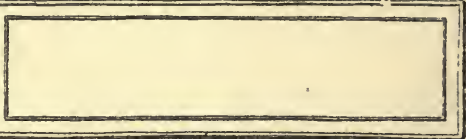


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1

THE PLACE OF MAGIC IN THE INTELLECTUAL
HISTORY OF EUROPE

STUDIES IN HISTORY, ECONOMICS AND PUBLIC LAW -

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THE PLACE OF MAGIC

Green

IN THE

INTELLECTUAL HISTORY OF EUROPE

BY

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ERRATA.

- Page 21, line 19, instead of *verbe* read *verbo*.
 Page 49, lines 9 and 10, instead of *marvelour* read *marvelous*.
 Page 58, at close of first foot-note, instead of 66 read 67.
 Page 71, line 10 of foot-note, instead of *ἀλλὰ* read *ἀλλᾶ*.
 Page 101, line 8 of foot note, instead of *factorum* read *fatorum*.
 Page 105, line 2 of second foot-note, instead of *εἶvai* read *εἶvai*.



CHAPTER I

ILLUSTRATIONS OF BELIEF IN MAGIC IN MEDIEVAL AND IN EARLY MODERN TIMES

EVEN a slight acquaintance with European history reveals the existence of a number of curious and apparently unreasonable beliefs prevalent throughout a period extending from early mediæval to comparatively recent times. There is the belief in witchcraft, for instance. From the canons of synods in the early Middle Ages down to the pitiless executions during the witchcraft delusion, there is abundant evidence of its prominence. It played its part not only in humble life, but in court intrigues and in the accusations brought at state trials.

The belief that one's future could be learned by observing the stars was equally widespread. Astrologers thrived at the courts of kings, and sometimes their advice was taken even by him whose every act was held to be under special divine direction. It would be a great mistake to think that the astrologer was maintained merely for the amusement of king and court, like the jester. His utterances were taken most seriously, and the principles of his art were so generally accepted as to become the commonplaces of the thought and the conversation of daily life. In 1305, for instance, when certain cardinals urged Pope Clement V to return to Rome, they reminded him that every planet was most powerful in its own house.¹ Indeed, even in our

¹ H. C. Lea, *History of the Inquisition in the Middle Ages* (1887),
II] II

speech to-day numerous vestiges of the astrological art survive.¹

Moreover, a grander and more imposing witchcraft displayed itself in the stories of the wizard Merlin and in the persons of the wicked magicians with whom knights contended in the pages of mediæval romance. So strong was the tendency to believe in the marvelous, that men of learning were often pictured by subsequent tradition, if not by contemporary gossip, as mighty necromancers. Even Gerbert, who seems to have done nothing more shocking than to write a treatise on the abacus and build a pipe-organ, was pictured as running off with a magician's book and daughter, hanging under bridges between earth and water to escape noxious spells, and making compacts with Satan.²

The attitude of the average mind as it has just been illustrated was to a large extent characteristic of the best instructed and most widely read men. The erudite poet Dante accepted the influence of the constellations upon human destiny. Bodin maintained in his *Republic*—perhaps the greatest book on political science written during the sixteenth

vol. iii, p. 437. Mr. Lea's chapter on "Sorcery and the Occult Arts" is very interesting and contains much material which it is difficult to find elsewhere.

¹ We speak of persons as jovial or saturnine or mercurial in temperament; as ill-starred, and so on.

² The classic on the theme of magic reputations incurred by the learned in ancient and mediæval times is Gabriel Naudé's *Apologie pour tous les grands personages qui ont esté faussement soupçonnez de Magie*. Paris, 1625. That such reputations were often unjustly incurred was recognized long before Naudé, however. To say nothing now of Apuleius' *Apologia*, to which we shall refer later, attention may be called to the fact that even William of Malmesbury, while relating with apparent credulity the legends in regard to Gerbert, had the grace to admit that "the common people often attack the reputation of the learned, and accuse any one of dealing with the devil who excels in his art." *Gesta Regum Anglorum*, book ii, secs. 167, 168.

century—that astrology was very useful in tracing the development of society.¹ Aquinas, chief of the mediæval theologians, accepted astrological theory, except as limited by human free will, and further admitted that most men make little use of their liberty of action but blindly follow their passions, which are governed by the stars.² Among other great mediæval churchmen and canonists, d'Ailly and Gerson both believed that God signified important events in advance through the stars, and d'Ailly made some astrological predictions himself. Astrology was much taught in the mediæval universities,³ and was regarded as the climax of mathematics and as an essential part of medicine.

It is with such beliefs, accepted by educated men and forming a part of the learning and science of the times, that we are concerned in this essay. First, it is necessary to give some further evidence of the nature and of the general acceptance of these beliefs. This object will be most quickly and effectively secured by a résumé of the views of a few of the men most prominent in the intellectual history of the past. These men should offer fair, if not flattering, illustrations of the learning and culture of their times. In especial we shall notice the curious notions of those who wrote on scientific subjects or showed even a considerable

¹ *République*, book iv, ch. 2, cited by W. E. H. Lecky, *History of Rationalism* (1900), vol. i, p. 28. The chapter upon "Magic and Witchcraft" contains considerable material bearing upon our theme. A similar attitude to that of Bodin is found in a political treatise of about the year 1300, probably written by Pierre du Bois, where an argument for the universal rule of a French monarch is based on astrology. N. de Wailly, *Mémoire sur un opuscule anonyme* (Mémoires de l'Institut Impérial de France), vol. xviii, pt. ii, p. 442.

² *Summa Theologica*, pars prima, quæst. 115, arts. 3 and 4.

³ For some data on this point see Hastings Rashdall, *The Universities of Europe in the Middle Ages* (1895), vol. i, pp. 240-250; vol. ii, pp. 290, 452, 458, 459.

approach towards the modern scientific spirit. This we shall do partly because their writings seem at first thought the place where we should least expect to find such notions, and hence furnish striking illustration of the almost universal acceptance of these beliefs; partly because, as we shall soon find reason to conclude, there is really some connection between such beliefs and science.

The early Middle Ages are not distinguished for the prevalence of education and of culture in Latin Christendom, to say nothing of profound knowledge or original thought in any particular branch of learning. But in such learning and science as there was may be found examples of the beliefs which we wish to consider. We see them in Isidore of Seville, whose *Etymologies*, we may well believe, constituted an oft-consulted encyclopedia in many a monastic library for several centuries after the seventh, when it appeared. This saint, like almost all good Christians of his day, believed that marvels could be effected through magic by the aid of demons, although such resort to evil spirits he could not condemn too strongly.¹ But he saw no harm in holding that certain stones possess astonishing powers,² that the dog-star afflicts bodies with disease, and that the appearance of a comet signifies pestilence, famine or war.³ He maintained that it was no waste of time to look into the meaning of the numbers which occur in the Bible. He thought that they might reveal many sacred mysteries.⁴

¹ *Etymologiae*, bk. viii, ch. 9. In Migne's *Patrologia Latina*, vol. lxxxii.

² *Ibid.*, bk. xvi, *passim*.

³ *Ibid.*, bk. iii, ch. 71. He condemned astrology, however. See *ibid.*, and bk. iii, ch. 27.

⁴ "Liber Numerorum qui in Sanctis Scripturis Occurunt." (Also in Migne, vol. lxxxiii, col. 179.) "Non est superfluum numerorum causas in Scripturis sanctis attendere. Habent enim quamdam scientiae doctrinam plurimaque mystica sacramenta."

Bede expressed similar views in his scientific treatises.¹ Also, if we may regard as his two little essays about the authenticity of which there is some question, he ascribed such extraordinary influence to the moon as to maintain that the practice of bleeding should be regulated by its phases, and wrote—with some hesitation lest he should be accused of magic—an explanation of how to predict coming disasters by observing the time and direction of peals of thunder.²

Passing over several centuries during which judicial astrology is very conspicuous in the mathematical treatises which formed the greater part of the scientific literature of the times,³ we come at the close of the twelfth century to the *De Naturis Rerum* of Alexander Neckam (1157-1217). We find him ecstatically musing over the consonance of celestial harmony and associating the seven planets with the seven liberal arts and the seven gifts of the Holy Spirit,⁴ as if believing that there is some occult virtue in that number or some potent sympathy between these material bodies and such abstractions as branches of learning and generic virtues. Descending from the skies to things earthly—the transition is easy since he believes in the influence, saving human free will, of the planets on our lower creation⁵—he

¹ *De Natura Rerum*, ch. 24; *De Temporum Ratione*, ch. 28. The scientific writing of Bede may be found in vol. vi of his works as edited by J. A. Giles. London, 1843.

² *De Tonitruis ad Herefridum*, and *De Minutione Sanguinis sive Phlebotomia*. Many spurious treatises were attributed to Bede but there are some reasons for believing these genuine, although they are not named by Bede in the list of his writings which he gives in his *Ecclesiastical History*. Giles included them in his edition after some hesitation.

³ For the predominance of astrology in the mathematics of the 9th, 10th, 11th and 12th centuries, cf. *Histoire Littéraire*, vol. v, p. 183; vi, 9; vii, 137; ix, 197.

⁴ *De Naturis Rerum*, bk. ii, ch. 173, and bk. i, ch. 7. Volume xxxiv of *The Chronicles and Memorials of Great Britain*. (The Rolls Series.)

⁵ *Ibid.*, bk. i, ch. 7.

tells us that mugwort prevents the traveler from feeling fatigue,¹ and that the Egyptian fig makes the wrinkles of old age vanish and can tame the fiercest bulls once they are gathered beneath its branches.² He describes fountains with properties as marvelous as those of the herb or of the tree.³ He tells of stones which, placed on the head of the sleeping wife, provoke confession of marital infidelity,⁴ or which, extracted from the crop of a rooster and carried in one's mouth, give victory in war.⁵ What is more, words as well as plants and stones are found by the careful and industrious investigator of nature to have great virtue, as experiment shows beyond doubt.⁶

Neckam, despite the fact that according to his editor, Thomas Wright, he "not infrequently displays a taste for experimental science,"⁷ was, after all, more of a moralizing compiler than anything else. But greater men than Neckam, men who were interested in learning and science for their own sake, men who knew more and wrote more, still cherished beliefs of the same sort. There was Michael Scot in the early years of the thirteenth century, the wonder of the cultured court of Frederick II, perhaps that monarch's tutor, the "Supreme Master" of Paris, the man who helped much to make the treasures of learning amassed

¹ *De Naturis Rerum*, bk. ii, ch. 63.

