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Chapter II

ORIGIN OF THE ANGLO-AMERICANS, AND IMPORTANCE OF THIS ORIGIN IN RELATION TO THEIR FUTURE CONDITION

UTILITY of knowing the origin of nations, in order to understand their social condition and their laws--America the only country in which the starting-point of a great people has been clearly observable--In what respects all who emigrated to British America were similar--In what they differed--Remark applicable to all the Europeans who established themselves on the shores of the New World--colonization of Virginia--Colonization of New England--Original character of the first inhabitants of New England--Their arrival--Their first laws--Their social contract--Penal code borrowed from the Hebrew--Religious Fervor--Republican spirit--Intimate union of the spirit of religion with the spirit of liberty.

A MAN has come into the world; his early years are spent without notice in the pleasures and activities of childhood. As he grows up, the world receives him when his manhood begins, and he enters into contact with his fellows. He is then studied for the first time, and it is imagined that the germ of the vices and the virtues of his maturer years is then formed.

This, if I am not mistaken, is a great error. We must begin higher up; we must watch the infant in his mother's arms; we must see the first images which the external world casts upon the dark mirror of his mind, the first occurrences that he witnesses, we must hear the first words which awaken the sleeping powers of thought, and stand by his earliest efforts if we would understand the prejudices, the habits, and the passions which will rule his life. The entire man is, so to speak, to be seen in the cradle of the child.

The growth of nations presents something analogous to this; they all bear some marks of their origin. The circumstances that accompanied their birth and contributed to their development affected the whole term of their being.

If we were able to go back to the elements of states and to examine the oldest monuments of their history, I doubt not that we should discover in them the primal cause of the prejudices, the habits, the ruling passions, and, in short, all that constitutes what is called the national character. We should there find the explanation of certain customs which now seem at variance with the prevailing manners; of such laws as conflict with established principles; and of such incoherent opinions as are here and there to be met with in society, like those fragments of broken chains which we sometimes see hanging from the vaults of an old edifice, supporting nothing. This might explain the destinies of certain nations which seem borne on by an unknown force to ends of which they themselves are ignorant. But hitherto facts have been lacking for such a study: the spirit of analysis has come upon nations only as they matured; and when they at last conceived of contemplating their origin, time had already obscured it, or ignorance and pride had surrounded it with fables behind which the truth was hidden.

America is the only country in which it has been possible to witness the natural and tranquil growth of society, and where the influence exercised on the future condition of states by their origin is clearly distinguishable.

At the period when the peoples of Europe landed in the New World, their national characteristics were already completely formed; each of them had a physiognomy of its own; and as they had already attained that stage of civilization at which men are led to study themselves, they have transmitted to us a faithful

picture of their opinions, their manners, and their laws. The men of the sixteenth century are almost as well known to us as our contemporaries. America, consequently, exhibits in the broad light of day the phenomena which the ignorance or rudeness of earlier ages conceals from our researches. The men of our day seem destined to see further than their predecessors into human events; they are close enough to the founding of the American settlements to know in detail their elements, and far enough away from that time already to be able to judge what these beginnings have produced. Providence has given us a torch which our forefathers did not possess, and has allowed us to discern fundamental causes in the history of the world which the obscurity of the past concealed from them. If we carefully examine the social and political state of America, after having studied its history, we shall remain perfectly convinced that not an opinion, not a custom, not a law, I may even say not an event is upon record which the origin of that people will not explain. The readers of this book will find in the present chapter the germ of all that is to follow and the key to almost the whole work.

The emigrants who came at different periods to occupy the territory now covered by the American Union differed from each other in many respects; their aim was not the same, and they governed themselves on different principles.

These men had, however, certain features in common, and they were all placed in an analogous situation. The tie of language is, perhaps, the strongest and the most durable that can unite mankind. All the emigrants spoke the same language; they were all children of the same people. Born in a country which had been agitated for centuries by the struggles of faction, and in which all parties had been obliged in their turn to place themselves under the protection of the laws, their political education had been perfected in this rude school; and they were more conversant with the notions of right and the principles of true freedom than the greater part of their European contemporaries. At the period of the first emigrations the township system, that fruitful germ of free institutions, was deeply rooted in the habits of the English; and with it the doctrine of the sovereignty of the people had been introduced into the very bosom of the monarchy of the house of Tudor.

The religious quarrels which have agitated the Christian world were then rife. England had plunged into the new order of things with headlong vehemence. The character of its inhabitants, which had always been sedate and reflective, became argumentative and austere. General information had been increased by intellectual contests, and the mind had received in them a deeper cultivation. While religion was the topic of discussion, the morals of the people became more pure. All these national features are more or less discoverable in the physiognomy of those Englishmen who came to seek a new home on the opposite shores of the Atlantic.

