

CHAPTER VIII

"Even if we grant that all rights of property have the same basis and sanction and eliminate all moral distinction, reason and experience still show that there is but one right of property that conduces to the prosperity of the whole community, and that this is the right which secures to the laborer the product of his labor. This promotes prosperity by stimulating production, and giving such security to accumulation as permits the use of capital and affords leisure for the development of the intellectual powers. It is respect for this, not respect for those forms of property which the perversion or folly of legislative power may at times sanction, and which consist in the power of appropriating the results of others' labor, that universal experience shows to be essential to the peace, prosperity, and happiness of mankind".

Henry George in "Perplexed Philosopher", 274.

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The irregular course pursued by the court in these cases may be supplemented by other citations. Marshall's free and easy handling of the constitution in such matters seems to have set the pace, and we find Justice Holmes saying: "If a thing has been practiced for two hundred years by common consent, it will need a strong case for the fourteenth amendment to affect it". This, of course, helps us to understand that the constitution is the supreme law of the land.

Meanwhile, the several cases presented are sufficient to indicate that the court's decisions operated to maintain feudal views of privileged grants, even though they compelled the sacrifice of consistent reasoning. The justices also supported decisions for different, and sometimes antagonistic reasons. For instance, Johnson agreed that states could not vacate their grants, but dissented from Marshall's argument in behalf of the same conclusion.

Then Marshall and Story strongly supported the Dartmouth decision, but their descriptions of corporations, on which their conclusions rested, cannot be harmonized. In the Bank case, too, Marshall found it necessary not only to ignore his previous judgments and support the power of the state, but also to drag into the daylight the means whereby all feudal tyranny may be destroyed.

Again, in the Bridge case*, the court greatly grieved Story by taking a position so emphatically divergent from previous conclusions that that distinguished jurist mourned the passage of his old comrades and the advent of a new race. This case shows the court faced in the right direction, and it is probable that

*See "Note" at end of Chapter VI.

had not the influence of the institution of slavery and the great corporate powers incident to early railroad development intervened, the true course would have been pursued, even though progress were slow.

The corrupting and brutalizing influence of slavery finally became so widely recognized that a surgical operation was necessary. The corporate procedure, however, was more subtle, more of the confidence operator and less of the burglar—not that the arts of either of these worthies was wholly absent from either interest. Antagonism to popular rights is the practical method of both, and time only is needed to bring this truth into military or judicial daylight.

This conflict came to the surface in the Munn case, and we find the court ready to play its part. It did not directly exalt feudal power, but accomplished the same end by definitely degrading individual rights, just as increasing prices or decreasing wages lower the living conditions of working people.

Half a century later, in *Tyson vs. Banton*, Justice Holmes, although in a dissenting opinion, evidenced the growth of feudal faith by saying: "Property rights may be taken for

public purposes without pay if you do not take too much"; and "that business is clothed with a public interest and has been devoted to the public use is little more than a fiction"; and "that subject to compensation when compensation is due, the legislature may forbid or restrict any business when it has a sufficient force of public opinion behind it". One would suppose that most citizens would agree that this is very far from Marshall's notion that the people "have manifested a determination to defend themselves and their property from those sudden and strong passions to which men are exposed".

Again, Justice Holmes disputes Marshall's assertion that the power to tax is the power to destroy by saying: "The power to tax is not the power to destroy while this court sits." Yet, in another case he apparently asserts that "The right to tax 'in its nature acknowledges no limits'." He also held that the power to fix rates is the power to destroy, if unlimited, and that such rates "must be reasonable or they will be held void, but if this court deems them reasonable they stand." He also declared that most distinctions of law are of degree.

Doubtless it will be admitted that he would

reserve a great deal to the discretion of the court, and also that such position is very satisfactory to those entertaining feudal concepts of human relations.

Yet nothing can be plainer than that just in the degree that the bonds of feudalism have been loosened, modern progress, civilization and freedom have emerged. This is especially true of English speaking peoples. Such loosening of feudal bonds has permitted the growth of British democracy. Freedom and progress, in fact, express the normal condition of human life. Slavery and other forms of repression do not exist unless they are artificially imposed. It is reasonable, then, to believe that if civilized society would free itself wholly from hampering and repressive laws inherited from feudal times, as it has largely freed itself from the absurd superstitions of barbarians, it would advance from victory to victory in all departments. In such conditions science gains new knowledge. Art applies such knowledge to the practical affairs of life with ever increasing nicety. Normally, this growth is strong, vigorous and joyous.

Like all human affairs, however, such happy result is conditional. To attain this end, our

remnant of feudal law and barbarian superstition must be discarded. The latter need not much concern us. Education tends steadily to narrow its influence. In civilized lands, at least, few now live in dread of druid priests or vengeful deities. Feudalism, on the other hand, is still strongly supported by legal institution. In fact, under the very respectable name of vested interests, it claims first consideration in our fundamental law of property.

This claim rests upon the remnant of feudal law that the revolution did not destroy, and that a cautious court has emphasized. The doctrine of *Fletcher vs. Peck*, for instance, was no doubt intended to assure the security of property, which, in turn, would assure security to industry. The Georgia grant, however, from which this case originated was at best a gigantic speculation. Therefore, the doctrine announced by that decision operated to promote speculation, not industry. The history of realty transactions amply supports this statement, for exploitation first and development afterwards is the nearly universal record. In fact, on the basis of that decision such procedure was inevitable.

Nature, of course, compels us to speculate

in respect to weather, earthquakes, unavoidable accidents, etc., which lawyers reverently call "acts of God". Artificial or unnecessary risks, however, are not of this character. To indulge in these is gambling. Our land-holding and tax systems combine to create just such an entirely needless artificial risk, and, therefore, real estate transactions are accompanied by the gambler's hopes and fears.

The Georgia grant could not increase the quantity, quality or availability of the territory involved, or serve any other useful purpose. No activity is credited to the grantees beyond disposing of parcels of the granted land to settlers or to adventurers like themselves. This as readily could have been done without their aid. So far as definite information or reasonable conjecture may furnish enlightenment, no productive purpose was served by this extension of privilege. It must, therefore, be grouped with other gambling adventures.

The consequences of the feudal policy confirmed by the decision of the court in this case is revealed in great areas lying idle in all of our growing cities, and other great areas very inadequately used. It is shown, also, in the fur-

ther fact that additional lands are brought into use only on condition that the user shall submit to an ever increasing feudal tribute, plus growing taxes on whatever he may produce. How can industry thrive normally and hopefully under a handicap so foolish and unnecessary? Why levy taxes upon a man who is doing just what he should do, and just what everyone wishes him to do? Especially, why should this policy be pursued when it surely leads other men to engage in the wholly unproductive adventure of speculation in vacant land values?