² *Ibid.*, bk. ii, ch. 80.

³ *Ibid.*, bk. ii, ch. 3 *et seq.*

⁴ *Ibid.*, bk. ii, ch. 88. In chapter 87 he writes: "Chelidonium autem rufus portantes se gratissimos facit; niger vero gestatus optimum finem negotiis imponit, et ad iras potentium sedandas idoneus est."

⁵ *Ibid.*, bk. ii, ch. 89.

⁶ *Ibid.*, bk. ii, ch. 85. "In verbis et herbis et lapidibus multam esse virtutem compertum est a diligentibus naturarum investigatoribus. Certissimum autem experimentum fidem dicto nostro facit."

⁷ Preface, p. xii in vol. xxxiv of the Rolls Series.

by the Arabs in Spain the common property of Latin Christendom, the introducer to Western Europe of a Latin version of Averroes and of an enlarged Aristotle.¹ Scot composed a primer of astrology for young scholars. His writings on alchemy show that he experimented in it not a little. His *Physionomia* accepts the doctrine of signatures, tells us that these signs on the outward body of the soul's inner state are often discovered through dreams, and contains a chapter giving an extended description of the rules of augury—an art on which the author, though a Christian, apparently bestowed his sanction. Prophetic verses foretelling the fate of several Italian cities have come down to us under his name. A poem of Henri d'Avranches, written in 1235-6, recalls to mind the fact that certain prophecies concerning the emperor had been made by the then deceased Michael Scot, whom the poet proceeds to call a scrutinizer of the stars, an augur, a soothsayer, a *veridicus vates*, and a second Apollo.² A most interesting recipe for invoking demons to instruct one in liberal arts is attributed to Michael Scot in a manuscript collection of *Occulta* in the Laurentian library.³

¹ My information concerning Michael Scot is mainly derived from his biography (Edinburgh, 1897) by Rev. J. Wood Brown, who has studied the manuscript copies of Scot's works in various European libraries and has succeeded in dispelling much of the uncertainty which previously existed concerning the events of Scot's career and even the dates of his life. Of Scot's works the *Physionomia* exists in printed form; indeed, eighteen editions of it are said to have been issued between the years 1477 and 1660.

² The poem is printed in *Forschungen zur Deutschen Geschichte*, vol. xviii, (1878) p. 486.

³ The part of the manuscript containing the experiment was written between 1450 and 1500, Brown thinks, but purports to be a copy "from a very ancient work." If spurious, its fabricator at least shows considerable familiarity with Scot's life. See Brown, pp. 18-19. The recipe is given in full in the appendix of Brown's book.

Later in the same century stands forth the famous figure of Roger Bacon, the stout defender of mathematics and physics against scholasticism. Some have ascribed to him numerous important innovations in the realm of natural science and of the mechanical arts, and have regarded his promulgation of the experimental method, guided by the mathematical method, as the first herald note of that modern science which was not destined really to appear for yet several centuries. Yet he held that the alchemist, if given sufficient time and money, could discover a way not only to meet the state's expenses by converting baser metals into gold, but also to prolong human existence beyond that limit to which it can be drawn out by nature.¹ Indeed these objects constituted two of the three examples he gave of the great advantages to be gained from the pursuit of that experimental science which was to disprove and blot out all magical nonsense.²

How far Bacon let the principles of astrology carry him a citation or two will show. That a woman had succeeded in living twenty years without eating was, he explained, no miracle, but due to the fact that during that period some constellation was able to reduce the concourse of the four elements in her body to a greater degree of harmony than they usually attain.³ Nor is it health alone that the stars control; they affect human character.⁴ They implant in the babe at birth good or evil dispositions, great or small tal-

¹ *De Secretis Operibus Artis et Naturae et de Nullitate Magiae*, ch. 7. Contained in the Appendix of vol. xv of the Rolls Series, edited by J. S. Brewer, London, 1859.

² *Opus Maius*, vol. ii, pp. 204-221. Edited by J. H. Bridges, Oxford, 1897-1900. On page 210 *et seq.* Bacon gives an elaborate recipe for an *elixir vitae*.

³ *Opus Minus*, Rolls Series, vol. xv, pp. 373-4.

⁴ Bridges, *Opus Maius*, vol. i, pp. 137-139.

ents. Human free will may either better these innate tendencies through God's grace or modify them for the worse by yielding to Satan's temptings; but in general the stars so far prevail that there are different laws and customs and national traits under different quarters of the heavens.¹ Nay more, astrology offers proof of the superiority of Christianity to other religions and gives insight into the nature of Antichrist.²

As one might surmise from Bacon's belief in the potent effect of sidereal emanations, he makes much of the theory that every agent sends forth its own virtue and species into external matter. This leads him to accept fascination as a fact. Just as Aristotle tells that in some localities mares become pregnant by the mere odor of the stallions, and as Pliny relates that the basilisk kills by a glance, so the witch by the vapor from her bleary eye draws her victims on to destruction. In short, "Man can project virtue and species outside himself, the more since he is nobler than all corporeal things, and especially because of the virtue of the rational soul."³ Hence the great effects possible from spoken words or written characters; although one must beware of falling into the absurdities and abominations of the magicians. Bacon, moreover, was like Scot a believer in the doctrine of signatures.⁴

Other men of the same period prominent in science who held similar beliefs we can scarcely stop to mention. There was Vincent de Beauvais, the great encyclopedist, and Ber-

¹ *Compendium Studii*, Rolls Series, vol. xv, pp. 421-422.

² Bridges, *Opus Maius*, vol. i, pp. 253-269.

³ *De Secretis*, ch. 3, discusses this question of fascination and also the power of words and of the human soul. In regard to characters and incantations, see *De Secretis*, ch. 2, and the *Opus Tertium*, which is also contained in vol. xv of the Rolls Series, ch. 26.

⁴ *Opus Tertium*, ch. 27.

nard Gordon, a physician of Montpellier and a medical writer of considerable note, who nevertheless recommended the use of a magic formula for the treatment of epilepsy.¹ There was Albertus Magnus with his trust in such wonderful powers of stones as to cure ulcers, counteract potions, conciliate human hearts, and win battles; and his theory that ligatures and suspensions, and gems carved with proper images possess similar strange virtues.² There was Arnald of Villanova who propounded such admirable doctrines as that a physician ought first of all to understand the chief functions of life and chief organs of the body and that the science of particular things is the foundation of all knowledge, and yet who believed in astrological medicine, wrote on oneiromancy and interpreted dreams, translated treatises on incantations, ligatures and other magic devices, and composed a book on the *Tetragrammaton* or ineffable name of Jehovah.³

That marvelous power of words—especially of the divine names of angels and of the Supreme Deity—which we may suppose Arnald to have touched upon in his *Tetragrammaton*, was discussed at length by a series of scholars at the close of the fifteenth and beginning of the sixteenth century whose names are most familiar to the student of those times. These men pushed the practice of allegorical interpretation of sacred writings, which had been in constant vogue among religious and theological writers from the days

¹ "Gaspar fert myrram, thus Melchoir, Balthasar aurum.

Haec tria qui secum portabit nomina regum
Solvitur a morbo Christi pietate caduco."

Hist. Litt., vol. xxv, p. 327.

² See *Liber Mineralium. Opera Omnia*, ed. Borgnet (1890), vol. v, page 23 *et seq.*

³ Two good accounts of Arnald are those in the *Histoire Littéraire*, vol. xxviii and Lea, *History of the Inquisition*, vol. iii, pp. 52-57. Older accounts are generally very misleading.



of the early Christian Fathers, to the extreme of discovering sublime secrets not only by regarding every incident and object in Scripture as a parable, but by treating the text itself as a cryptogram. Not only, like Isidore, did they see in every numerical measurement in the Bible mystic meaning, but in the very letters they doubted not there was hidden that knowledge by which one might gain control of all the processes of the universe; nay, penetrate through the ten sephiroth to the unspeakable and infinite source of all. For our visible universe is but the reflected image of an invisible, and each has subtle and practically unlimited power over the other. The key to that power is words. Such were the doctrines held by Pico Della Mirandola (1463-1494) who asserted that no science gave surer proof of Christ's divinity than magical and cabalistic science;¹ such were the doctrines of the renowned humanist, John Reuchlin, who connected letters in the sacred text with individual angels;² of Henry Cornelius Agrippa (1486-1535) who, inspired by Reuchlin's *De verborum mirifico* and *De arte cabalistica*, declared that whoever knew the true pronunciation of the name Jehovah had "the world in his mouth;"³ of Trithemius from whom Paracelsus is said to have acquired the "Cabala of the spiritual, astral and material worlds."⁴

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Moreover, the writings of men primarily devoted to science continued through the sixteenth and on into the

¹ J. M. Rigg, *Giovanni Pico Della Mirandola*, London, 1890, pp. viii-x.

² Janssen, *History of the German People*, vol. iii, p. 45, of the English translation by A. M. Christie (1900).

³ Henry Morley, *Life of Agrippa von Nettesheim* (London, 1856), vol. i, p. 79. This biography includes a full and instructive outline of Agrippa's work on *Occult Philosophy*.