Another observation, moreover, to which we shall have occasion to return later, is applicable not only to the English, but to the French, the Spaniards, and all the Europeans who successively established themselves in the New World. All these European colonies contained the elements, if not the development, of a complete democracy. Two causes led to this result. It may be said that on leaving the mother country the emigrants had, in general, no notion of superiority one over another. The happy and the powerful do not go into exile, and there are no surer guarantees of equality among men than poverty and misfortune. It happened, however, on several occasions, that persons of rank were driven to America by political and religious quarrels. Laws were made to establish a gradation of ranks; but it was soon found that the soil of America was opposed to a territorial aristocracy. It was realized that in order to clear this land, nothing less than the constant and self-interested efforts of the owner himself was essential; the ground prepared, it became evident that its produce was not sufficient to enrich at the same time both an owner and a farmer. The land was then naturally broken up into small portions, which the proprietor cultivated for himself. Land is the basis of an aristocracy, which clings to the soil that supports it; for it is not by privileges alone, nor by birth, but by landed property handed down from generation to generation that an aristocracy is constituted. A nation may present immense fortunes and extreme wretchedness; but unless those fortunes are territorial, there is no true aristocracy, but simply the class of the rich and that of the poor.

All the British colonies had striking similarities at the time of their origin. All of them, from their beginning, seemed destined to witness the growth, not of the aristocratic liberty of their mother country, but of that freedom of the middle and lower orders of which the history of the world had as yet furnished no complete example. In this general uniformity, however, several marked divergences could be observed, which it is necessary to point out. Two branches may be distinguished in the great Anglo-American family, which have hitherto grown up without entirely commingling; the one in the South, the other in the North.

Virginia received the first English colony; the immigrants took possession of it in 1607. The idea that mines of gold and silver are the sources of national wealth was at that time singularly prevalent in Europe; a fatal delusion, which has done more to impoverish the European nations who adopted it, and has cost more lives in America, than the united influence of war and bad laws. The men sent to Virginia¹ were seekers of gold, adventurers without resources and without character, whose turbulent and restless spirit endangered the infant colony² and rendered its progress uncertain. Artisans and agriculturists arrived afterwards; and, although they were a more moral and orderly race of men, they were hardly in any respect above the level of the inferior classes in England.³ No lofty views, no spiritual conception, presided over the foundation of these new settlements. The colony was scarcely established when slavery was introduced;⁴ this was the capital fact which was to exercise an immense influence on the character, the laws, and the whole future of the South. Slavery, as I shall afterwards show, dishonors labor; it introduces idleness into society, and with idleness, ignorance and pride, luxury and distress. It enervates the powers of the mind and benumbs the activity of man. The influence of slavery, united to the English character, explains the manners and the social condition of the Southern states.

On this same English foundation there developed in the North very different characteristics. Here I may be allowed to enter into some details.

In the English colonies of the North, more generally known as the New England states,⁵ the two or three main ideas that now constitute the basis of the social theory of the United States were first combined. The principles of New England spread at first to the neighboring states; they then passed successively to the more distant ones; and at last, if I may so speak, they interpenetrated the whole confederation. They now extend their influence beyond its limits, over the whole American world. The civilization of New England has been like a beacon lit upon a hill, which, after it has diffused its warmth immediately around it, also tinges the distant horizon with its glow.

The foundation of New England was a novel spectacle, and all the circumstances attending it were singular and original. Nearly all colonies have been first inhabited either by men without education and without resources, driven by their poverty and their misconduct from the land which gave them birth, or by speculators and adventurers greedy of gain. Some settlements cannot even boast so honorable an origin; Santo Domingo was founded by buccaneers; and at the present day the criminal courts of England supply the population of Australia.

The settlers who established themselves on the shores of New England all belonged to the more independent classes of their native country. Their union on the soil of America at once presented the singular phenomenon of a society containing neither lords nor common people, and we may almost say neither rich nor poor. These men possessed, in proportion to their number, a greater mass of intelligence than is to be found in any European nation of our own time. All, perhaps without a single exception, had received a good education, and many of them were known in Europe for their talents and their acquirements. The other colonies had been founded by adventurers without families; the immigrants of New England brought with them the best elements of order and morality; they landed on the desert coast accompanied by their wives and children. But what especially distinguished them from all others was the aim of their undertaking. They had not been obliged by necessity to leave their country; the social position they abandoned was one to be regretted, and their means of subsistence were certain. Nor did they cross the Atlantic to improve their situation or to increase their wealth; it was a purely intellectual

craving that called them from the comforts of their former homes; and in facing the inevitable sufferings of exile their object was the triumph of an idea.

