which, though in logic it be of doubtful congruity with the prohibitions previously named, joins with them but too consistently to make front against charitable bequests. Not through any express enactment of the legislature, but through a series of judicial decisions—the earliest having been that of Lord Hardwicke in the case of *Attorney-General v. Lord Weymouth* and others, it has come to be accepted law, that, where the testator is forbidden to give by will to charitable use any land or interest in land whereof he shall die possessed, he is further forbidden to bequeath to any such use the cash which his representatives would be able to realise (and which he might direct them to realise) by the sale of the land or interest: the legal theory of this prohibition being, that, in certain cases, "if such a bequest was allowed, the charity to whom the bequest was made might elect to take the land."*

The writer of the present observations is unable to conceive any reason in law or common sense for such prohibitions as those which he has above described; and they seem strangely discordant from those parts of the statute-

* *Tudor's Charitable Trusts*, by Bristowe and Cook, p. 399.

book which in matter are of nearest relation to them. On the one hand, the intention of our old mortmain law, so far as it may be deemed applicable to present times, seems caricatured and almost outraged by those extravagant provisions pretending to support it; while, on the other hand, the prohibitions, so far as they extend, are in direct contravention of the general spirit of our law of wills. Very great, too, is the practical injury which they, and the uncertainties of the law regarding them, occasion to the institutions they concern; and in a country where the State deliberately leaves to personal and voluntary benefaction so very large a share as here of what it construes to be charity, in a country which so largely depends on private munificence for hospitals and infirmaries, for places and appliances of popular recreation, and for endowments to promote learning and science, it surely is a national evil, and ought to be deemed a national scandal, that uses of wealth, which within their proper limits would eminently be of the nature of public service, should be subject to wanton obstruction by a law as capricious as it is peremptory.*

The writer, as a person particularly concerned for one class of charities, and not without warm interest for others, ventures to urge that the state of law he has described requires amendment: and, though not pretending to suggest an exact form of legislation for that purpose, he would submit, as regards essential aims, that the prohibitions which now stand in the law ought to be mitigated to the following effect:—

- (1) that testamentary gifts of actual land, or of purchase-money for land, into trust for uses of charity, should be regarded in law as on the same footing with assurances of land to corporate bodies,—that is to say, should not be forbidden by the law, but should merely be made subject to general mortmain conditions, and should, if such conditions require, admit of being fully legalised by licence on probate of will;
- (2) that bequests of mortgages and other like interests in land into trust for uses of charity should be made lawful; but with the mortgagee's right of foreclosure made subject to the same restrictions as those which the Act 33 and 34 Vict., cap. 34, imposes when corporations and trustees (as by that Act permitted) invest charitable trust-moneys in real securities; and
- (3) that bequests of money to be realised for uses of charity from the *bona-fide* sale of land or any interest in land should be made equally lawful with bequests of personal estate.

Amendments to the above effect in the general law regarding dispositions of the sorts of property which are in question might involve something very like a repeal of the second part of the consolidating Mortmain and Charitable Uses Act, 1888, but would not in any degree lessen the securities which the Act is intended to provide against irregular mortmainings of land, whether for charitable or for other uses. Were but such amendments made in the law, our statute-book would no longer be discredited, as it now is, with appearances of unjust favour to particular purposes and particular establishments. When the

* Though the writer's immediate purpose is only to draw attention to the cases in which the national wealth is debarr'd from charitable applications, he may here in passing also call to the reader's recollection, that, even of the funds which are lawfully bequeathable for purposes of charity, none can be so bestowed except under liability to the heavy taxation of 10 per cent. on the amount of each intended benefaction.

law had discarded needless inequalities from its treatment of the different sorts of private property, it would be in effect an equal law as between the varieties of charitable intention. The treatment which has been deemed just for our universities and colleges in regard of benefactions intended for them, and which they, with certain very few bodies of different purpose, have hitherto had as an exclusive privilege, would then be extended, as of common right, to the many hundreds of other and kindred institutions, which, in their various ways of voluntary service—medical, scholastic, and other, are equally conferring popular good in all parts of the country, and are amongst the most influential of agencies for the physical, intellectual, and moral welfare of the people. Surely the equality of law is in itself an object to be desired. Let all institutions, properly and responsibly organised for such functions of beneficence, have the fullest liberty to receive whatsoever means of support the wealthier parts of the population may be willing to bestow; free from all those wanton hindrances which the legislators of 1786 raised against them; but subject, of course, to such general conditions as the law for the time being would presumably always have in force with regard to the administration and control of charitable trusts.

INDEX.

ABBREVIATIONS.

L.G.B. = Local Government Board.
G.B.H. = General Board of Health.

P.C. = Privy Council.
P.H. = Public Health.

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