⁴ A. E. Waite, *Hermetical and Alchemistical Writings of Paracelsus*, vol. i, p. xii.

seventeenth century to contain much the same occult theories that Michael Scot, Roger Bacon and Albertus Magnus had accepted and discussed. Jerome Cardan, one of the most prominent men of his time in mathematics and medicine—indeed, the discoverer of new processes in the former science—nevertheless believed in a strong attraction and sympathy between the heavenly bodies and our own, cast horoscopes and wrote on judicial astrology. In his *Arithmetic* he treated of the marvelous properties of certain numbers; in other writings he credulously discussed demons, ghosts, incantations, divination and chiromancy. His thirteen books on metoposcopy explain how to tell a person's character, ability and destiny by a minute examination of the lines on different portions of the body and by warts. He owned a selenite which he believed prevented sleep and a jacinth to which he attributed an opposite influence.¹

The vagaries of Paracelsus are notorious, and yet he was far more than a mere quack. Tycho Brahe (1546-1601) was a faithful follower of experimental method. He saw that the science of the stars could amount to little unless based on a mass of correct observations, and was one of the first to devote his life to that foundation of patient and systematic drudgery on which the great structure of modern science is being reared. His painstaking endeavor to have accurate instruments and his care to make allowance for possible error were the marks, rare enough in those days, of the true scientist. Yet he made many an astrological prognostication, and was, as his biographer puts it, "a perfect son of the sixteenth century, believing the universe to be woven together by mysterious connecting threads which the contemplation of the stars or of the

¹ For Cardan, see the biography in two volumes by Henry Morley, London, 1854, and that in one volume by W. G. Waters, London, 1898.

elements of nature might unravel, and thereby lift the veil of the future."¹ He also dabbled in alchemy, believed in relations of occult sympathy between "the ethereal and elementary worlds," and filled his mind with the teachings of Hermes Trismegistus, Geber, Arnald of Villanova, Raymond Lullius, Roger Bacon, Albertus Magnus, and Paracelsus.

Finally, even Francis Bacon, famed as the draughtsman of the chart which henceforth guided explorers in the domain of science, thought that there was considerable value in physiognomy and the interpretation of natural dreams, though the superstition and phantasies of later ages had debased those subjects;² and in divination if not "conducted by blind authority."³ He said that by a reformed astrology one might predict plagues, famines, wars, seditions, sects, great human migrations and "all great disturbances or innovations in both natural and civil affairs."⁴

Such are the beliefs which for a long time pervaded the thought and learning of Europe; beliefs of the widespread acceptance of which we have noted but a few striking illustrations. They constitute a varied and formidable class of convictions. There was the notion that from such things as the marks upon one's body, or from one's dreams, or from peals of thunder, flight of birds, entrails of sacrificial victims and the movements of the stars, we can foretell the future. There was the assumption that certain precious stones, certain plants and trees and fountains, certain animals or parts of animals have strange and wonderful virtues. There was the idea that man, too, possesses marvel-

¹ J. L. E. Dreyer, *Tycho Brahe. A Picture of Scientific Life and Work in the Sixteenth Century* (Edinburgh, 1890), p. 56. A valuable book.

² *De Augmentis Scientiarum*, bk. iv, ch. 1.

³ *Ibid.*, bk. iv, ch. 3.

⁴ *Ibid.*, bk. iii, ch. 4.

ous powers to the extent that he can fascinate and bewitch his fellows. Nor should we forget the attribution to the heavenly bodies of an enormous influence over minerals and vegetation, over human health and character, over national constitutions and customs, even over religious movements. We find this notion of occult virtue extended to things without physical reality: to words, to numbers, to written characters and formulæ. It is applied to certain actions and ways of doing things: to "ligatures and suspensions," for instance. Then there was the belief that wonders may be wrought by the aid of demons, and that incantations, suffumigations, and the like are of great value in invoking spirits. Finally, there was a vague general notion that not only are the ethereal and elementary worlds joined by occult sympathy, but that all parts of the universe are somehow mystically connected, and that perhaps a single magic key may be discovered by which we may become masters of the entire universe.

How shall we classify these beliefs? What shall we call them? What is their meaning, what their origin and cause? As for classification, it is easy to suggest names which partially apply to some of these notions, or adequately characterize them individually. The art of signatures, oneiromancy, augury, divination, astrology, alchemy, the Cabala, sorcery, and necromancy are some designations which at once come to mind. But no one of them is at all adequate as a class name for all these beliefs and the practices which they involve, taken together. Are not these notions, nevertheless, closely allied; is there not an intimate relation between them all? And is not "magic" a term which will include them all and denote the general subject, the philosophy and the art, of which they all are branches?

True, many of the holders of the beliefs above enumer-

ated declaimed against "magic."¹ But sometimes fear of being accused of magic was their very reason for so doing. Bede had such a fear when he treated of divination by thunder. Roger Bacon took suspicious care to insist that his theories had nothing to do with magic, which he declared was for the most part a mere pretense and could bring marvels to pass only by diabolical assistance.² The writer of the *Speculum Astronomiae*—probably Albertus Magnus—found it necessary to write a treatise to distinguish books of necromancy from works on "astronomy," *i. e.*, astrology.³ Coming to a later age, we find Agrippa frankly owning his trust in magic, and including under it, in his three books of *Occult Philosophy*, practically all the beliefs that we have mentioned. For him magic embraced the fields of nature, mathematics and theology. Indeed, men of his day and of the century following displayed a tendency to stretch the term to include true science. He himself called magic "the acme of all philosophy." Giovanni Battista della Porta (1540-1615), not it is true without considerable justification, called his encyclopedic work on

¹ Bodin for instance condemned "magic" in his *De Magorum Daemonomania* (Paris, 1581).

² Bridges, *Opus Maius*, vol. i, p. 241. See too the *De Secretis Operibus Artis et Naturae et de Nullitate Magiae*. Rolls Series, vol. xv, appendix.

³ *Spec. Astron.*, ch. 17. Albertus Magnus, *Opera Omnia*, ed. Borgnet (1890), vol. x, pp. 629 *et seq.* And he finally came to the conclusion that "concerning books of necromancy the better judgment—prejudice aside—seems to be that they ought rather to be preserved than destroyed. For the time is perchance near at hand in which, for reasons which I now suppress, it will be advantageous to consult them occasionally. Nevertheless, let their inspectors abstain from abuse of them." Ch. 17.

Similarly Roger Bacon, in his *De Secretis*, ch. 3, after mentioning books of magic to be eschewed, remarked that many books classed as magic were not such but contained worthy wisdom.

nature *Natural Magic*.¹ Lord Bacon chose to understand magic "in its ancient and honorable significance" among the Persians as "a sublimer wisdom or a knowledge of universal nature." He said that as physics, investigating efficient and material causes, produced mechanics, so metaphysics, studying into forms, produced magic.²

Apparently, then, magic has a broad significance and a long history. The word itself takes us back to the Magi of ancient Persia; the thing it represents is older yet. It will form the theme of our next chapter, where we shall discuss its history and its meaning, and then the particular significance of those beliefs accepted by men of learning which have been enumerated in the present chapter.

¹ *Magiae Naturalis Libri XX*. Lyons, 1651.

² *De Augmentis*, bk. iii, ch. 4.

CHAPTER II

MAGIC: ITS ORIGINS AND RELATIONS TO SCIENCE

To men of the past—how long ago does not at present matter—magic meant far more than the performance for their amusement of clever tricks, which however puzzling they knew well enough were based upon illusion and deception. There was a real magic for them.

This faith in the reality of magic was not, moreover, merely the outcome of men's belief in the existence of evil spirits, in the power of those spirits to work changes in matter or to predict the future, and in man's power to gain their services. We sometimes speak of magic and necromancy as if they were identical, and mediæval writers often did the same thing, but such is not the case. If we but consider the meaning of the word "magic" when used as an adjective, we perceive that thus to restrict its scope as a noun is incorrect. What is a magic cloak, for instance? It is simply a cloak possessing properties which cloaks in general do not possess and which we are surprised to find in cloaks. Most cloaks keep us warm or improve our personal appearance; this cloak makes us invulnerable and invisible. A demon or a fairy may have endowed the cloak with these extraordinary qualities, but that is a secondary consideration. What makes the garment a magic cloak is the fact that it has such properties, no matter where or how it got them. Or what is a magic change? Is it merely a change wrought by spirits good or evil? By no means.

It is any change with characteristics and results which we do not expect nor usually see in changes. In short, magic is præternatural rather than supernatural.

Thus we find the existence of magic in the earliest period of human thought generally assumed by anthropologists, but some writers deny that man always has believed in supernatural beings. He first, they tell us, had a vague notion that by propitiating or by coercing nature he might secure for himself happiness; and that if anything external was to have power over the workings of the natural structure, it must be man, for both gods and God were yet unknown. Only gradually, they hold, through his belief in tree-spirits, through his devotion to plants or fetishes made sacred by their supposed efficacy in serving human wishes, perhaps, too, through his attitude toward human beings whose reputation for skill in magic finally led to deification, did man come to a belief in more or less divine beings and turn to them for the power and the happiness which in his savage and untutored impotency he had been unable to win by his own efforts.¹ Then only would the performance of magic by the aid of supernatural beings commence.

There is another misleading idea which we should avoid. Fairy tales and romances picture magicians to us as few in number, adepts in a secret art. Instinctively, moreover, looking as we do upon magic as a mere delusion, we are prone to regard it as the creation of the popular imagination, and to believe that what magicians there were outside of the ordinary man's imagination were a few imposters who took advantage of his fancies, or a few self-deceived

¹ This view is set forth at length in J. G. Frazer's *The Golden Bough* (3 vols., London, 1900). The book also furnishes many illustrations of the magic of primitive man. Mr. Frazer holds that "religion" supplanted magic and is in turn itself being supplanted by science. His definition of religion would probably not be generally accepted.

dreamers whose minds such fancies had led astray. This is a superficial view. It does not explain how the ordinary man came to imagine the existence of magic. Magicians in the true sense were no mere imaginary order existent only in the minds of men, nor a profession of dreamers and imposters. Magic was not the outright invention of imagination; it was primitive man's philosophy, it was his attitude toward nature. It was originally not the exercise of supposed innate, marvelous powers by a favored few nor a group of secret doctrines or practices known to but a few; it was a body of ideas held by men universally and which, during their savage state at least, they were forever trying to put into practice. Everybody was a magician.