The immigrants, or, as they deservedly styled themselves, the Pilgrims, belonged to that English sect the austerity of whose principles had acquired for them the name of Puritans. Puritanism was not merely a religious doctrine, but corresponded in many points with the most absolute democratic and republican theories. It was this tendency that had aroused its most dangerous adversaries. Persecuted by the government of the mother country, and disgusted by the habits of a society which the rigor of their own principles condemned, the Puritans went forth to seek some rude and unfrequented part of the world where they could live according to their own opinions and worship God in freedom.

A few quotations will throw more light upon the spirit of these pious adventurers than all that we can say of them. Nathaniel Morton,⁶ the historian of the first years of the settlement, thus opens his subject: "Gentle Reader, I have for some lengths of time looked upon it as a duty incumbent especially on the immediate successors of those that have had so large experience of those many memorable and signal demonstrations of God's goodness, viz. the first beginners of this Plantation in New England, to commit to writing his gracious dispensations on that behalf; having so many inducements thereunto, not only otherwise, but so plentifully in the Sacred Scriptures: that so, what we have seen, and what our fathers have told us (Psalm lxxviii. 3, 4), we may not hide from our children, showing to the generations to come the praises of the Lord; that especially the seed of Abraham his servant, and the children of Jacob his chosen (Psalm cv. 5, 6), may remember his marvellous works in the beginning and progress of the planting of New England, his wonders and the judgments of his mouth; how that God brought a vine into this wilderness; that he cast out the heathen, and planted it; that he made room for it and caused it to take deep root; and it filled the land (Psalm lxxx. 8, 9). And not only so, but also that he hath guided his people by his strength to his holy habitation, and planted them in the mountain of his inheritance in respect of precious Gospel enjoyments: and that as especially God may have the glory of all unto whom it is most due; so also some rays of glory may reach the names of those blessed Saints, that were the main instruments and the beginning of this happy enterprise."

It is impossible to read this opening paragraph without an involuntary feeling of religious awe; it breathes the very savor of Gospel antiquity. The sincerity of the author heightens his power of language. In our eyes, as well as in his own, it was not a mere party of adventurers gone forth to seek their fortune beyond seas, but the germ of a great nation wafted by Providence to a predestined shore.

The author continues, and thus describes the departure of the first Pilgrims:⁷

"So they left that goodly and pleasant city of Leyden, which had been their resting-place for above eleven years; but they knew that they were pilgrims and strangers here below, and looked not much on these things, but lifted up their eyes to heaven, their dearest country, where God hath prepared for them a city (Heb. xi. 16), and therein quieted their spirits. When they came to Delfs-Haven they found the ship and all things ready; and such of their friends as could not come with them followed after them, and sundry came from Amsterdam to see them shipt, and to take their leaves of them. One night was spent with little sleep with the most, but with friendly entertainment and Christian discourse, and other real expressions of true Christian love. The next day they went on board, and their friends with them, where truly doleful was the sight of that sad and mournful parting, to hear what sighs and sobs and prayers did sound amongst them; what tears did gush from every eye, and pithy speeches pierced each other's heart, that sundry of the Dutch strangers that stood on the Key as spectators could not refrain from tears. But the tide (which stays for no man) calling them away, that were thus loth to depart, their Reverend Pastor, falling down on his knees, and they all with him, with watery cheeks commended them with most fervent prayers unto the Lord and his blessing; and then with mutual embraces and many tears they took their leaves one of another, which proved to be the last leave to many of them."

The emigrants were about 150 in number, including the women and the children. Their object was to plant a colony on the shores of the Hudson; but after having been driven about for some time in the

Atlantic Ocean, they were forced to land on the arid coast of New England, at the spot which is now the town of Plymouth. The rock is still shown on which the Pilgrims disembarked.⁸

“But before we pass on,” continues our historian,⁹ “let the reader with me make a pause, and seriously consider this poor people’s present condition, the more to be raised up to admiration of God’s goodness towards them in their preservation: for being now passed the vast ocean, and a sea of troubles before them in expectation, they had now no friends to welcome them, no inns to entertain or refresh them, no houses, or much less towns, to repair unto to seek for succour: and for the season it was winter, and they that know the winters of the country know them to be sharp and violent, subject to cruel and fierce storms, dangerous to travel to known places, much more to search unknown coasts. Besides, what could they see but a hideous and desolate wilderness, full of wilde beasts, and wilde men? and what multitudes of them there were, they then knew not: for which way soever they turned their eyes (save upward to Heaven) they could have but little solace or content in respect of any outward object; for summer being ended, all things stand in appearance with a weather-beaten face, and the whole country, full of woods and thickets, represented a wild and savage hew; if they looked behind them, there was the mighty ocean which they had passed, and was now as a main bar or gulph to separate them from all the civil parts of the world.”