Nevertheless, since the revolutionary days many of the forms of vested interest have been greatly modified or wholly obliterated, but, under the operation of existing law, its chief power still endures. For this reason Mercer's statement can not fairly be denied, and Mommson's prophecy is worthy of attention. Even the French king observed the ill-effects of feudalism, and wished entirely to rid his land of it. He did not realize, however, that one form of his much esteemed property was being administered in a manner to cause the very evils that he would eliminate. That the supreme court of the United States appears to

have taken the same view of this matter entertained by that unfortunate monarch may be thought highly complimentary.

From the beginning that court has maintained feudal doctrines with respect to primary laws of property. This attitude necessarily conflicts with modern individualism, which asserts personal freedom and responsibility. The conflict, thus established, recognizing individual rights on the one hand, and on the other, maintaining feudal power, continues to the present time. These ingredients will not mix, being mutually exclusive, like certain gases that German chemists call "noble". The two theories are not only inharmonious, but are definitely antagonistic. Consistent law in harmony with both is impossible.

It is, of course, unreasonable to believe that courts intend thus to assert contradictory opinions; nor is it reasonable to believe that they intend to oppress the people. It is reasonable, however, to believe in the existence of forces that are indicated by the facts of every day experiences.

Every day proves the enormous productive power of the present time. The strained condition of economic activity is also known.

Muddle and contradictory judicial decisions, too, are known to all who frankly investigate them. Such great productive power should bring the happiest results. The strained economic condition, however, proves that it does not do so. In seeking explanation for this state of affairs, it is soon discovered that political power is the only agency capable of seriously interfering with economic development. It is further discovered that this power is finally applied pursuant to judicial decisions.

Political power, then, judicially endorsed, is the energy that disturbs business relations. Men who are otherwise outspoken, and even aggressive, shrink from frank recognition of this conclusion. Also because the quiet, though dominating, influence of judicial action upon economic matters is not fully appreciated. Meanwhile, explanation of the situation must be sought elsewhere than in the design of courts.

Such explanation is not extremely difficult, but it covers centuries of time. The key is to be found in Maine's words: "Our laws are saturated with feudal principles".

Through the centuries, feudalism, born of social disorder and maintained by force, was

slowly welded into a system of aristocratic tyranny, based upon denial of equal access to the earth. This bar to legitimate effort was overcome, if at all, upon rack rent terms, or by villeinage. Even after the black death, that swept away a third or more of the people, the king and council, "whose sympathies were naturally with the landlords", says a noted professor of history, forbade workmen from demanding more wages than the rate paid before that event. Evidently their knowledge of economic law was not superior to that of present day statesmen.

Feudalism, however, finds its roots in times still more ancient. The authority of the feudal lord was, primarily, that of the head of the barbarian family, plus exclusive control of the family lands, while the dependence of his feudatory was that of the barbarian, minus the blood-tie. The man lost his security, but the lord increased his power.

In such primitive family, we find that all members were "blood-brothers". The family was the social unit. Larger groups were aggregates of families. Obviously, then, each individual, being a member of a family, held a secure place in the life of the community. No

one was an outcast, save for wrong-doing. In such condition, a barbarian family, or a whole tribe, might starve or be destroyed by enemies, but no one could starve in the midst of plenty. That particular expression of humanity was reserved for a later and more highly civilized society. For instance, the world recently struggled with a surplus of wheat and other food products, while thousands were hungry. Even our government held some 200,000,000 bushels of wheat that it feared to place on the market, although holding it was a matter of large monthly expense. Administration in barbarian society, in this respect, certainly was superior; besides, an unemployed man was as unknown to barbarians as an unemployed member of a tribe of monkeys in a South American forest.

Surrounded by savage enemies, barbarians placed authority in the hands of headmen to provide for the imperative need for instant united action. For an analogous reason we place authority in the hands of a commander of a vessel at sea. The heads of barbarian groups thus became accustomed to the exercise of power, while others were equally habituated to obedience. Sir Henry Maine seems at

a loss to account for the long continuance of this primitive custom, but the matter is apparently clear enough when we note the reluctance with which men surrender any sort of power. Maine also observes that recruiting groups by adoption ceased "probably as soon as they felt themselves strong enough to resist extrinsic pressure". Safety, evidently, was the motive.

Such social arrangement grew from actual need. It was not a mere private privilege, like most of the feudal customs with which civilized people now torment and bewilder themselves. This group idea was so completely inclusive that injury of an individual was considered an attack upon the family, and called for vengeance. The family right to land, too, was a matter of course. In such conditions, individual independence was not even a dream, but individual security was as positive as the blood-tie. This notion of group solidarity appears to have been the only concept of political organization of which our Aryan ancestors were conscious.

The integration of human society, however, gradually modified primitive customs. Individuals unconnected with families became so

numerous that, in Rome at least, laws respecting them were enacted. This slow advance of individualism was accompanied by an equally slow fading of primitive customs. Then ensued a mixture of individual, group and public interests. These, without a system of representative government, developed confusions, antagonistic interests and influences similar in character to those now common in civil society. Political corruption, bribery, rascality of all sorts linked with violence followed, and the republic collapsed.

The empire continued the same economic system. This was possible under great executives who were absolute masters of the state, but when weaklings and criminals were elevated to autocratic power, confusion became fatal, and barbarians overwhelmed Rome. The last emperor was deposed in 476, twenty-five years after the invasion of Gaul by Attila, "The scourge of God".

During that quarter of a century, nine emperors appeared and vanished. The resulting condition was called feudalism. It was a mixture of Roman and barbarian laws and customs that obtained recognition in a period of great disorder. It was, in fact, confusion

crudely organized, and came into existence only because governments were too weak to defend people from marauding bands or from oppression by government officials.

Free men thus found themselves threatened on all sides, and sought protection at the hands of local lords who held in pay armed forces of more or less strength. These men surrendered their lands to secure this limited safety, the lord claiming that he "could only protect his own". The land was then returned to the man for use, but title remained with the lord, and his armed band made his title good.

This is the feudal contract mentioned by Maine. It is the central fact in the feudal system. We are to understand, then, that, in fear of annihilation, men made contracts! This is a curious notion. Still, in a similar way, modern freemen take "jobs" preferable to begging, stealing or starving, none of which makes strong appeal to virtue or independence. The job undoubtedly is contractual in form.

These early feudal associations were essentially self-supporting, under the authority of one man, much like barbarian groups, although often on a higher level of civilization. There was, however, one marked difference: the

blood-tie, that secured membership to each individual in an established barbarian family, was wholly lacking in the feudal system. Here the lord alone "belonged"; everyone else was subject to eviction. Barbarian authority was thus continued, but barbarian security vanished.