To understand magic, then, we should consider this attitude of primitive man—I use the word primitive in no narrow sense—and should try to picture to ourselves what his attitude would be. It is a safe assumption that he would interpret the world about him according to his own sensations, feelings and motives. Whether he looked upon nature at large or in detail, he would in all probability regard it not as an inexorable machine run in accordance with universal and immutable laws, but as a being or world of beings much like himself—fickle, changing, capable of being influenced by inducements or deterred by threats, beneficent or hostile according as satisfied or offended by treatment received. To make life go as he wished, he must be able to please and propitiate or to coerce these forces outside himself.¹ In this endeavor his faculty of associa-

¹ Alfred Maury, in the introduction to his *La Magie et l'astrologie dans l'antiquité et au moyen âge*, (Paris, 1860), expresses a practically identical view and has the conception of magic gradually fading away before the advance of science. (See also the article on "Magic" in the *Encyclopædia Britannica*, 9th edition.)

Maury's work is not, however, as satisfactory as one is led to think

tion probably led him to conclude that things resembling each other or having any seeming connection must be related by strong bonds of sympathy and have power over each other. Since he had already attributed human characteristics to matter, he naturally now observed no distinction between the animate and the inanimate, the material and the spiritual. A wooden image might be used to affect the fate of a human being, or the utterance of alluring and terrifying sounds to produce change in unfeeling and unresponsive matter.

Moreover, as man observed the world about him, he would note many a phenomenon in nature which he could explain only by assuming strange and subtle influences. There was, for instance, the magnet, so different from other stones; the hot spring, so different from other waters; the action of electricity—still a mystery. Such things, too, as a calf with five legs, a dream, a sneeze, appealed to him as peculiar and striking, and perplexed him. He thought that they must have some important significance. His attempt to explain all such phenomena generally led him into magic.

from reading its introduction. Although he has defined magic almost in so many words as the attitude of primitive man towards the universe, he himself interprets magic much more narrowly when he comes to write his book proper, as indeed its title, *Magic and Astrology*, suggests. In short the thought that science and magic may at one time have mingled does not seem to impress him, and his work is of little aid to one considering our present subject. For instance, he cites Pliny only as an opponent of magic. Maury's work, moreover, comprising in its historical portion but a little over two hundred pages—and these nearly half filled by foot-notes—can hardly be regarded as more than a brief narrative sketch of the subject.

Considerable erudition is displayed in Maury's references, especially those to Greek and Roman writers, and from page 208 to 211 Maury gives a good bibliography of some of the chief secondary works dealing with magic. More was written upon the subject shortly before his time than has been since.

Man often had to decide between two or more courses of action, apparently equally pleasing and advantageous or displeasing and disadvantageous. Should he turn to the right or to the left; should he begin his journey to-day or to-morrow? The thought probably came to him that one of these directions, one of these days, would in the end prove more advantageous than the other, though at present he could see no difference between them. One must be lucky, the other unlucky. This belief in lucky times, places and actions was magic. For such times, places and actions were magical as truly as the cloak that is unlike other cloaks or the change that differs from other changes.

Akin to man's desire to discover what course of action would bring him good luck was the longing he doubtless had to know the future; a knowledge which would be as interesting as those tales of his ancestor's doings in which he delighted, and of more practical use. As he had no difficulty in granting to matter spiritual qualities or in subjecting to trivial material influences mind and soul without power of resistance, so now he sought in the present sure signs of his own future. Such indications seemed to him to be found not only in dreams, which indeed had some connection with his personality, but also in such things as the flight of birds or the movements of the stars. He often did more than assign magic powers to the heavenly bodies; often he worshiped them as gods. His effort thus to learn the future from inadequate and irrelevant present phenomena was divination or magic.

These notions of primitive man do not exhaust the field of magic. As he became educated, he would extend the attribution of magic properties to such things as numbers and written characters or formulæ. His original ideas might be elaborated or refined. But already he accepted the principles upon which a belief in magic founds itself. These

principles were evidently common property. Of course some men would come to surpass others in their knowledge of the supposed bonds of sympathy between different things, or of lucky objects, seasons and methods, of ways to coax and control natural forces, of the meaning of portents and of means to predict the future. In the progress of time the finer mysteries of the art might become the monopoly of a priesthood. But everybody believed in magic; everybody understood something about it.

To attempt to define magic further than has been done in our description of the notions of primitive man is like trying to embrace a phantom. Magic rested upon man's conjecture of the characteristics and processes of nature, not on a knowledge of nature correctly deduced from observation and experiment. As one would expect, there went with these mistaken notions a fantasticalness both in reasoning and in practical procedure. The follower of magic is apt to be on the watch not for facts or laws, but for hidden mysteries; he is fond of ceremonial and symbols; he enjoins upon himself and his fellows the necessity of secrecy in their operations and mysticism in their writings. Again, magic is, as has been said, *præternatural*; its outcome is to be marvelous. It assumes the existence of wonderful properties in various objects and of wonderful bonds of sympathy between different things. Finally, we should remember that man always is a factor in magic. His knowledge, skill or power is always essential to the performance of a feat of magic. Even when demons do the deed, they must be invoked. A miracle may be contrary to natural law but it is not magic, for man is not the cause of it. Even if wrought in answer to his prayer, the miracle is not magic, for the gods answer only if they choose. But the magic formula compels the desired marvel; by it man coerces nature or even deity.

Such are some of the chief characteristics of magic. Yet with these granted, it remains, like superstition or religion, a vague term at best. The reader may disagree with me as to exactly what beliefs and practices should be included under it, and it is indeed a nice question just where magic begins and ends. Much of alchemy, for example, was nothing but chemistry of a rude sort, and perhaps even its theories that metals may be transmuted and life greatly prolonged will some day prove to have had much truth in them. On the other hand, alchemy was based to a considerable extent on a belief that plants, animals and minerals have properties and powers which they cannot have; and if we ever do succeed in making gold or putting off old age, it is quite certain that such a consummation will never be accomplished by the fantastic methods which alchemists usually employed. Similarly we shall see that the practice of allegorical interpretation of past writings and the Pythagorean doctrine of numbers, which perhaps at first thought one would not regard as magic at all, nevertheless bear at least some resemblance to it. But after all our thesis is not to establish a certain definition for the word "magic," or to prove that such and such ideas and acts are magical. A name signifies little, and the word magic has had too many different meanings in different periods and for different men to allow any one to assert with confidence that he has found an absolutely correct definition. I employ the word simply because it seems the most convenient, most intelligible and most justifiable term for denoting a number of beliefs which I believe are all intimately related and which are the marks of a certain attitude towards the world.

So much for the definition of magic and for the nature of its origin. But the discussion of these two points does not fully explain the meaning of the beliefs which were illustrated in our first chapter. We have yet to bring out

the full significance of the presence of such notions in the minds of mediæval thinkers and scientists.

It was stated above that the outcome of magic is præternatural, marvelous; but this statement, while in one sense perfectly true, requires some qualification. Perhaps to inexperienced primitive man the results which he wished to accomplish or the crude theories on which he based his operations seemed nothing remarkable. Perhaps incantation seemed to him the natural way to bring rain, and sorcery the sole cause of disease. But as time went on and observation taught men, it must have been impressed upon their minds that either the events they sought to produce, or the methods by which they sought to produce them, were a little out of the ordinary, although of the possibility of the events and of the validity of the methods they still remained convinced. If we wish to sum up the whole history of magic in a sentence, we may say that men first regarded magic as natural, then as marvelous, then as impossible and absurd. Evidently then magic is subjective, as anything false must be. To-day in the thought of educated and sensible people it is limited in actual significance to stage illusions; once it was a universal attitude towards the universe. As one false hypothesis after another was superseded by true notions, the content of magic narrowed in men's minds until at last it became an acknowledged deception. Meanwhile its mistaken premises and strange proceedings first mingled with and then vanished into science and scientific methods.

This, then, is the significance of the beliefs of which we were speaking in the first chapter. They are phenomena in that union—or struggle—of magic and science which marked the decay of the former and the development of the latter. As such, they warn us not to picture a magician to ourselves as armed with a wand, clad in solemn robes,

and attended by a black cat. They warn us, on the other hand, not to regard the learned students of nature, mathematics and medicine in ages past as modern scientists in mind and spirit, who were merely handicapped by such obstacles as crude instruments and want of data. We perceive the anachronism involved in explaining away as mere passing fancies, personal eccentricities or anomalous beliefs the superstitious or bizarre notions of those to whom tradition has accorded great fame. We are warned to consider carefully whether such notions were not ingrained in the very being of those men and characteristic of their whole mental attitude.

Science and magic are very unlike, but even the distinction between East and West varies according to where the speaker takes his stand. We have come to regard science as abstract truth, scientific investigation as necessarily correct and sensible; we forget that science has a past. In their actual history science and magic were not unassociated. Scientists might accept magical doctrines and magic might endeavor to classify its fancies and to account for them by natural causes. Roger Bacon could regard the attainment of magical results as the great end of experimental science. Francis Bacon could place magic in the same category with metaphysics and physics.

It is with this mingling of magic and science—or more broadly of magic with learning in general—in the history of our Western world that this essay has to do. It is a theme of no narrow interest. Such ideas as have been cited, not only held by the most learned men of the times but incorporated in their scientific and philosophical systems—in so far as they had any—deserve consideration in the history of science and philosophy as well as in that of magic, or in an investigation of the mental make-up of the men of the past.

While, however, the place of magic in the intellectual history of Europe is our general subject, the present essay is far from being an attempt at a complete treatment of it. The aim is rather to illustrate that theme by a survey of learning during the period of the Roman Empire, when the divers threads of the thought and knowledge of the ancient world were to some extent united. The prominence of magic in mediæval science is perhaps better known and more generally admitted. Accordingly this essay will take for granted, except in so far as it has been illustrated in our first chapter, the presence of magic in mediæval learning, and will try to show that magical doctrines, credulity, mysticism, and love of the marvelous were not traits peculiar to mediæval thought, but that in this respect (as in others) there was close resemblance, probably strict continuity between the Roman world and later times. It was largely in order to bring out this resemblance, continuity and influence that the beliefs of various writers in the Middle Ages and early modern times were given in the first chapter. Let the reader compare them with those notions of men in the Roman Empire which will presently be set forth. If we are justified in thus regarding the Roman world as summarizing ancient science and helping to explain mediæval thought, we evidently, in taking our stand in that period secure a broad prospect and ought to obtain a fair idea of the place of magic in the intellectual history of Europe. In defining the field which we are to cover, it should be further said that Christian thought will not come into our discussion, since it did not greatly influence science and other secular learning until the close of the Roman Empire. Lastly, it should be clearly understood that we are here concerned with magic only as connected with science and with learning—only as accepted by educated men. →

CHAPTER III

PLINY'S NATURAL HISTORY

WE should have to search long before finding a better starting-point for the consideration of the union of magic with the science of the Roman Empire and of the way in which that union influenced the Middle Ages than Pliny's *Natural History*. Its encyclopedic character affords a bird's-eye view of our entire subject. Its varied contents suggest practically all the themes of our discussion in succeeding chapters. Chronologically considered, it is satisfactory as an introduction, since it appeared in the early part of the Empire (77 A. D.).