It must not be imagined that the piety of the Puritans was merely speculative, or that it took no cognizance of the course of worldly affairs. Puritanism, as I have already remarked, was almost as much a political theory as a religious doctrine. No sooner had the immigrants landed on the barren coast described by Nathaniel Morton than it was their first care to constitute a society, by subscribing the following Act:¹⁰ IN THE NAME OF GOD AMEN. We, whose names are underwritten, the loyal subjects of our dread Sovereign Lord King James, &c. &c., Having undertaken for the glory of God, and advancement of the Christian Faith, and the honour of our King and country, a voyage to plant the first colony in the northern parts of Virginia; Do by these presents solemnly and mutually, in the presence of God and one another, covenant and combine ourselves together into a civil body politick, for our better ordering and preservation, and furtherance of the ends aforesaid: and by virtue hereof do enact, constitute, and frame such just and equal laws, ordinances, acts, constitutions, and offices, from time to time, as shall be thought most meet and convenient for the general good of the Colony: unto which we promise all due submission and obedience,” etc.

This happened in 1620, and from that time forwards the emigration went on. The religious and political passion which ravaged the British Empire during the whole reign of Charles I drove fresh crowds of sectarians every year to the shores of America. In England the stronghold of Puritanism continued to be in the middle classes; and it was from the middle classes that most of the emigrants came. The population of New England increased rapidly; and while the hierarchy of rank despotically classed the inhabitants of the mother country, the colony approximated more and more the novel spectacle of a community homogeneous in all its parts. A democracy more perfect than antiquity had dared to dream of started in full size and panoply from the midst of an ancient feudal society.

The English government was not dissatisfied with a large emigration which removed the elements of fresh discord and further revolutions. On the contrary, it did everything to encourage it and seemed to have no anxiety about the destiny of those who sought a shelter from the rigor of their laws on the soil of America. It appeared as if New England was a region given up to the dreams of fancy and the unrestrained experiments of innovators.

The English colonies (and this is one of the main causes of their prosperity) have always enjoyed more internal freedom and more political independence than the colonies of other nations; and this principle of liberty was nowhere more extensively applied than in the New England states. It was generally allowed at that period that the territories of the New World belonged to that European nation which had been the first to discover them. Nearly the whole coast of North America thus became a British possession towards the end of the sixteenth century. The means used by the English government to people these new domains were of several kinds: the king sometimes appointed a governor of his own choice, who ruled a

portion of the New World in the name and under the immediate orders of the crown;¹¹ this is the colonial system adopted by the other countries of Europe. Sometimes grants of certain tracts were made by the crown to an individual or to a company,¹² in which case all the civil and political power fell into the hands of one or more persons, who, under the inspection and control of the crown, sold the lands and governed the inhabitants. Lastly, a third system consisted in allowing a certain number of emigrants to form themselves into a political society under the protection of the mother country and to govern themselves in whatever was not contrary to her laws. This mode of colonization, so favorable to liberty, was adopted only in New England.¹³

In 1628¹⁴ a charter of this kind was granted by Charles I to the emigrants who went to form the colony of Massachusetts. But, in general, charters were not given to the colonies of New England till their existence had become an established fact. Plymouth, Providence, New Haven, Connecticut, and Rhode Island¹⁵ were founded without the help and almost without the knowledge of the mother country. The new settlers did not derive their powers from the head of the empire, although they did not deny its supremacy; they constituted themselves into a society, and it was not till thirty or forty years afterwards, under Charles II, that their existence was legally recognized by a royal charter.

This frequently renders it difficult, in studying the earliest historical and legislative records of New England, to detect the link that connected the emigrants with the land of their forefathers. They continually exercised the rights of sovereignty; they named their magistrates, concluded peace or declared war, made police regulations, and enacted laws, as if their allegiance was due only to God.¹⁶ Nothing can be more curious and at the same time more instructive than the legislation of that period; it is there that the solution of the great social problem which the United States now presents to the world is to be found.

Among these documents we shall notice as especially characteristic the code of laws promulgated by the little state of Connecticut in 1650.¹⁷

The legislators of Connecticut¹⁸ begin with the penal laws, and, strange to say, they borrow their provisions from the text of Holy Writ.

“Whosoever shall worship any other God than the Lord,” says the preamble of the Code, “shall surely be put to death.” This is followed by ten or twelve enactments of the same kind, copied verbatim from the books of Exodus, Leviticus, and Deuteronomy. Blasphemy, sorcery, adultery,¹⁹ and rape were punished with death; an outrage offered by a son to his parents was to be expiated by the same penalty. The legislation of a rude and half-civilized people was thus applied to an enlightened and moral community. The consequence was, that the punishment of death was never more frequently prescribed by statute, and never more rarely enforced.