The partial individualism, that developed in Rome, together with the feudalism following the destruction of that state deprived men of equal access to the soil. Thus dependent, they were burdened with feudal dues, the cost of military service, enforced labor, and many other restrictions. Justice was ignored. Force was rampant. The original vassal held a contract with his lord, to be sure, and this sometimes descended to his heirs, but what power could enforce respect for its obligation? The absence of such power was the reason for making the contract. In fact, the contract itself was proof that no such power existed. Besides, it is not recorded that feudal lords often executed judgment against themselves. However, the lord often needed loyal support from his vassal, and this fact was the underling's chief security.

Thus secure in the control of their small

groups and domains, these lords, true to their barbarian heritage, made war upon one another. Among them fortune varied. Power waxed and waned. Principalities arose and fell. Even attempts at orderly government were not wanting, and some show of democratic impulse appeared in so-called free cities and their leagues*.

These, however, ultimately yielded to the pressure of feudalism, which seemed to be as firmly established as the ancient family and tribal organization of barbarians.

The game of war continued through the centuries, while bench and bar, ever catering to the propertied interests, have been at great pains to prove its "legality". Recently, however, war has been proved to be unprofitable, even to the victors. That fact may modify the practice. Some evidence of such modification

*In "The State", Prince Kropotkin presents an interesting sketch of these Free Cities and the leagues evolved by them. He strongly condemns their destruction by feudal lords, but also notes factions that grew in the cities. Had there been no tyrannical lords, such factions would likely have become destructive, although more time would have been needed to realize this result. Meanwhile the Prince seems not to perceive that the splendid results of free co-operation in and by the cities, which he so greatly admires, may be made secure and permanent only by the power of great states. To link free individual initiative to adequate defensive power is the problem. Genuine democracy certainly seems to offer the only solution.

is offered by the international peace proclamation. Cautious observers, nevertheless, will note that international veracity is a virtue of limited credit.

During these many centuries of strife, the modern great states slowly emerged, but the individual never regained security equal to the blood-tie, save as a slave. Since the abolition of the time-honored institution of property in human beings, the function of our wisest and best has been revealed in almsgiving and the imposition of tariffs. That the feudal system made no provision for individual security was fully demonstrated by the condition of the people in western Europe before the French revolution. Their condition was the product of oppressive taxes by central governments and tyranny of local lords. By such means the people were deprived of all possibility of orderly progressive development.

It is often said that the fourteenth century saw the end of feudalism; governments having become strong enough to resume their functions of keeping the peace and securing property. This merely means that the executive power no longer depended wholly upon the favorable attitude of adventurous and am-

bitious lords. The character of the system was not changed. It was bent more to the will of the central power and somewhat less to the advantage of the great lords. The early crude and disorderly feudalism had slowly taken on fixed forms and gradually approximated a developed system. Whether executed by the lords or a central authority, it still was designed to secure the power of the privileged few by holding the mass of the people in subjection.

Finally feudal rule became much more rigid than during the centuries of its growth; and through the whole period of its reign, there was but slight social development. The chief concern of that system was, and is, to secure its own power. Under its rule strife, ignorance, and degradation continued through the centuries as the lot of the masses, while a few men of learning appeared as oases in the desert of ignorance.

The struggles of William of Orange and the rise of the Dutch republic, however, proved that kings were not absolute, and the English revolution demonstrated that a determined people could rule their king instead of being ruled by him. Meanwhile practical plans for.

the inauguration and administration of orderly freedom were wanting. Not until the American and French revolutions, did workable plans appear, and these were imperfect, as changes in French law and amendments to our constitution amply prove.

Accompanying these features of feudal society, was an ever increasing effort on the part of land holders to escape legitimate and lawful taxation, and by various devices to foist that payment upon producers or consumers. They were so successful in this enterprise, according to Carlyle, that in his day only one twenty-fourth of British revenue came from land holders. Incidentally it may be noted that control of the purse was wrested from the grasp of the king, but meanwhile the people became the victims of the land holders' tax scheme, and English land was valued for purposes of taxation for the last time in 1692.

Under the leadership of Hamilton, we followed the British practice, and consequently, until recent years, privileged property in the United States has been almost wholly free from Federal taxes.

In matters of detail, quite naturally, feudal societies varied greatly at different times and

places. Important features, however, varied chiefly in form only. Everywhere the lord was dominant. The man was dependent. Equality and freedom were unknown.

Some modification of the social pressure thus produced followed the discovery of the western continent. That event opened the whole world to view and in some degree eased the oppressed people of western Europe. It also brought feudal law to America.

But while it obtained foot-hold here, feudalism was not always able to control the scattered and independent communities that grew up on our frontiers. Also America was too far removed from the central authority in England for subjugation, even by George III's personal government, which sought to emphasize feudal principles, although that genial gentleman, like latter-day notables, hardly knew what was taking place.

The individuality nurtured here, combined with the vanity and stupidity of the British government in dealing with the colonies, in addition to the actual oppression on the continent, at length caused the pent up forces to burst their barriers. The American and French revolutions followed, proving feudal laws to

be no longer competent to meet the needs of civilized society, and incidentally forcing tyranny to pay some small part of its debt to humanity.

In this adventure our primary declaration voiced a principle antagonistic to the feudal concept. In different language Frenchmen proclaimed the same doctrine. But it did not find universal acceptance. European statesmen, noted for much learning and great skill in public affairs, met it with harsh denunciation or pitying smiles, and assumed that defeat was its inevitable fate. Such attitude implied that the American and French revolutions were sporadic, and that society must perforce settle back into the old traces, as the only hope for peace, order and safety.

That some of our leading men of that day sympathized with this European judgment is well known, although not widely advertised. Many of these were as definitely aristocratic as the titled ladies and gentlemen of Britain. Their objection to British rule did not arise from hostility to that system, but from the fact that, in this instance, they were payers, not receivers, of taxes. In short, they desired

to exercise the powers of government themselves.

The formation of our government, therefore, was in the hands of men who were not in agreement respecting fundamental principles of public organization. The result was a product of which they declared, "It is the best that we can do". It was a great improvement over the previously existing regime but fell far short of complete elimination of feudal power. Slavery, for instance, was vigorously opposed but the combined wisdom of the convention was not equal to its extirpation.

Some members of the convention, like Benjamin Franklin, wished to establish a genuine democracy. Perusal of their contributions to the discussions, however, indicates that they held vague ideas as to how that end might be achieved. Some of the lawyers, too, showed a degree of democratic emotion with little democratic knowledge beyond well grounded fears of executive tyranny and legislative jealousy and confusion. Besides, these lawyers, and nearly all publicists as well, were reared in and trained to the same principles of law that, as Maine said, saturated their British brethren.