I. *The character of the work.*—Pliny's treatise is far more than what we understand by a "Natural History." It is an attempt to cover the whole field of science; *rerum natura* is its subject.¹ This, as Pliny says, is a task which no single Greek or Roman has before attempted. He tells us that he treats of some 20,000 topics gleaned from the perusal of about 2,000 volumes, with the addition of many facts not contained in previous works and only recently

¹ "Praeterea iter est, non trita auctoribus via, nec qua peregrinari animus expetat. Nemo apud nos qui idem temptaverit, nemo apud Graecos qui unus omnia ea tractaverit." From his dedication to the Emperor Vespasian. C. Plinii Secundi, *Naturalis Historiae Libri xxxvii*. Ludovicus Janus, Lipsiæ, 1870. 5 vols. in 3. I shall refer to passages by the division into chapters found in the editions of Hardouin, Valpy, Lemaire and Ajasson. Three modes of division are indicated in the edition of Janus. There is an English translation of the *Natural History*, with an introductory essay, by J. Bostock and H. T. Riley, London, 1855, 6 vols. (Bohn Library).

brought to light.¹ At first thought, then, the *Natural History*, vast in its scope and constituting a summary of the views of previous authorities, would seem the best single example of the science of the classical world. The fact that it touches upon many of the varieties and illustrates most of the characteristics of magic makes it the more fitting a starting-point for us. Indeed, Pliny makes frequent mention of the Magi, and in the opening chapters of his thirtieth book gives the most important extant discussion of magic by an ancient writer.

It is true, however, that Pliny does not seem to have been a man of much scientific training and experience. He said himself that his days were taken up with the performance of public duties, and that consequently his scientific labors were largely carried on in the evening hours.² Probably we should regard his book as little more than a compilation, and perhaps no very judicious compilation at that, in view of his maxim that there is no book so bad but that some good may be got from it.³ Perhaps we may not unjustly picture him to ourselves as collecting his material in a rather haphazard fashion; as not always aware of the latest theories or discoveries; as occasionally citing a fantastic writer instead of a more sober one; or as quoting incorrectly statements which his limited scientific knowledge

¹ "Viginti milia rerum dignarum cura . . . ex lectione voluminum circiter duum millium, quorum pauca admodum studiosi attingunt propter secretum materiæ, ex exquisitis auctoribus centum inclusimus xxxvi voluminibus, adiectis rebus plurimis quas aut ignoraverant priores aut postea invenerat vita." Also from the dedication. Pliny uses more than one hundred writers, however.

² "Homines enim sumus et occupati officii, subcisivisque temporibus ista curamus, id est nocturnis, ne quis vestris putet cessatum horis." From the dedication.

³ Pliny the Younger to Macer in his *Letters*, bk. iii, ep. 5, ed. Keil, Leipzig, 1896.

prevented him from comprehending. Perhaps, too, he derived some of his data directly from popular report and superstition. Certainly to us to-day his work seems a disorderly and indiscriminate conglomeration of fact and legend on all sorts of subjects—disorderly, in that its author does not seem to have made any effort to sift his material, to compare and arrange his facts, even in his own mind; indiscriminate, in that Pliny seems to lack any standard of judgment between the true and the false, and to deem almost nothing too improbable, silly or indelicate to be mentioned. Ought we to consider such a work as truly representative of the beliefs of preceding centuries, or as an example of the best educated thought and science of its author's own age? This is a question which we must consider.

Yet as we read Pliny's pages we feel that he possessed elements of greatness. If he was equipped with little scientific training or experience, we should remember that little training or experience was necessary to deal with the science of those days. At least he sacrificed his life in an effort to investigate natural phenomena. Moreover, his faults were probably to a great extent common to his age. The tendency to regard anything written as of at least some value did not begin with him. Material had often before been collected in a haphazard manner. Lewes, in his book on the science of Aristotle, has described with truth even the famous *History of Animals* as unclassified in arrangement and careless in the selection of material.¹ Many of Pliny's marvelous assertions and absurd remedies purport to be from

¹ Geo. H. Lewes, *Aristotle; a Chapter from the History of Science*, London, 1864. Lewes also holds that while Aristotle often dwelt upon the value of experiment and the necessity of having a mass of facts before making general assertions, he in practice frequently jumped at conclusions.

the works of men of note, although possibly he was sometimes deceived by spurious writings. He frequently gives us to understand that he himself intends to maintain a cautious and critical frame of mind, and he makes great pretensions to immunity from that credulousness of human nature over which he will occasionally smile or philosophize.¹ When we take up Aristotle's *History of Animals* and Seneca's *Natural Questions*, it will become evident that Pliny's "science" was not very different in quality from that of the Greeks or from that of his own age. If he seldom gives us a clear-cut or complete exposition of a subject, it is probably because there was seldom one to be found. If he seems in a chronic state of mental confusion and incoherency, it is because his task staggered him. His work was by its nature so far impersonal that we can attribute its defects only in part to his personality.

On the whole, then, we probably shall not be greatly misled if we regard the *Historia Naturalis* as a sort of epitome of what men had believed about nature in the past or did believe in Pliny's own day. The author may not have portrayed past and present thought at their best but he portrayed them, and that in detail. "The greatest gull of antiquity"² was the Boswell of ancient science.

¹ *Nat. Hist.*, bk. xxvi, ch. 9. "Mirum esset profecto hucusque profectam credulitatem antiquorum saluberrimis ortam initiis, si in ulla re modum humana ingenia novissent atque non hanc ipsam medicinam ab Asclepiade repertam probaturi suo loco assemus evectam ultra Magos etiam. Haec est omni in re animorum condicio, ut a necessariis orsa primo cuncta pervenerint ad nimium." Cf. also bk. xxviii, ch. 1. "Quamquam et ipsi consensu prope iudicata eligere laboravimus potiusque curae rerum quam copiae institimus." In Pliny's dedication, however, occurs a sentence which gives one the impression that he felt rather in duty bound to accept tradition. "Res ardua, vetustis novitatem dare, novis auctoritatem, obseletis nitorem, obscuris lucem, fastiditis gratiam, *dubiis fidem*, omnibus vero naturam et naturae suae omnia."

² Quoted without reference by E. Eggleston, *The Transit of Civiliza-*

Pliny makes almost as good a representative of mediæval science as of that of the Roman world, and thus well illustrates the influence which the one had upon the other. Indeed not only is the *Natural History* just the sort of work that delighted the Middle Ages, but Pliny seems to have exerted a considerable direct influence on writers down through the sixteenth century. Isidore of Seville practically copied his unfavorable comments on the magi and his discussion of the powers of stones.¹ Bede seems to have owed a good deal to him. Alcuin openly praised that "most devoted investigator of nature."² Roger Bacon quoted him; the *Natural History* was a mine whence Agrippa dug much of the material for his *Occult Philosophy* and to which Porta seems equally indebted in his *Natural Magic*.

II. *Pliny's discussion of magic.*— Before illustrating Pliny's combination of magical lore with true and sane statements about nature, we should consider his discussion of what he was pleased to call magic; for just as he prided himself upon his freedom from excessive credulity in the abstract, so in regard to magic in particular he seems to have flattered himself that his position was quite different from what it actually was.

tion from England to America in the Seventeenth Century" (N. Y., 1901), p. 16. This interesting and valuable book contains much material illustrative of the science and superstitions of the times.

¹ *Etymologies*, bk. xvi, Migne, vol. lxxxii.

² *Alcuini Epistolæ*, 103, vol. vi, pp. 431-432, of *Bibliotheca Rerum Germanicarum*, ed. Philip Jaffé, Berlin, 1873. "Vel quid acutius quam quod naturalium rerum divitissimus [or devotissimus] inventor, Plinius Secundus, de caelestium siderum ratione exposuit, investigari valet?" In Migne's *Patrologia Latina*, vol. c, col. 278, the letter is given as number 85. For other references to Pliny by earlier writers, see *Bibliothèque Latine-Française*, C. L. F. Panckoucke, vol. cvi which forms the opening volume of Pliny's work in that set.

Pliny did have, however, a fairly clear idea of the extensive scope of magic as well as of its great age and currency. Not only did he declare that of all known arts it had exerted the greatest influence in every land and in almost every age, but "no one," he said, "should wonder that its authority has been very great, since it alone has embraced and combined into one the three other subjects which appeal most powerfully to man's mind."¹ For magic had invaded the domain of religion and had also made astrology a part of itself,² while "no one doubts that it originally sprang from medicine and crept in under the show of promoting health as a loftier and more holy medicine."³ Indeed, he thinks that the development of magic and of medicine have been parallel⁴ and that the latter is now in imminent danger of being overwhelmed by the follies of magic which have made men doubt whether plants possess any medicinal properties at all.⁵ Pliny, moreover, sees the connection of magic with the lore of the magi of Persia. Indeed, "magus" is his only word for a magician. But this does not lead him to admit what some persons—the philosopher Eudoxus, for instance—have asserted, that magic is the most splendid and useful branch of philosophy.⁶ For Pliny, magic is always something reprehensible.

The magi are either fools or imposters. They are a

¹ *Nat. Hist.*, bk. xxx, ch. i. "Auctoritatem ei maxumam fuisse nemo miretur, quandoquidem sola artium tris alias imperiosissimas humanae mentis complexa in unam se redigit."

² *Ibid.* He uses the words "mathematicas artes" instead of "astrologiam" but the words following make his meaning evident: "nullo non avido futura de sese sciendi atque ea e caelo verissime pati credente."