The chief care of the legislators in this body of penal laws was the maintenance of orderly conduct and good morals in the community; thus they constantly invaded the domain of conscience, and there was scarcely a sin which was not subject to magisterial censure. The reader is aware of the rigor with which these laws punished rape and adultery; intercourse between unmarried persons was likewise severely repressed. The judge was empowered to inflict either a pecuniary penalty, a whipping, or marriage²⁰ on the misdemeanants, and if the records of the old courts of New Haven may be believed, prosecutions of this kind were not infrequent. We find a sentence, bearing the date of May 1, 1660, inflicting a fine and reprimand on a young woman who was accused of using improper language and of allowing herself to be kissed.²¹ The Code of 1650 abounds in preventive measures. It punishes idleness and drunkenness with severity.²² Innkeepers were forbidden to furnish more than a certain quantity of liquor to each consumer; and simple lying, whenever it may be injurious,²³ is checked by a fine or a flogging. In other places the legislator, entirely forgetting the great principles of religious toleration that he had himself demanded in Europe, makes attendance on divine service compulsory,²⁴ and goes so far as to visit with severe punishment,²⁵ and even with death, Christians who chose to worship God according to a ritual differing from his own.²⁶ Sometimes, indeed, the zeal for regulation induces him to descend to the most frivolous particulars: thus a law is to be found in the same code which prohibits the use of tobacco.²⁷ It

must not be forgotten that these fantastic and oppressive laws were not imposed by authority, but that they were freely voted by all the persons interested in them, and that the customs of the community were even more austere and puritanical than the laws. In 1649 a solemn association was formed in Boston to check the worldly luxury of long hair.²⁸

These errors are no doubt discreditable to human reason; they attest the inferiority of our nature, which is incapable of laying firm hold upon what is true and just and is often reduced to the alternative of two excesses. In strict connection with this penal legislation, which bears such striking marks of a narrow, sectarian spirit and of those religious passions which had been warmed by persecution and were still fermenting among the people, a body of political laws is to be found which, though written two hundred years ago, is still in advance of the liberties of our age.

The general principles which are the groundwork of modern constitutions, principles which, in the seventeenth century, were imperfectly known in Europe, and not completely triumphant even in Great Britain, were all recognized and established by the laws of New England: the intervention of the people in public affairs, the free voting of taxes, the responsibility of the agents of power, personal liberty, and trial by jury were all positively established without discussion.

These fruitful principles were there applied and developed to an extent such as no nation in Europe has yet ventured to attempt.

In Connecticut the electoral body consisted, from its origin, of the whole number of citizens; and this is readily to be understood.²⁹ In this young community there was an almost perfect equality of fortune, and a still greater uniformity of opinions.³⁰ In Connecticut at this period all the executive officials were elected, including the governor of the state.³¹ The citizens above the age of sixteen were obliged to bear arms; they formed a national militia, which appointed its own officers, and was to hold itself at all times in readiness to march for the defense of the country.³²

In the laws of Connecticut, as well as in all those of New England, we find the germ and gradual development of that township independence which is the life and mainspring of American liberty at the present day. The political existence of the majority of the nations of Europe commenced in the superior ranks of society and was gradually and imperfectly communicated to the different members of the social body. In America, on the contrary, it may be said that the township was organized before the county, the county before the state, the state before the union.

In New England, townships were completely and definitely constituted as early as 1650. The independence of the township was the nucleus round which the local interests, passions, rights, and duties collected and clung. It gave scope to the activity of a real political life, thoroughly democratic and republican. The colonies still recognized the supremacy of the mother country; monarchy was still the law of the state; but the republic was already established in every township.

The towns named their own magistrates of every kind, assessed themselves, and levied their own taxes.³³ In the New England town the law of representation was not adopted; but the affairs of the community were discussed, as at Athens, in the marketplace, by a general assembly of the citizens.

In studying the laws that were promulgated at this early era of the American republics, it is impossible not to be struck by the legislator's knowledge of government and advanced theories. The ideas there formed of the duties of society towards its members are evidently much loftier and more comprehensive than those of European legislators at that time; obligations were there imposed upon it which it elsewhere slighted. In the states of New England, from the first, the condition of the poor was provided for;³⁴ strict measures were taken for the maintenance of roads, and surveyors were appointed to attend to them;³⁵ records were established in every town, in which the results of public deliberations and the births, deaths, and marriages of the citizens were entered;³⁶ clerks were directed to keep these records;³⁷ officers were appointed to administer the properties having no claimants, and others to determine the boundaries of inherited lands, and still others whose principal functions were to maintain public order in the

community.³⁸ The law enters into a thousand various details to anticipate and satisfy a crowd of social wants that are even now very inadequately felt in France.