In fact, but few of the present generation have escaped the same influence.

Our judges, of course, have been selected from among lawyers so reared and trained. Therefore, although we have declared with the greatest possible emphasis for individual freedom and responsibility, a declaration wholly antagonistic to feudal concepts, our judges have almost unconsciously leaned to the side of privilege. As the professor of history said, "Their sympathies were naturally with the land holders".

Only when the law was definitely and clearly in favor of freedom could they wrench themselves away from the feudal notions to which they were trained. Even explicit declaration was not always a sufficient defense from their prejudices, as invasion of free speech and the use of writs of injunction attest. Wherever uncertain meaning would be noted, construction readily found means not only to defend privilege but also to enlarge its control, or to check the agencies whereby it might be brought more nearly to conform to our ideal of personal freedom.

Thus, when a fundamental question of property was presented to our court of last

resort, even Johnson thought that a "right of soil" over a territory at least double that possessed by many sovereign states, was secured by the formalities of a law suit that he himself declared had the appearance of a feigned case, and that undoubtedly originated in jobbery. Surely confusion could not go much farther. The mixed state of the law is also shown by the emphatic division of opinion that often occurs among the learned justices. If the law is, as it should be, merely honesty and conformity to decent custom, what explanation, other than that here proposed, can be offered for divergence so pronounced?

Nevertheless, our constitution has operated to modify feudal power, and has given us a freer and more rational administration than previously obtained. Thus even partial freedom has brought its just reward and taught a more hopeful lesson than emanated from the gloomy forebodings of European statesmanship. Surely the limited removal of feudal restrictions may be credited with modern social advance. The wider range of activity thus permitted invited invention and enterprise to new adventure, while one undertaking opened the way for another.

For instance, export taxes are illegal, nor may tariff taxes be levied between our states. Therefore, trade, although hampered by continuance of feudal import taxes, has grown to its present enormous volume. Domestic trade is colossal, while foreign trade, struggling with some success against absurd legal obstructions that promise high reward for their successful violation, fails to show a like achievement. The facts appear to agree with the theory that wherever industry is freest we find the highest development and most satisfactory results.

It is clear, then, that the men of the revolution did not remove all feudal restrictions, nor did those of the civil war time. Their work, however, was magnificent, and has borne splendid fruit, but it was not finished. Unless it shall be carried forward, the possibilities of free institutions will not be fully revealed; nor shall we have full assurance that feudalism will not again be imposed. Common sense dictates continuance of work so well begun.

Our experience up to the present time does not teach that the great American experiment in popular government is a failure, but it does abundantly teach that it is incomplete. There-

fore, statecraft that is both wise and honest will seek advance from our present position rather than multiplicity of regulative statutes that are in fact retrogressive, and indicate a melancholy lack of vision.

Yet it may be argued that the work of our ancestors is being carried forward, and in a very creditable way, as proved by the undoubted wealth and power of our country. Wealth and power, however, are not sufficient. Rome was rich and powerful at a time when historians agree that she was sowing the seeds of her own destruction, while boasting of her glory. Spain, too, was rich and powerful when the folly and fanaticism of the reign of Philip II, who thought himself the first sovereign in Europe, led to her decline. France, also was rich and powerful, although her treasury was empty, when the revolution engulfed her.

This record might be extended at length: Austria was rich and powerful, but a few years ago, and German wealth and power did not save that state from defeat. Russia—but who knows the Russian situation? Whose testimony is to be accepted? In any event, wealth and power cannot be taken as the measure of either political or social security. It was not

the empty treasury of France that brought disaster, but the fact of which that empty treasury was the evidence. That fact was stupid administration. Had France adhered to Turgot's policies, disaster would have been avoided.

Wealth and power are essential to a great state, to be sure, but intelligent administration also is essential. In a democracy such condition can be assured only by general ability of the people to determine the character of the policies inaugurated and administered by those selected for responsible positions.

To this end the elementary facts of the matter to be dealt with must be understood. This matter is public organization, or the arrangement whereby sovereign power is exercised. It is the fundamental law of the land, or the essential features of just constitutional law. If properly taught, these are as easily within the capacity of school children as the first steps in astronomical knowledge or elementary principles of mathematics. For instance, it is not easier to teach the motions of the earth than the nature of the two kinds of property.

Difficulty, however, is experienced in explaining to adults existing relations. This is because part of customary practice denies the natural justice that is obvious to children. Such denial is evidenced in customary methods of taxation, or the usual distribution of property controlled by these methods. "No consecrated wrong could have endured had not the man silenced the questionings of the child".

Incidentally, it is curious to note the energy with which men resist any proposal to alter prevailing tax methods in the interest of a fairer distribution of property. The existing system is assumed to be normal and the proposal revolutionary. In fact, however, a large part of our usual tax methods is a direct invasion of normal distribution. This fact is quietly avoided, as if it were a recognized tabu among barbarians.

Meanwhile, part of our revenue system is harmonious with sound principles. The rest denies nearly every affirmation of our accepted moral code, as it bears upon industrial affairs. For instance, we tax dogs in order, of course, to limit their number. We tax buildings, also, thereby limiting their number, but

we do not attempt to justify this tax on that ground. A contradiction of this character is not easily explained to immature minds. It is easier to leave it in the hands of pettifogging statesmen.

We also tax one who builds a chicken house, and one who robs it. Explanation of such conduct on the part of the state is with difficulty associated with integrity. We send our children to Sunday school, teaching them to speak the truth, and frequently accompany the instruction with promised rewards. When grown to adult years many of these same individuals are given tax schedules with the information that the more nearly they tell the truth respecting the subject matter, the more money they will lose.

We do not teach these matters in our schools, and the reason for our reticence is rather obvious. Still, one might think, and think correctly, that making a citizen should be the chief business of public schools. Just how a proper citizen can be produced without such explicit explanation of primary political and economic relations is not clear.

The actual facts here involved, if divorced from feudal precedents and barbarian super-

stitutions, are in themselves simple. The first of these that needs to be clearly apprehended is that the natural physical environment in which we live is constant and dependable, although subject to the relatively slight interruptions of cyclones and earthquakes. So far as we know, chemical action and reaction are trustworthy. An iron bar will support a definite weight. A seed will grow if it can. Natural forces are our final dependence. These in the aggregate are called "Land", which is the objective basis of all industry. The best use of land compels the establishment and maintenance of a system by which parcels of land may be held in private possession, or in severalty. But establishment of such a system is beyond individual capacity. The whole body of the people, acting as a unit, alone is capable of such result. The freedom and independence of the individual are secured by this means, if the measure itself is not made the instrument of oppression. Finally such freedom or oppression is determined by the use made of the taxing power, whereby public revenue is obtained.