³ *Ibid.* "Natam primum e medicina nemo dubitat ac specie salutari inrepsisse velut altiozem sanctiozemque medicinam."

⁴ Bk. xxx, ch. 2.

⁵ Bk. xxvi, ch. 9.

⁶ Bk. xxx, ch. 2. "Eudoxus qui inter sapientiae sectas clarissimam utilissimamque eam intellegi voluit."

genus vanissimum.¹ They believe such absurdities as that herbs can dry up swamps and rivers, open all barriers, turn hostile battle-lines in flight, and insure their possessor, wherever he may be, abundant provision for every need.² They make statements which Pliny thinks must have been dictated by a feeling of contempt and derision for the human race. They affirm that gems carved with the names of sun and moon and attached to the neck by hairs of the cynocephalus and feathers of the swallow will neutralize the effect of potions, win audience with kings, and, with the aid of some additional ceremony, ward off hail and locusts.³ They have the impudence to assert that the stone "heliotropium," combined with the plant of the same name and with due incantations, renders its bearer invisible.⁴ "Vanitas" is Pliny's stock-word for their statements. Nero proved how hollow are their pretenses by the fact that, although he was most eagerly devoted to the pursuit of magic arts and had every opportunity to acquire skill in them, he was unable to effect any marvels through their agency and abandoned the study of them.⁵

¹ Bk. xxviii, ch. 23.

² Bk. xxvi, ch. 9.

³ Bk. xxxvii, ch. 40. The word in this passage which I render as "potion" is in the Latin "veneficium"—a word difficult to translate owing to its double meaning. "Venenum" signifies a drug or potion of any sort, and then in a bad sense a drug used to poison or a potion used to bewitch. In a passage soon to be cited Pliny contrasts "veneficæ artes" to "magicæ artes" but I doubt if he always preserved such a distinction. A similar confusion exists in regard to the Greek word φάρμακον, as Plato sets forth clearly in his *Laws*. There are, he says, two kinds of poisons employed by men which cannot be clearly distinguished. One variety injures bodies "according to a natural law." "There is also another kind which persuades the more daring class that they can do injury by sorceries and incantations . . ." *Laws*, bk. xi, p. 933 (Steph.). Jowett's translation.

⁴ Bk. xxxvii, ch. 60. "Magorum impudentiæ vel manifestissimum in hac quoque exemplum est . . ."

⁵ Bk. xxx, ch. 5, 6.

Moreover, magi or magicians deal with the inhuman, the obscene and the abominable. Osthanes, and even the philosopher Democritus, are led by their devotion to magic into propounding such remedies as drinking human blood or utilizing in magic compounds or ceremonies portions of the corpses of men violently slain.¹ Magic is a malicious and criminal art. Its devotees attempt the transfer of disease from one person to another or the exercise of baleful sorcery.² "It cannot be sufficiently estimated how great a debt is due the Romans who did away with those monstrous rites in which to slay a man was most pious; nay more, to eat men most wholesome."³ In fine, we may rest persuaded that magic is "execrable, ineffectual and inane." Yet it possesses some shadow of truth, but is of avail through "veneficas artes . . . non magicas,"⁴ whatever that distinction may be.

III. *Illustrations of Pliny's fundamental belief in magic.*

—Pliny, we have seen, made a bold pretense of utter disbelief in magic, and also censured the art on grounds of decency, morality and humanity. Yet despite this wholesale condemnation, in some places in his work it is difficult to tell where his quotations from magicians cease and where statements which he accepts recommence. Sometimes he explicitly quoted theories or facts from the writings of the "magi" without censure and without any expression of disbelief. If it is contended that he none the less regarded

¹ Bk. xxviii, ch. 2. Pliny's own medicine is not prudish, and elsewhere he gives instances of devotees of magic guarding against defilement. (Bk. xxx, ch. 6 and xxviii, ch. 19).

² Bk. xxviii, ch. 23. "Quanta vanitate," adds Pliny, "si falsum est, quanta vero noxia, si transferunt morbos!"

³ Bk. xxx, ch. 4.

⁴ Bk. xxx, ch. 6. "Proinde ita persuasum sit, intestabilem, inritam, inanem esse, habentem tamen quasdam veritatis umbras, sed in his veneficas artis pollere non magicas."

them as false and worthless, we may fairly ask, why then did he give them such a prominent place in his encyclopedia? Surely we must conclude either that he really had a liking for them himself and more than half believed them, or that previous works on nature were so full of such material and his own age so interested in such data that he could not but include much of this lore. Probably both alternatives are true. Finally, many things which Pliny states without any reference to the magi seem as false and absurd as the far-fetched assertions which he attributes to them and for which he shows so much scorn. Indeed, it hardly seems paradoxical to say that he hated the magi but liked their doctrines.

What clearer example of magic could one ask than the conclusion that the odor of the burning horn of a stag has the power of dispelling serpents, because enmity exists between stags and snakes, and the former track the latter to their holes and extract the snakes thence, despite all resistance, by the power of their breath? Or that on this same account the sovereign remedy for snake-bite comes "ex coagulo hinnulei matris in utero occisi?" Or that, since the stag is not subject to fever, the eating of its flesh will prevent that disease, especially if the animal has died of a single wound? What more magical than to fancy that the longest tooth of a fish could have any efficacy in the cure of fever? Or that excluding the person who had tied it on from the sight of the patient for five days would complete a perfect charm? Or that wearing as an amulet the carcass of a frog, minus the claws and wrapped in a piece of russet-colored cloth, would be of any aid against disease?¹ Yet the *Natural History* is full of such things.

To plants, for example, Pliny assigns powers no less

¹ Concerning the stag, see bk. viii, ch. 50. On the use of frogs and fishes to cure fevers, bk. xxxii, ch. 38.

marvelous than those which he has attributed to animals. There is one plant which, held in the hand, has a beneficial effect upon the groin; ¹ another overcomes the asp with torpor, and hence, beaten up with oil, is a remedy for the sting of that snake. ² Fern, he says, if mowed down with the edge of a reed or uprooted by a ploughshare on which a reed has been placed, will not spring up again. ³ Moreover, in his twenty-fourth book, immediately after having announced that he has sufficiently discussed for the present the marvellous properties attributed to herbs by the magi, ⁴ he proceeds to mention the following remedies. One is a quick cure for headache, and consists in gathering a plant growing on the head of a statue and attaching it to your neck with a red string. Another is a cure for tertian fever, and consists in plucking a certain herb before sunrise on the banks of a stream and in fastening it to the patient's left arm without his knowledge. A third recipe instructs us that plants which have taken root in a sieve that has been thrown into a hedge-row "*decerptae adalligataeque gravidis partus adcelerant.*" A fourth would have herbs growing on dung-hills a cure for quinzy, and a fifth assures us that sprains may be speedily cured by the application of a plant "*iuxta quam canes urinam fundunt,*" torn up by the roots and not allowed to touch iron. ⁵

Coming to minerals we find Pliny rather more reticent in regard to strange qualities. His account of gems is written mainly from the jeweler's point of view. When marvellous powers are mentioned, the magi are usually made re-

¹ Bk. xxvi, ch. 59.

² Bk. xxi, ch. 105.

³ Bk. xviii, ch. 8.

⁴ Bk. xxiv, ch. 102.

⁵ Bk. xxiv, chs. 106, 107, 109, 110, 111. Evidently these last remedies derive their force not merely from magic powers inherent in vegetation. The effect of ceremony and of circumstance becomes a factor.

sponsible, and such powers are frequently rejected as absurd. Pliny, however, grants some magic properties in certain stones. Molochitis, by some medicinal power which it possesses, guards infants against dangers; ¹ and eumecas, placed beneath the head at night, causes oracular visions.² To water Pliny allows powers which we must regard as magical, for according to him certain rivers pass under the sea because of their hatred of it.³

In man, moreover, as well as in other creatures upon earth, there is magic power. Pliny mentions men whose eyes are able to exert strong fascination,⁴ others who fill serpents with terror and can cure snake-bite by merely touching the wound, and others who by their presence addle eggs in the vicinity.⁵ Pliny takes up the power of words and incantations in connection with man. Whether they have potency beyond what we expect ordinary speech to possess is a great and unanswered question. Our ancestors, Pliny says, always believed so, and in every-day life we often unconsciously accept such a view ourselves. If, for instance, we believe that the Vestal virgins can, by an imprecation, stop runaway slaves who are still within the city limits, we must accept the whole theory of the power of words. But, taken as individuals, the wisest men lack faith in the doctrine.⁶

¹ Bk. xxxvii, ch. 36.

² Bk. xxxvii, ch. 58.

³ Bk. ii, ch. 106.

⁴ Bk. vii, ch. 2. ". . . Qui visu quoque effascinent interimantque quos diutius intueantur, iratis praecipue oculis, quod eorum malum facilius sentire puberes. Notabilius esse quod pupillas binas in singulis habeant oculis."

⁵ Bk. xxviii, ch. 6. The eggs, however, it should be said, are represented as being beneath a setting hen.

⁶ Bk. xxviii, ch. 3. "Ex homine remedium primum maxumae quaestiois et semper incertae est, polleatne aliquid verba et incantamenta

Pliny, then, believed in the possession of magic properties by well-nigh all varieties of terrestrial substances, nay even by colors and numbers, and in strange relations of occult sympathy, love and hatred between different things in the realm of nature. His acceptance of ceremony as efficacious has also been brought out to some extent. We have seen him attributing importance to death from a single wound, to suspension by a single hair, to fastening an amulet without the patient's knowledge, or to the absence for a time from the patient's sight of the person who attached it. We will consider one or two more such instances among the many which exist in his pages.