But it is by the mandates relating to public education that the original character of American civilization is at once placed in the clearest light.³⁹ "Whereas," says the law, "Satan, the enemy of mankind, finds his strongest weapons in the ignorance of men, and whereas it is important that the wisdom of our fathers shall not remain buried in their tombs, and whereas the education of children is one of the prime concerns of the state, with the aid of the Lord...." Here follow clauses establishing schools in every township and obliging the inhabitants, under pain of heavy fines, to support them. Schools of a superior kind were founded in the same manner in the more populous districts. The municipal authorities were bound to enforce the sending of children to school by their parents; they were empowered to inflict fines upon all who refused compliance; and in cases of continued resistance, society assumed the place of the parent, took possession of the child, and deprived the father of those natural rights which he used to so bad a purpose.⁴⁰ The reader will undoubtedly have remarked the preamble of these enactments: in America religion is the road to knowledge, and the observance of the divine laws leads man to civil freedom.

If, after having cast a rapid glance over the state of American society in 1650, we turn to the condition of Europe, and more especially to that of the Continent, at the same period, we cannot fail to be struck with astonishment. On the continent of Europe at the beginning of the seventeenth century absolute monarchy had everywhere triumphed over the ruins of the oligarchical and feudal liberties of the Middle Ages. Never perhaps were the ideas of right more completely overlooked than in the midst of the splendor and literature of Europe; never was there less political activity among the people; never were the principles of true freedom less widely circulated; and at that very time those principles which were scorned or unknown by the nations of Europe were proclaimed in the deserts of the New World and were accepted as the future creed of a great people. The boldest theories of the human mind were reduced to practice by a community so humble that not a statesman condescended to attend to it; and a system of legislation without a precedent was produced offhand by the natural originality of men's imaginations. In the bosom of this obscure democracy, which had as yet brought forth neither generals nor philosophers nor authors, a man might stand up in the face of a free people, and pronounce with general applause the following fine definition of liberty:

"Concerning liberty, I observe a great mistake in the country about that. There is a twofold liberty, natural (I mean as our nature is now corrupt) and civil or federal. The first is common to man with beasts and other creatures. By this, man, as he stands in relation to man simply, hath liberty to do what he lists; it is a liberty to evil as well as to good. This liberty is incompatible and inconsistent with authority, and cannot endure the least restraint of the most just authority. The exercise and maintaining of this liberty makes men grow more evil, and in time to be worse than brute beasts: omnes sumus licentia deteriores. This is that great enemy of truth and peace, that wild beast, which all the ordinances of God are bent against, to restrain and subdue it. The other kind of liberty I call civil or federal; it may also be termed moral, in reference to the covenant between God and man, in the moral law, and the politic covenants and constitutions, among men themselves. This liberty is the proper end and object of authority, and cannot subsist without it; and it is a liberty to that only which is good, just, and honest. This liberty you are to stand for, with the hazard not only of your goods, but of your lives, if need be. Whatsoever crosseth this, is not authority, but a distemper thereof. This liberty is maintained and exercised in a way of subjection to authority; it is of the same kind of liberty wherewith Christ hath made us free."⁴¹

I have said enough to put the character of Anglo-American civilization in its true light. It is the result (and this should be constantly kept in mind) of two distinct elements, which in other places have been in frequent disagreement, but which the Americans have succeeded in incorporating to some extent one with the other and combining admirably. I allude to the spirit of religion and the spirit of liberty.

The settlers of New England were at the same time ardent sectarians and daring innovators. Narrow as the limits of some of their religious opinions were, they were free from all political prejudices.

Hence arose two tendencies, distinct but not opposite, which are everywhere discernible in the manners as well as the laws of the country.

Men sacrifice for a religious opinion their friends, their family, and their country; one can consider them devoted to the pursuit of intellectual goals which they came to purchase at so high a price. One sees them, however, seeking with almost equal eagerness material wealth and moral satisfaction; heaven in the world beyond, and well-being and liberty in this one.

Under their hand, political principles, laws, and human institutions seem malleable, capable of being shaped and combined at will. As they go forward, the barriers which imprisoned society and behind which they were born are lowered; old opinions, which for centuries had been controlling the world, vanish; a course almost without limits, a field without horizon, is revealed: the human spirit rushes forward and traverses them in every direction. But having reached the limits of the political world, the human spirit stops of itself; in fear it relinquishes the need of exploration; it even abstains from lifting the veil of the sanctuary; it bows with respect before truths which it accepts without discussion.

Thus in the moral world everything is classified, systematized, foreseen, and decided beforehand; in the political world everything is agitated, disputed, and uncertain. In the one is a passive though a voluntary obedience; in the other, an independence scornful of experience, and jealous of all authority. These two tendencies, apparently so discrepant, are far from conflicting; they advance together and support each other.

Religion perceives that civil liberty affords a noble exercise to the faculties of man and that the political world is a field prepared by the Creator for the efforts of mind. Free and powerful in its own sphere, satisfied with the place reserved for it, religion never more surely establishes its empire than when it reigns in the hearts of men unsupported by aught beside its native strength.