Revenue to defray public expense must be secured, and must be taken from either industrial or privileged values, or, of course, from both. These include all property. Taxes

levied upon products of industry check business, throw people out of work, and thus cause economic dependence. It is this dependence that is the root of political corruption and crime. Its abode is the recruiting ground of social disintegration.

If, for instance, one is a manufacturer of shoes, we tax his buildings, machinery, stock, etc., because of his "ability to pay". But suppose it costs him five dollars to make a pair of shoes ready for the market and our taxes amount to one dollar on each pair, must not he make six dollars, instead of five, the basis of his price? It follows, of course, that the purchaser pays the tax. Manufacturers of shoes and other articles are not able to pay and do not pay taxes on their products, for all of their ability. Still, the tax is injurious to them, because it limits the purchasing power of consumers. Consequently effective demand declines, and some are deprived of employment, which again checks effective demand.

Then, too, the more revenue we derive from products, the less will we take from the legal privilege of holding land, and the lower taxes are upon such privilege the easier it is to hold valuable land vacant. Valuable land held vacant increases rent by artificially reducing nor-

mal supply. In such condition, business must meet an unnecessary tax as well as an artificially increased rent, and must achieve these results from the gains of industry that has been limited in this absurd manner.

Removing taxes from products, and increasing taxes upon the legal privilege of holding land, operates to reverse all of these results. As we levy taxes through the agency of Federal, state and municipal governments, it is practically impossible to make the suggested change all at once, but when the proposed system is fully applied no expense beyond normal cost attaches to business of any kind, while such tax upon the value of land makes vacant land holding an unprofitable enterprise. Consequently both land and products appear upon the market at their normal values*.

* Incidentally, but emphatically, it may be well to note that a tax on the value of land is not a tax on real estate. A tax on real estate falls on improvements as well as on ground value. Taxes on improvements are especially burdensome in cities, checking development, and, by relieving valuable lands of legitimate payments to the public treasury, stimulate speculation in land value. Such speculation is the deadly enemy of all progress. Further, anything that checks city growth curtails the farmer's market, as well as the market for other products. This is a matter to which the farmer and his friends have not given sufficient attention. The jealousy that has existed between country and city, doubtless greatly reduced through the advent of the automobile, is injurious to both. In any event, it should be clearly understood that a tax on the value of land is not a tax on real estate.

Land holding in severalty, then, is necessary to the best use of land, and is established only by act of the public. Value flowing from a public act belongs to the public and should reach the public treasury, unless we wish to revert to feudalism. Established custom no doubt opposes this action, but what advance in civilization has established custom failed to oppose?

Established customs are much to be praised and highly to be commended if they are just as well as established. When, however, they are disturbing relics from feudal times, it is difficult to discover sound reasons for their continuance. At any rate, we in this generation should be as free from medieval tradition and superstition as were our revolutionary ancestors. They withstood the power of feudal lords with the weapons of war. Surely we might at least try to institute reasonable public policy in lieu of the confused mass of regulations that are called "the law of the land".

The natural physical environment in which we live compels activity on the part of both individuals and governments. It also limits those activities. It is, in fact, the dominant force in human existence*.

*See "Intellectual Development of Europe". Vol. 1, Chap. 1. John W. Draper.

This is true despite emphatic assertion that "there is no history, only biography", for the influence of great men in dominating practical affairs has usually been possible only by virtue of their control of that same environment. Lords, like William the Conqueror, have seized the lands, and thereby been able to control the people who inhabited them, thus guiding events.

That individuals are limited by the natural environment is perhaps the most obvious fact of our experience. Men can neither eat nor breathe, nor even stand, without natural opportunity. Aside from economic considerations, the same truth is revealed by the fact that sight and hearing are confined to certain limited vibrations. Efforts are made to extend these limits but regardless of how successful these endeavors may be, individuals still find themselves limited.

Governmental activities also are limited, but may be extended beyond their legitimate bounds by trespassing upon individual rights. Such acts are tyrannical, and the record of resistance to such invasion constitutes a large part of the history of recent centuries. These invasions induce among the people habits of partly enduring and partly evading such tres-

pass. This is illustrated by customary practices respecting personality taxes, and does not evidence a patriotic or law abiding attitude. Instead, it indicates a feeling of responsibility to the law of the land rather than for it.

Not only may the powers of government be improperly extended, but the legal authority of a relatively few individuals may also be increased beyond normal limits by placing unguarded public power in their hands. Meanwhile, it is evident that not all individuals can thus be favored. It follows, of course, that such grants are burdens to all save the grantees, unless the common interest is fully protected.

Such procedure, in harmony with feudal theory, was customary before the American revolution. When, after that event, opportunity was presented in *Fletcher vs. Peck*, in some degree to check this custom, our court failed to apply the curb. The *Dartmouth* case, on the other hand, offered opportunity to extend special privilege by depriving states of power to alter or annul charters. This the court sanctioned. It, therefore, stood committed to the feudal view, so far as the most

favorable interpretation of the constitution permitted.

The reasoning upon which these decisions rest sustains the bank's contention in *Providence Bank vs. Billings*. The consequence, however, of enforcing the theory of those cases in the bank matter were so outrageous that the court revolted from application of its own doctrine. Yet that doctrine was assumed to be maintained in all matters, save taxation.

The power of privilege, which is the essence of feudalism, thus sustained, continued an actual, but unacknowledged, trespass upon public rights. At a later time *Munn vs. Illinois* revealed the inevitable collision that occurs between such unguarded public power in private hands and private rights to industrial property. In that case, although the court attempted to disguise the character of the decision by claiming that it was in behalf of the common good, a frank invasion of private right was sanctioned. In his dissenting opinion Justice Field properly declared that popular rights were "frittered away". In fact, he felt so strongly respecting this decision that in another case, during the same term, he asked: "Of what avail is the constitutional provision that no state shall deprive any person of his

property except by due process of law, if the state can, by fixing the compensation which he may receive for its use, take from him all that is valuable in the property?"

The continued application of the theory of this case can only extend this "frittering" process, and such course can only develop economic tyranny and confusion. However, this would enable the court to persevere in its career as a legislature, and no doubt the process could be developed interstitially and to the satisfaction of the bench.

It may be noted, too, that if any of these invasions of public or private rights affords profit to a portion of the community, which is possible only as they are burdens to the remainder, there is added to force of habit the vigilant influence of greed. This deserves close attention, for the greedy are usually quite articulate, while the vast majority is nearly dumb.

It may also be noted that there is a general demand for justice in these matters, and an equally general refusal to permit the inauguration of measures that would secure its establishment. The flat contradiction between *Fletcher vs. Peck* and the *Bank* case are typi-

cal. Indeed, a curious state of mind follows an attempt to accept all of the court's pronouncements.