He who gathers the iris should be in a state of chastity. Three months beforehand let him soak the ground around the plant with hydromel—as a sort of atonement to appease the earth. When he comes to pluck it, he should first trace three circles about it with the point of a sword, and, the moment he plucks it, raise it aloft towards the heavens.¹ In another passage, in connection with the application of a mixture to an inflammatory tumor, Pliny says that persons of experience regard it as very important that the poultice be applied by a naked virgin and that both she and the

carminum. Quod si verum est, homini acceptum fieri oportere conveniat, sed viritum sapientissimi cuiusque respuit fides. In universum vero omnibus horis credit vita . . . Vestalis nostras hodie credimus nondum egressa urbe mancipia fugitiva retinere in loco precationibus, cum, si semel recipiatur ea ratio et deos preces aliquas exaudire aut illis moveri verbis, confitendum sit de tota coniectione. Prisci quidem nostri perpetuo talia credere, difficilimumque ex his etiam fulmina elici, ut suo loco docuimus.”

Pliny seems inclined to narrow down the problem of the power of words to the question whether the gods answer prayer or not, a question which takes us out of the field of magic unless he regarded prayer as a means of coercing the gods.

¹ Bk. xxi, ch. 19.

patient be fasting. Touching the sufferer with the back of her hand, she is to say, "Apollo forbids a disease to increase which a naked virgin restrains." Then, withdrawing her hand, she is to repeat the same words thrice and to join with the patient in spitting on the ground each time.¹

Pliny occasionally prefaces his marvelous remedies by some such expression as "it is said." This circumstance is scarcely to be taken as a sign of mental reservation, however, as the following absurd statement, which he makes upon his own authority and declares is easily tested by experiment, will indicate. "If a person repents of a blow given to another, either by hand or with a missile, let him spit at once into the palm of the hand which inflicted the blow, and all resentment in the person struck will instantly vanish." This is often proved, according to Pliny, in the case of beasts of burden, which can be induced to increase their speed by this method after the use of the whip has failed.²

One can, perhaps, make some distinction between the strange influences which Pliny credited and the statements of the magi which he rejected. I believe that he did not go to the length of affirming that plants or parts of animals could cause panics, procure provisions, win you royal favor, gain for you vengeance on your enemies, or make you invisible. But he was inconsistent enough. After asserting that a single fish but a few inches long could immediately

¹ Bk. xxvi, ch. 60. "Experti adfirmavere plurimum referre, si virgo inponat nuda ieiuna ieiuno et manu supina tangens dicat; 'Negat Apollo pestem posse crescere cui nuda virgo restinguat,' atque ita retrorsa manu ter dicat totiensque despuant ambo."

² Bk. xxviii, ch. 7. "Mirum dicimus, sed experimento facile: si quem paeniteat ictus eminus comminusve inlati et statim exspuat in mediam manum qua percussit, levatur ilico in percusso culpa. Hoc saepe delumbata quadripede adprobatur statim a tali remedio correcto animalis ingressu."

arrest the progress of the largest vessel by attaching itself to the keel of the ship,¹ was it for him to declare false the notion that a stone can calm winds or ward off hail and swarms of locusts? He characterized as "idle talk" the assertion of the magi that the stone "gorgonia" counteracted fascination,² but he had already written: "Id quoque conuenit, quo nihil equidem libentius crediderim, tactis omnino menstruo postibus inritas fieri magorum artes, generis vanissimi, ut aestimare licet."³ Apparently, then, the only charge which he could bring against magicians without reflecting upon himself was that of malicious and criminal practices. His beliefs were much like theirs.

Indeed, the varieties of magic in the *Natural History* have not yet been exhausted. For one thing, we must consider Pliny's position in regard to magic properties of the stars as well as of terrestrial matter. He believed in astrology, at least to some extent, although one might not think it if one read only the passage in which he speaks of the debt of gratitude mankind owe to the great geniuses who have freed them from superstitious fear of eclipses.⁴ He could, nevertheless, in naming some prominent personage in each of the primary arts and sciences, mention Berosus, to whom a public statue has been erected by the Athenians in honor of his skill in prognostication, in connection with astrology.⁵

Pliny himself holds that the universe is a divinity, "holy eternal, vast, all in all—nay, in truth is itself all," a propo-

¹ Bk. xxxii, ch. 1.

² Bk. xxxvii, ch. 59.

³ Bk. xxviii, ch. 23.

⁴ Bk. ii, ch. 9. Indeed, in bk. ii, ch. 30, he gives examples of ominous eclipses of the sun, although it is true that they were also of unusual length.

⁵ Bk. vii, ch. 37. "Astrologia Berosus cui ob diuinas praedictiones Athenienses publice in gymnasio statuam inaurata lingua statuere."

sition rather favorable to astrological theory.¹ The sun is the mind and soul of the whole world and the chief governor of nature.² The planets affect each other. A cold star renders another approaching it pale; a hot star causes its neighbor to redden; a windy planet gives those near it a lowering aspect.³ Saturn is cold and rigid; Mars a flaming fire; Jupiter, located between them, is temperate and salubrious.⁴ When the planets reach a certain point in their orbits, they are deflected from their regular course by the rays of the sun.⁵

Besides effects upon each other the planets exert especial influence upon the earth. "Potentia autem ad terram magnopere eorum pertinens."⁶ They govern, each according to its nature, the weather on our globe.⁷ The planets also have great influence upon diseases and on animal and plant life in general, although Pliny does not dwell upon this point at any length.⁸ The moon, a feminine and nocturnal star, stirs up humors on earth and is powerful in producing

¹ Bk. ii, ch. 1. "Mundum . . . numen esse credi par est. Sacer est, aeternus, immensus, totus in toto, immo vero ipse totum."

² Bk. ii, ch. 4. "Hunc esse mundi totius animum ac planius mentem, hunc principale naturae regimen ac numen credere decet opera eius aestimantes."

³ Bk. ii, ch. 16.

⁴ Bk. ii, ch. 6.

⁵ Bk. ii, ch. 13.

⁶ Bk. ii, ch. 6. See also bk. ii, ch. 39. "Ut solis ergo natura temperando intellegitur anno sic reliquorum quoque siderum propria est quibusque vis et ad suam cuique naturam fertilis."

⁷ Bk. ii, ch. 39. For the general physical interaction of earth and stars as conceived by Pliny see bk. ii, ch. 38. "Terrena in caelum tendentia deprimit siderum vis, eademque quae sponte non subeant ad se trahit. Decidunt imbres, nebulae subeunt, sicantur amnes, ruunt grandines, torrent radii et terram in medio mundi undique inpellunt, iidem infracti resiliunt et quae potuere auferunt secum. Vapor ex alto cadit rursumque in altum redit. Venti ingruunt inanes iidemque cum rapina remeant. Tot animalium haustus spiritum e sublimi trahit, at ille contra nititur, tellusque ut inani caelo spiritum fundit."

⁸ Bk. ii, ch. 41.

putrefaction and corruption in matter.¹ By the nature of Venus every thing on earth is generated.²

To what extent the planets rule man's life Pliny does not specify—an instance of prudent reticence on his part, if he really consciously avoided the question. He disclaims any belief in the vulgar notion that a star, varying in brightness according to our wealth, is assigned to each of us, and that the eternal stars rise and fade at the birth or death of insignificant mortals. “Non tanta caelo societas nobiscum est ut nostro fato mortalis sit ibi quoque siderum fulgor.”³ But thus to deny that the stars are ruled by man's destiny or doings is far from refusing to believe that men's lives are ordered by the stars. Pliny, as we have seen, holds that Venus has a considerable influence over the process of birth in all animals. Also he certainly accepts the portentous character of various particular celestial phenomena. “From the stars celestial fire is vomited forth bearing omens of the future.”⁴ He gives instances from Roman history of comets which signalled disaster, expounds the theory that their significance is to be determined from the direction in which they move and the heavenly body whose powers they receive, and states that the particular phase of life to which they apply may be deduced from the shape which they assume or from their position in relation to the signs of the zodiac.⁵

¹ Bk. ii, ch. 104.

² Bk. ii, ch. 6. “Huius natura cuncta generantur in terris, namque in alterutro exortu genitali rore conspergens non terrae modo conceptuus inplet verum animantium quoque omnium stimulat.”

³ Bk. ii, ch. 6.

⁴ Bk. ii, ch. 18. “A sidere caelestis ignis expuitur praescita secum adferens.”

⁵ Bk. ii, ch. 23. The part dealing with the shape and position of the comet reads: “Tibiarum specie musicae arti portendere, obscenis autem moribus in verendis partibus signorum, ingeniis et eruditioni, si tri-

Pliny's belief in portents seems to have been general and not limited to celestial phenomena. In a passage on earthquakes he declares, "Never has the city of Rome shaken but that this was a forewarning of some future event."¹

Pliny is less certain in regard to the superstitious observances so common then, to secure good luck or ward off evil fortune. In chapter five of his twenty-eighth book he gives quite a list of practices, such as selecting persons with lucky names to lead the victims at public lustrations, saluting those who sneeze, placing saliva behind the ear to escape mental anxiety, removing rings while eating, averting the ill-omen of mentioning fire at meal-time by pouring water beneath the table, and other superstitious table etiquette. He cites beliefs of the same nature, as that odd numbers are for every purpose the more efficacious, that medicines do no good if placed on a table before being administered, that baldness and headaches may be prevented by cutting the hair on the seventeenth and twenty-ninth days of the moon, and that women who walk along country roads twirling distaffs, or even having these uncovered, bring very bad luck, especially to the crops. He seems to have inclined to the belief that there was a modicum of truth, at any rate, in these notions and customs—and certainly we have already seen him affirming the validity of analogous practices—but he finally decides that amid the great variety of opinion existing in the matter he will not be dogmatic and that each person may think as he deems best. His attitude is much the same in regard to divination from thunder and lightning.²

quetram figuram quadratamve paribus angulis ad aliquos perennium stellarum situs edant, venena fundere in capite septentrionalis austrinaeve serpentis."

¹ Bk. ii, ch. 86. "Numquam urbs Roma tremuit, ut non futuri eventus alicuius id praenuntium esset." See also bk. ii, ch. 85.

² Bk. ii, ch. 54.