Liberty regards religion as its companion in all its battles and its triumphs, as the cradle of its infancy and the divine source of its claims. It considers religion as the safeguard of morality, and morality as the best security of law and the surest pledge of the duration of freedom.⁴²

REASONS FOR CERTAIN ANOMALIES WHICH THE LAWS AND CUSTOMS OF THE ANGLO-AMERICANS PRESENT

Remains of aristocracy institutions amid the most complete democracy--Why?--Careful distinction to be drawn between what is of Puritanical and what of English origin.

THE reader is cautioned not to draw too general or too absolute an inference from what has been said. The social condition, the religion, and the customs of the first immigrants undoubtedly exercised an immense influence on the destiny of their new country. Nevertheless, they could not found a state of things originating solely in themselves: no man can entirely shake off the influence of the past; and the settlers, intentionally or not, mingled habits and notions derived from their education and the traditions of their country with those habits and notions that were exclusively their own. To know and to judge the Anglo-Americans of the present day, it is therefore necessary to distinguish what is of Puritanical and what of English origin.

Laws and customs are frequently to be met with in the United States which contrast strongly with all that surrounds them. These laws seem to be drawn up in a spirit contrary to the prevailing tenor of American legislation; and these customs are no less opposed to the general tone of society. If the English colonies had been founded in an age of darkness, or if their origin was already lost in the lapse of years, the problem would be insoluble.

I shall quote a single example to illustrate my meaning. The civil and criminal procedure of the Americans has only two means of action, committal or bail. The first act of the magistrate is to exact

security from the defendant or, in case of refusal, to incarcerate him; the ground of the accusation and the importance of the charges against him are then discussed.

It is evident that such a legislation is hostile to the poor and favorable only to the rich. The poor man has not always security to (produce, even in a civil case; and if he is obliged to wait for justice in prison, he is speedily reduced to distress. A wealthy person, on the contrary, always escapes imprisonment in civil cases; nay, more, if he has committed a crime, he may readily elude punishment by breaking his bail. Thus all the penalties of the law are, for him, reduced to fines.⁴³ Nothing can be more aristocratic than this system of legislation. Yet in America it is the poor who make the law, and they usually reserve the greatest advantages of society to themselves. The explanation of the phenomenon is to be found in England; the laws of which I speak are English,⁴⁴ and the Americans have retained them, although repugnant to the general tenor of their legislation and the mass of their ideas.

Next to its habits the thing which a nation is least apt to change is its civil legislation. Civil laws are familiarly known only to lawyers, whose direct interest it is to maintain them as they are, whether good or bad, simply because they themselves are conversant with them. The bulk of the nation is scarcely acquainted with them; it sees their action only in particular cases, can with difficulty detect their tendency, and obeys them without thought.

I have quoted one instance where it would have been easy to adduce many others. The picture of American society has, if I may so speak, a surface covering of democracy, beneath which the old aristocratic colors sometimes peep out.

Notes

1 The charter granted by the crown of England in 1609 stipulated, among other conditions that the adventurers should pay to the crown a fifth of the produce of all gold and silver mines. See *Life of Washington*, by Marshall Vol. I, pp. 18-66.

2 A large portion of the adventurers, says Stith (*History of Virginia*), were unprincipled young men of family, whom their parents were glad to ship off in order to save them from an ignominious fate, discharged servants, fraudulent bankrupts, debauchees, and others of the same class, people more apt to pillage and destroy than to promote the welfare of the settlement. Seditious leaders easily enticed this band into every kind of extravagance and excess. See for the history of Virginia the following works: *History of Virginia, from the First Settlements in the Year 1624*, by Smith; *History of Virginia*, by William Stith; *History of Virginia, from the Earliest Period* by Beverley, translated into French in 1807.

3 It was not till some time later that a certain number of rich English landholders came to establish themselves in the colony.

4 Slavery was introduced about the year 1620, by a Dutch vessel, which landed twenty Negroes on the banks of the James River. See Chalmer.

5 The New England states are those situated to the east of the Hudson. They are now six in number: (1) Connecticut, (2) Rhode Island, (3) Massachusetts, (4) New Hampshire, (5) Vermont, (6) Maine.

6 *New England's Memorial* (Boston, 1826), p. 14. See also Hutchison's *History*, Vol. II, p. 440.

7 *New England's Memorial*, p. 22.

8 This rock has become an object of veneration in the United States I have seen bits of it carefully preserved in several towns of the Union. Does not this sufficiently show how all human power and greatness are entirely in the soul? Here is a stone which the feet of a few poor fugitives pressed for an instant, and this stone becomes famous- it is treasured by a great nation, a fragment is prized as a relic. But what has become of the doorsteps of a thousand palaces Who troubles himself about them?