Such condition is to be remedied only by removal of its cause. This is not difficult, if we frankly recognize that failure to adjust the acts of government to the normal physical conditions of human life develops industrial or economic disturbances. From this source increasing disorder proceeds. The lesson, surely, is plain enough for those who wish to learn.

As repeatedly indicated, many feudal tyrannies have been much modified or wholly destroyed. These achievements have made the modern world possible, and for them we owe thanks to our ancestors, the Netherlanders who bearded Philip, the yeomen who marched with Cromwell, and the brave Frenchmen who struggled in the chaos of their revolution. The feudal citadel, however, still stands secure and it is well provisioned.

Before this stronghold, our popular welfare legislation is as useless as stone-age weapons when opposed by modern artillery. The inconsequential chatter that goes on in behalf of this, that or the other pseudo-reform diverts attention from the real cause of industrial in-

justice. We are down to bed rock respecting industrial affairs, and it is time for competent men and women to take account of stock.

During the last 150 years the civilized world has been relieved of a great deal of the dead weight and iron rule of feudalism. During that time of comparative freedom more progress has been made than during the preceding fifteen centuries. Science, knowledge, education, wealth, civilization in every respect have advanced as never before in human history.

In short, so far as we have proved our faith in freedom, happy results have followed. Free labor has proved to be more profitable than slave labor; free commerce more profitable than piracy; free roads more profitable than toll roads; debts more easily collected since fear of prison vanished. Further, it is now evident that the last mix-up of the feudal lords proved war to be unprofitable. Many were aware of this fact before the demonstration was made, but the feudal lords themselves are practical men, hard to convince and plainly of Bourbon extraction. They discover much difficulty in accepting the demonstration. War, of course, is barbarism. It is also preposterous and idiotic. Nations and peoples live by production, not by destruction.

We have learned, then, or at least have had ample opportunity to learn, that more wealth is to be gained by voluntary co-operation and trade, if these are defended by common-sense public law, than can be acquired by conquest. Besides, it is a much more agreeable habit of life. Battlefields are dirty places.

It is evident, too, that in the absence of force that interrupts and diverts productive energy, normal development along profitable lines would be continuous. The only agency competent seriously to interfere with this constant struggle of an energetic people to improve the conditions of life is political power expressed in either judicial or military form. Surely it must follow that laws that prevent, interfere with, or hamper wholly proper, commendable and voluntary individual and co-operative industrial efforts are neither more or less than perversions of legitimate legal functions. They are unprofitable in the same sense that chattel slavery was unprofitable, and as destructive agencies are inferior only to war.

We may avoid this issue for a time, but not permanently. It is of "the reason and nature of things". The constitutional convention evaded a question of analogous character in

the matter of chattel slavery, which in a different form involved the distinction between public and private rights. In so doing it left a legacy that ultimately drenched the land in blood, and opened wide the portals for political fanaticism and commercial rascality, which always accompany war. The reason and nature of things are matters of importance. In fact, they are the basis of all science, including science of government, and Dame Nature is insistent.

This subject deserves and is receiving increasing attention. Among others of note, Professor Roscoe Pound asks: "For what purpose does the legal order exist? What do we seek to achieve through the political organization?" These are very pertinent questions, as might be expected, coming from that source. Precisely why do men institute governments?

Definite response to these inquiries would necessarily reveal the primary functions of government and the facts and relations from which these spring. It would show that while individuals produce the wealth upon which we subsist, government properly contributes to that end by preventing obstruction to productive process or interference with its re-

sults. The conclusion immediately follows that these services by government are valuable, and, therefore, entitled to fair reward. Government is a laborer worthy of its hire*.

That the various conveniences produced by human beings, such as food, clothing, shelter, luxuries, etc., are earned, and for that reason primarily belong to their producers, and, therefore, should be recognized as private property, is generally admitted. Such property, then, is at the disposal of its owner, or owners, subject only to the limitation that it may not be used in a way that will trespass upon the rights of another. Any other concept of private property impairs its private character.

Such being the case, this property is subject to free exchange. Also, if any product is in

*One supreme court justice thought the cost of government as much a part of the cost of production as expense for coal, etc. It depends, however, on the method by which public revenue is collected. If taxes are levied on the value of land (that is, on privileged values), the tax payer already has received compensation in the superior site occupied, and has no need to tax his customers again in advanced prices. In fact, he cannot do so, for the cost of goods bears no relation to the value of the land on which they were produced or exchanged. A bushel of wheat is worth a given price, no matter what the value of land on which it was grown or sold. If, on the other hand, taxes are levied on products, the justice is right. Observing that some taxes operated as he asserted, he seems to have jumped to the conclusion that all taxes had the same effect.

great demand, and for that reason its production is especially profitable, all who choose may engage in that business, to the end that no one shall possess legal opportunity superior to his neighbors. Such untrammelled production is free competition, and free competition is free trade. Less than this is but partial democracy, for free competition is the widest possible opportunity for co-operation; and co-operation, today, has become almost world-wide, save as it meets legal interference.

We thus secure a guiding principle: Any law that interferes with free competition is at once condemned, except in time of war or other disaster. Lack of clear perception of this principle has been a serious obstruction to the growth of democracy since the revolution*.

Only as production and distribution are left to the control of free competition can true values be known, and without that knowledge property cannot be distributed fairly. Failure to perceive this essential truth is apparent among those of highest literary and legal attainments, to whom the people in general

*An earnest and powerful argument in support of this position, as the only means of preventing the present world-wide depression from becoming disastrous is offered by Sir William Paich in "The Road to Prosperity" and "The Way to Recovery".

naturally, although perhaps unconsciously, look for guidance. This failure is seen in all ranks of our society, from senators and university professors to enthusiastic socialists.

It is interesting, too, to note that leading lawyers support their opinions by quoting ancient precedents, while socialists insist upon the "materialistic interpretation of history," which apparently is much the same thing. This manifestation is in no way astonishing, however, for the assumption of the aristocracy defended by lawyer and senator and the doctrine of the socialist are both survivals of barbarian group organizations. Aristocracy asserts barbarian authority, while socialism seeks security for workers, both being adaptations of the barbarian original. This likeness of inheritance is revealed, too, in the multiplicity of aristocratic and socialistic laws with which we are increasingly burdened, and which often reveal barbarian parentage by ignoring all legal principles save "authority"*.

Courts and legislatures lend aid to this tendency, and they are supported by some who absurdly call themselves democrats. This pretense of democracy is the most grotesque

*Lawyers—"Conservators of ancient barbarism"—Voltaire.

picture presented in our political kaleidoscope, and can be accorded rationality only on the ground that it is spurious. So-called democrats thus supporting every phase of grasping aristocracy, including protective tariffs, private monopoly grants of land and franchises, with zeal far outstripping the enthusiasm of Hamilton's disciples, is a vision calculated to stir one's patriotism or lure one to the golf links.

The kinship of socialism and feudalism is further shown by the fact that the former is strongest upon the continent, where feudalism also is most emphatic. This is merely because the people discover in socialism much that is in harmony with usages to which they have been accustomed. Consequently they feel relatively slight shock to habitual modes of thought. In Britain, feudalism is less apparent and socialism less popular. In America feudalism is still weaker and so is socialism. Wherever feudalism is most pronounced, there socialism finds most ready acceptance. It follows, of course, that in defending feudal theory, courts lend to socialism prestige that it could not otherwise possess.

When, however, we turn from legitimate private holdings to those things that are prop-

erty only because of legal institution, such as land titles, franchises and other grants, we encounter emphatic disagreement. At the same time these matters, being of public character, must receive legal disposition of some sort. Surely it is right for a man to possess a parcel of land on which to erect a house to shelter his family. Yet private possession of land is clearly a matter of legal institution. On the other hand, it is difficult for modern freemen to admit that enslavement of innocent men and women was ever justifiable. Thus one form of institutional property seems to be legitimate, while the abolition of chattel slavery was a frank admission of the illegitimate character of the other.

In fact, as soon as we enter the domain of institutional property, we find ourselves in a controversial region. This might well raise a suspicion that here is the source of our difficulties. One man here supports copyrights and condemns patents, while another defends both, and a third will have none of either. Such variety of opinion is doubtless to be expected when we note, in *Munn vs. Illinois*, the great divergence between Waite and Field. How may the beliefs of ordinary men be welded into

a consistent whole when our foremost experts are so widely separated?

Some common ground respecting these matters is essential to unity, and to this end it is suggested that whenever public power in private possession acquires value in the open market, that fact is conclusive evidence that the taxing power of the state has become operative. In such case, public regulation must follow. Hale's Rule is still sound law, even though one supreme court justice declared it fictional.

Such private possession of public power is necessary, because only by possession of land in severalty can the best use of land and order in property holdings be secured. Good sense, therefore, dictates that this danger spot be guarded with nicest care.

It is also needful to remember that no one can own land, not even the public. It is no more subject to ownership than is air or sunlight. If this is doubted, reference may be made to the law books. They have been more accurate in this than in some other matters. They correctly state that there is no such thing as land ownership. One may hold an estate in land. This, in extreme form, is power to possess in perpetuity, subject to the state's authority.

Calling this estate a "right of soil", or a fee-simple title, does not convert it into ownership. The state, in short, representing the whole people, has legitimate power to control the occupancy of the common heritage, the land. It is this power that is guaranteed by a fee-simple title.

Such estate is a legal privilege, established by law for clear and explicit reasons, chief of which is that each individual has a right to the products of his industry, but to secure such right and to possess such products he must exercise it and hold them in some place. He can do neither in "no place". The only practical solution of this situation yet devised is for the community, acting as a unit, to ordain a form for holding possession of land.

Land held under this system is, of course, properly charged with the worth of its possession, just as a charge is made for any other service. The just amount of this charge is the value of the public services made available by such possession. Obviously public services can be enjoyed, just as products can be held, only in some place. It follows, therefore, that the value of the services so received is reflected in the worth of the place, or land, so held.

The worth of the land, then, measures the

value of the public service, and if land holders meet this charge, justice is done because they receive these services and, where property is rented, promptly charge the value of the same to lease holders. Failure on the part of the government to make this collection compels it to tax products and impose licenses for permission to engage in perfectly proper lines of business that in many, if not most cases, are necessary to civilized existence.

Fees are charged, too. Permits are issued. Some states, indeed, have conducted gambling enterprises, called lotteries, to secure revenue. Special taxes, likewise, are levied, as well as general taxes, excise taxes, tariff taxes, a variety of taxes called police taxes, like the dog tax, and some states even tax people for having heads, calling it a poll tax. This tax is always light—for obvious reasons. Also there is an income tax, presumably levied on the theory that it is unseemly for a free born American citizen to possess an income, or at least that it is detrimental to his moral nature. Bernard Shaw seized upon this tax to prove to his British neighbors that they were approaching an ideal of equal incomes; but our government is finding it unreliable as a revenue producer.

Such failure on the part of the state to tax public values permits land holders to appropriate the public income. The result, of course, is double taxation. That is, we pay in rent all that it is worth to live and do business in a given location. This payment includes the worth of police, fire and other protection and service. Then the state taxes our products to secure public revenue, which, of course, is paying a second time for protection and service for which rent was paid. To prevent such unjust appropriation and double taxation, it is necessary for the state to "absorb" as Marshall said, the rent of land and abolish taxes on products. This absorption may most readily be made in the form of a tax. The state would then be in receipt of its own proper wages for services rendered, and no longer under the necessity of trespassing upon private rights. The words "private property" would then be understood in their true sense.

These annoyances, hindrances and interruptions of entirely legitimate business are sins of commission on the part of the state that necessarily flow from its sin of omission in failing to secure its proper revenue from the value of granted lands. Thus, by law, we have given ourselves a double bill for taxes. By the

same act we have limited our opportunities to meet these or any other economic responsibilities. Speculation in privileged values, too, is stimulated to the limit of economic endurance. Bankruptcy alone checks it.

Failure, then, to control the rich stream of economic rent in the public interest leads to much difficulty, including an inevitable collision between granted privilege and private right. *Munn vs. Illinois* is an instance of that collision that implies, if it does not establish, regulation of private business by law.

That case was an exercise of the police power. This power is commonly understood to be instituted to prevent the regulation of free men by those who are stronger than themselves. It is not popularly understood to be an agency whereby privilege may invade private rights. This power is good in itself, but it may be used for evil ends, for evil is but perverted good. Meanwhile, legal defense of the rights of free men is the glory of the law, while legal regulation of their legitimate activities is legal filth. Rich earth in the garden is fine; on the parlor mantel it is out of place.

Finally, remedy is to be found in the tax system. The practical question becomes a matter of collecting public revenue. All taxes

levied upon products, no matter by what process nor how they are named, are subtractions from legitimate private earnings. They are, therefore, confiscatory, and can be justified only by the compulsions of war or other public calamity. Taxes on the value of land, on the other hand, are such only in form. In essence they are payments for value received, and payment for value received is the only possible ethical adjustment of economic relations.

All legitimate public taxation, if we omit the cost of war, which cannot much longer be tolerated because of the great cost, if for no other reason, is payment for such services. These public services increase the value of land, but do not increase the value of products. On the contrary, they reduce such values by improving the means of transportation, exchange and security. The price of a bushel of wheat, for instance, is the same in one place as another, except for cost of transport, including time. In a free market the price of the land from which it was grown or on which it was bought or sold does not affect its value.