9 New England's Memorial, p. 35.

10 The emigrants who founded the state of Rhode Island in 1638, those who landed at New Haven in 1637, the first settlers in Connecticut in 1639, and the founders of Providence in 1640 began in like manner by drawing up a social contract, which was acceded to by all the interested parties. See Pitkin's History, pp. 42 and 47.

11 This was the case in the state of New York.

12 Maryland, the Carolinas, Pennsylvania, and New Jersey were in this situation. See Pitkin's History, Vol. I, pp. 11-31.

13 see the work entitled Historical Collection of State Papers and Other Authentic Documents Intended as Materials for a History of the United States of America, by Ebenezer Hazard, printed at Philadelphia, 1792, for a great number of documents relating to the commencement of the colonies, which are valuable for their contents and their authenticity, among them are the various charters granted by the English crown, and the first acts of the local governments. See also the analysis of all these charters given by Mr. Story, Judge of the Supreme Court of the United States, in the Introduction to his Commentaries on the Constitution of the United States. It is proved by these documents that the principles of representative government and the external forms of political liberty were introduced into all the colonies almost from their origin. These principles were more fully acted upon in the North than in the South, but they existed everywhere.

14 see Pitkin's History, p. 35. Also, the History of the Colony of Massachusetts Bay, by Hutchinson, Vol. I, p. 9.

15 *ibid.*, pp. 42, 47.

16 The inhabitants of Massachusetts had deviated from the forms that are preserved in the criminal and civil procedure of England; in 1650 the name of the king was not yet put at the head of the decrees of justice. See Hutchinson, Vol. I, p. 452.

17 Code of 1650, p. 28 (Hartford, 1830).

18 See also in Hutchinson's History, Vol. I, pp. 435-6, the analysis of the penal code adopted in 1648 by the colony of Massachusetts. This code is drawn up on the same principles as that of Connecticut.

19 Adultery was also punished with death by the law of Massachusetts: and Hutchinson (Vol. I, p. 441) says that several persons actually suffered for this crime. On this subject he quotes a curious anecdote of what took place in the year 1663. A married woman had had criminal intercourse with a young man; her husband died, and she married the lover. Several years had elapsed when the public began to suspect the previous intercourse of this couple; they were thrown into prison, put to trial, and very narrowly escaped capital punishment.

20 Code of 1650, p. 48. It appears sometimes to have happened that the judges inflicted these punishments cumulatively, as is seen in a sentence pronounced in 1643 (New Haven Antiquities p. 114), by which Margaret Bedford, convicted of loose conduct, was condemned to be whipped and afterwards to marry Nicolas Jemmings, her accomplice. 21 New Haven Antiquities, p. 104. See also Hutchinson's History, Vol. I, p. 435, for several causes equally extraordinary.

22. Code of 1650, pp. 50, 57.

23 *Ibid.*, p. 64.

24 *Ibid.*, p. 44.

25 This was not peculiar to Connecticut. See, for instance, the law which, on September 13, 1644, banished the Anabaptists from Massachusetts (Historical Collection of State Papers, Vol. I, p. 538). See also the law against the Quakers, passed on October 14, 1656. "Whereas," says the preamble, "an accursed race of

heretics called Quakers has sprung up," etc. The clauses of the statute inflict a heavy fine on all captains of ships who should import Quakers into the country. The Quakers who may be found there shall be whipped and imprisoned with hard labor. Those members of the sect who should defend their opinions shall be first fined, then imprisoned, and finally driven out of the province. Historical Collection of State Papers, Vol.I, p.630.

26 By the penal law of Massachusetts, any Catholic priest who should set foot in the colony after having been once driven out of it was liable to capital punishment.

27 Code of 1650, p. 96.

28 New England's Memorial, p. 316. See Appendix E.

29 Constitution of 1638 p. 17.

30 In 1641 the General Assembly of Rhode Island unanimously declared that the government of the state was a democracy, and that the power was vested in the body of free citizens, who alone had the right to make the laws and to watch their execution. Code of 1650, p. 70.

31 Pitkin's History, P 47

32 Constitution of 1638, p. 12.

33 Code of 1650, p. 80.

34 Ibid., p. 78.

35 Ibid., p. 49.

36 See Hutchinson's History, Vol. I, p. 455.

37 Code of 1650, p. 86.

38 Ibid., p. 40.

39 Ibid., p. 90.

40 Ibid.. p. 83.

41 Mather's Magnalia Christi Americana, Vol. II, p. 13. This speech was made by Winthrop; he was accused of having committed arbitrary actions during his magistracy, but after having made the speech, of which the above is a fragment, he was acquitted by acclamation, and from that time forwards he was always re-elected Governor of the state. See Marshall, Vol. I, p. 166.

42 See Appendix F.

43 Crimes no doubt exist for which bail is inadmissible, but they are few in number.

44 See Blackstone and Delolme, Bk. I, ch. 10