In view of facts so plain and simple, current literature on the subject of taxation becomes a marvel, and revenue legislation supported

by leading statesmen is of a sort to fill speculators with joy.

Even Carlyle, who without rhyme was more of a poet than many who resort to measured verse, speaks of taxes as if he were about to offer a constructive proposal, but suddenly turns us over to his heroes, who are to order us about—to our betterment, of course. Still, one can hardly avoid a suspicion that the canny Scot knew more than he declared.

If democracy would be safe, it must entirely uproot feudal taxes. Otherwise, as surely as weeds will return to a garden if they are not completely exterminated, tyranny will again grow into full strength and power. The outward form of this new growth, as compared with the feudalism of older days, may present the difference between an agricultural generation and one largely devoted to manufacture, but the controlling forces in all civilized societies are the same. Ground rent grows with civilization.

It seems fair, then, to assert that the sources of property are perfectly clear. That perception as clearly indicates the channels for honest distribution of profits arising from its use. Land is property because of sovereign act. Therefore, its value belongs to the sovereign.

The use of land, however, is chiefly in private hands. Therefore, the value flowing from such use belongs to its private administrators. This is but full recognition of normal property right. It is the only way by which the sacred right of private property can be made perfectly secure. It is also the only way by which the state can avoid taking what does not belong to it. Failure to appreciate this distinction and to act in harmony with it is the chief stimulus to communistic belief. Let the state take its own. Let private individuals take their own. No other arrangement is consonant with justice.

The process whereby civil society journeyed from primitive justice to final injustice is also clear. Quite naturally this movement was extremely irregular, for its beginnings were connected with the fortuitous increase in the numbers of individuals dissociated from primitive families.

As the growth of individualism progressed primitive customs faded. Divergent interests arose while representation, the necessary condition of orderly social extension, was lacking. Such lack, after all manner of ghastly horrors, was met by endowing the head of the state with the same absolute authority that bar-

barian society bestowed upon the head of the family. Such was the Roman empire.

Great executives gave an appearance of strength to this organization, but the great executives soon passed, and under inferior or tyrannical rulers its true character was revealed. Disorder followed, offering opportunity to wisdom, but wisdom was not to be found. Only experience can furnish that very desirable possession.

The feudal organizations that then appeared were controlled by memory of the great state of which they were fragments, rather than by the instinct for solidarity, which was the controlling impulse of barbarian tribes. The feudal ideal was power, and this was emphasized by personal ambition and greed. The authority of chiefs of primitive tribes was preserved and augmented in the persons of feudal rulers, but the security of individuals disappeared.

This system was continued in disorderly fashion through the centuries but its inadequacy was demonstrated during the revolutionary period. It was crippled at that time, but not shattered. It still checks and cramps free social growth.

So far as it was cast out happy results have followed. Modern society has gone forward with strength and good will where not held down by legal regulations inherited from a cruel, selfish and ignorant past, that made serfs of men and women. These have vanished, but many free born American citizens are glad to serve as lackeys, and the feudal beneficiary of our time is still solicitous to avoid his legitimate payments to public treasuries.

Lawyers are still trained to accept feudal law concerning landed property, and this inevitably conflicts with individual freedom. Without freedom, individual responsibility is absurd, but the desire to preserve order impels courts to invade private right, and their decisions really recognize in legislative bodies a power to enact laws that are essentially edicts. That these have not yet formally appeared is an argument once used in another connection by a late member of the court, and surely it is a queer one.

Freedom is the only condition that is consonant with the accepted notion of individual responsibility. Without it no one can fairly resist Mercer's pessimistic assertion that secured property will develop an aristocracy.

The attempt to maintain unguarded privilege in private hands, and at the same time assert individual freedom and responsibility is futile. One or the other must yield. This conflict is, in fact, the mainspring of politics throughout the English speaking world.

Individual freedom is, of course, accompanied by obligation and responsibility. Thus, the obligation of an American is to earn his livelihood. His especial responsibility as a citizen, however, is constructive criticism of law. This is responsibility for law, not to it.

Such wholly legitimate criticism of law has more than once caused the mean and the ignorant to invite the critic to leave the country if not pleased with its legal arrangements. Such happening is annoying, but considerable time is likely to elapse before we shall be entirely relieved of our mean and ignorant neighbors. Meanwhile, condemnation of certain laws is not new in our history. Such action, in fact, is the basis of our national existence. Action of like character, too, is our chief claim to recognition at the bar of justice, and the ground upon which, at least until recent years, the people of the world have rested our reputation.

To criticize a legal condition, therefore, that permits a governmental exhibit of 511 personal yearly incomes of over a million dollars each, is not evidence of communistic thought or revolutionary purpose. It is a statement of judgment respecting a startling situation. Of those incomes 26 were over five millions each, and averaged nearly 10 millions, which is still more startling.

As noted in Chapter III, an approximate calculation shows 24 million families in the United States. About four million tax returns were made. This indicates that five-sixths of our families were too poor to come within the tax minimum. Of the four million returns over three million showed less than \$5000.00 income each. The remainder, something less than a million, after paying the Federal income tax, indicated an annual income of nearly 16 billion dollars. Manifestly this latter amount is the unused purchasing power of the people of this country, and is held by one twenty-fourth of our families.

Contrasted with the comparative equality of our early days, the concentration of wealth indicated by these figures calls for explanation, because, except for gifts or some form of steal-

ing, there are but two ways of acquiring wealth: One of these is by force of labor, the other by force of law.

The former method, when undisturbed by privilege or violence, adjusts its various features freely and profitably, and distributes its products fairly by virtue of natural competition, because of which no one need buy or sell when the terms of the transaction are unjust. The force of law, however, must enter. By no other agency can the necessary secure possession of land be established and maintained, and without such secure possession a highly developed civil society is not possible. An ever increasing revenue accompanies this possession.

The question to be determined, then, is: Who shall receive this revenue? If it is permitted to flow into private pockets, feudal power and privilege will appear, social stratification be assured and the foundation of internecine strife firmly laid. If, on the other hand, the state shall collect this revenue, by levying its taxes upon the value of titles to land granted under its authority, as its own proper wages for services rendered, and use this revenue to defray legitimate public ex-

penses, feudal power and privilege will vanish, social stratification be made impossible, and internecine strife become a mere tradition.

Explanation of the social problems of today, all centering around an enormous concentration of wealth never before equaled in human history, is to be found nowhere save in the administration of fundamental public law, the use made of sovereign power. No civilized people can escape this fact; nor can responsibility for its disposal be avoided.