With all the foolish notions which he imbibed from antiquity or into which his mind, over-hospitable to the fantastic and marvelous, led him, Pliny had one good scientific trait. He might believe in magic but he had no liking for the esoteric. His mind might be confused but it was not mystical. He had no desire to hide the "secrets" of science and philosophy from the public gaze, to wrap them up in obscure and allegorical verbiage lest the unworthy comprehend them. On the contrary, he sharply remarked apropos the lack of information about the medicinal properties of plants, that there was a most shameful reason for this scarcity, namely, that even those who knew were unwilling to give forth their knowledge, "as if that would be lost to themselves which they passed on to others."¹

Such, then, is the *Natural History*. Pliny gives evidence that many of the most intelligent men were coming to doubt a large part of the superstitious beliefs and observances once universally prevalent, and he himself makes a brave effort to assume a critical and judicious attitude. Yet his work contains a great deal of magic and reveals, what this essay in its entirety will make further evident, the error of such a statement as the following from Dr. White's *Warfare of Science and Theology*:

Under the old Empire a real science was coming in and thought progressing. Both the theory and practice of magic were more and more held up to ridicule. Even as early a writer as Ennius ridiculed the idea that magicians, who were generally poor and hungry themselves, could bestow wealth on others; Pliny, in his *Natural Philosophy*, showed at great length their absurdities and cheatery; others followed in the same line

¹ Bk. xxv, ch. 6. "Turpissima causa raritatis quod etiam qui sciunt demonstrare nolunt, tamquam ipsis perituum sit quod tradiderint aliis."

of thought, and the whole theory, except among the very lowest classes, seemed dying out.¹

¹ Vol. i, p. 382. Dr. White's book, which imputes well-nigh every fantastic feature of mediæval science to Christian institutions and theology, is written with too little use of primary sources, and considerable ignorance of the character of ancient science.

Aside from unfairness in the general tone and mode of presentation, —Cosmas Indicopleustes, for instance, is set forth as a typical representative of mediæval science of the clerical type, while Albertus Magnus is not permitted to stand as a representative of "theological" science at all but is pictured as one inclined to true science who was frightened into the paths of theology by an ecclesiastical tyranny bitterly hostile to scientific endeavor—the author makes some inexcusable mistakes in details. For instance, after speaking of "theological" methods, he proceeds (vol. i, p. 33): "Hence such contributions as that the basilisk kills serpents by his breath and men by his glance," apparently in serene ignorance of the fact that this statement about the basilisk was a commonplace of ancient science. Again (vol. i, p. 386) he tells us that in 1163 the Council of Tours and Alexander III "forbade the study of physics to ecclesiastics, which of course in that age meant the prohibition of all such scientific studies to the only persons likely to make them." On turning to the passage cited we find the prohibition to be that persons who have vowed to lead a monastic life shall not absent themselves from their monasteries for the purpose of studying "physica" (which the context indicates means medicine, not physics), or reading law. The canon does not apply to all ecclesiastics, and it is as absurd to infer from it that "all such scientific studies were prohibited to the only persons likely to make them" as to conclude that henceforth no one could study civil law. To argue from a single piece of legislation is hazardous in any case. (For the canon, see Harduin, vol. vi, pt. ii, p. 1598. Canon viii.)

On the whole the book strikes one as an unscientific eulogy of science and a bigoted attack on bigotry. The inconsistency of the author's professions and practice, to say nothing of the somewhat perplexing arrangement of his material, reminds one of Pliny's *Natural History*.

CHAPTER IV

SOME ANTECEDENTS OF THE BELIEF IN MAGIC IN THE ROMAN EMPIRE

WRITERS who have discussed the intellectual life under the Roman Empire generally agree that it was not marked by originality and creative power, and owed a perhaps unusually large debt to the past. The cosmopolitan character of the Empire, the mingling at that time of the science, theology, philosophy and superstition of different nations, religions and races, deserve equal emphasis. The lore of the magi of Persia, the occult science of Egypt, perhaps even the doctrines of the gymnosophists of India, may be regarded, together with that belief in divination which played such a rôle in classical religion and government and with other superstitious notions of Greeks and Italians, as contributory to the prominence of magic in the Empire.

To discuss with any attempt at completeness the influence of the past upon the belief in magic in the Empire lies, however, outside the province of this essay. Pliny has shown us something of the union of magic with science in the literature before his day. Philo of Alexandria, Apuleius and the fame of Hermes Trismegistus may give us some notion of the influence of the East. In other writers of the period of which we treat one may discern further traces of the thought and learning of the past. In general such evidence must suffice. We shall, however, presently take occasion to support our contention that Pliny gives one

a fairly good idea of science before his day, by a few citations from two writers of repute, one a Greek and one a Roman, of the period before the Empire. Moreover, the great historical importance of Greek philosophy and the fact that, besides playing a prominent part in Roman culture, it exercised a powerful direct influence on Christian Europe long after the fall of Rome, seem to justify some treatment of its doctrines. Especially may we mention Plato and Aristotle, who exerted great influence not only during classical times, but also the one in the Middle Ages, the other in the period following the decline of Scholasticism.

We naturally incline to regard this earlier period of more or less distinctively Greek thought and learning as a golden age, comparatively speaking, characterized by sane thinking if not also by careful investigation of nature, and free from superstition, credulity and mysticism. The general opinion seems to be that magic entered science and learning and was accepted by men of intellectual prominence only when mental decay had set in and when Oriental influence had become a powerful force.

Yet something might be said for the opposite view that this earlier age combined magic with its science and philosophy as much, if not more, than the later time. We know that Greek philosophy had its beginnings in mythology; and if the representatives of its maturity accepted the Greek religion with its auspices drawn from sacrifices, its oracles and the like, we may with reason ask, is it probable that they would hesitate to give similar doctrines a place in their scientific and philosophical systems? Pliny, for his part, evidently regarded himself as less credulous and as less inclined to magic than the ancient Greeks, although it is true that he attributed their belief to Oriental influence. He declared that Pythagoras, Empedocles, Democritus and Plato had learned the magic art abroad and had taught it on their

return.¹ Beside the name of Hippocrates in the field of medicine he set that of Democritus in the domain of magic.² Elsewhere he said that Pythagoras and Democritus, having embraced the doctrine of the magi, first expounded the properties of magic plants in the Western world.³ In Cicero's *De Divinatione*, Epicurus is alone of the Greek philosophers declared free from trust in divination, and Panaetius is said to have been the only Stoic to reject astrology.⁴

Fortunately we are not here concerned to measure either relatively or absolutely with any attempt at exactness the amount of magic in the learning of the closing centuries of Greek national life, but only to investigate whether in the philosophy of the Greeks there were not theories at least liable to encourage a later age to belief in magic. There

¹ *Nat. Hist.*, bk. xxx, ch. 2. "Certe Pythagoras, Empedocles, Democritus, Plato ad hanc discendam navigavere exsiliis verius quam peregrinationibus susceptis. Hanc reversi praedicavere, hanc in arcanis habuere." Philostratus, as we shall see, mentioned the same men as associating with the magi, although he denied that they embraced the magic art. (See *infra*, p. 66.)

² Bk. xxx, ch. 2. "Plenumque miraculi et hoc, pariter utrasque artis effloruisse, medicinam dico et magicenque, eadem aetate illam Hippocrate, hanc Democrito inlustrantibus." Pliny may have got a false idea of the teachings of Democritus by accepting as genuine works which were not. He tells us (bk. xxx, ch. 2) that some persons have vainly tried to save Democritus' reputation by denying that certain works are his. "Democritus Apellobechen Coptiten et Dardanum et Phoenicem inlustravit voluminibus Dardani in sepulchrum eius petitis, suis vero ex disciplina eorum editis, quae recepta ab ullis hominum atque transisse per memoriam aequae ac nihil in vita mirandum est. In tantum fides istis fasque omne deest, adeo ut qui cetera in viro probant, haec opera eius esse inficiuntur. Sed frustra. Hunc enim maxime adfixisse animis eam dulcedinem constat."

³ Bk. xxiv, ch. 9. "In promisso herbarum mirabilium occurrit aliqua dicere et de Magicis. Quae enim mirabiliores? Primi eas in nostro orbe celebravere Pythagoras atque Democritus, consecrati Magos."

⁴ *De Divinatione*, bk. i, ch. 39, and bk. ii, ch. 42.

was, for instance, the view of the Stoics that the universe is a single living whole—a theory well fitted to form the starting-point for a belief in sympathetic magic. Also their doctrine that events are all arranged in a fatal causal series was favorable to divination. Quintus Cicero, represented as upholding the truth of that art, cites the Stoics as authority, and we may safely assume that Seneca drew his view of divination largely from the same source.

The doctrine of Pythagoras also deserves mention, for it has played a great rôle in history. He is said to have held that the whole world is, and that the life of man ought to be, harmoniously ordered in accordance with mathematical principles; nay more, that such principles are living things and that numbers are the essence of the universe. The logical conclusion is that by skilful use of mere numbers man can move heaven and earth. As the poet, eulogizing Michael Scot, put it; the “mathematici” by their art affect numbers, by numbers affect the procession of the stars, and by the stars move the universe. The employment of characters constructed of numbers or of geometrical figures, the use of numerical formulæ as remedies or of compounds of three portions of three kinds of drugs applied during three successive days, is raised from the plane of superstition to the level of science. It is not unreasonable to suppose that the heavenly bodies with their apparently unchanging regularity of movement are the governors of our existence. Plato, who adopted the Pythagorean doctrines at least to a considerable extent, declared that the loftiest function of the sense of sight was to survey the heavens, an occupation by which we gain philosophy.¹ Like the Pythagoreans also, he associated the four elements with regular solids. The

¹ *Timæus*, p. 47 (Steph.). The passage may be found in English translation in vol. iii, p. 466, of B. Jowett's *Plato's Dialogues* (3d edit.), London, 1892.

cube represented earth; the octohedron was water; the tetrahedron, fire; and the icosahedron, air.¹ The remaining regular solid, the dodecahedron, was held to represent the universe as a whole.

Towards magic, as he understood it, Plato's attitude seems to have been sceptical, though perhaps not confidently so. He maintained that persons acquainted with medicine and prophets or diviners were the only ones who could know the nature of poisons which worked naturally, and of such things as incantations, magic knots and waxen images; and that since other men had no certain knowledge of such things, they ought not to fear but to despise them. He admitted, however, that there was no use in trying to convince most men of this and that legislation against sorcery was necessary.² He himself occasionally mentioned charms or soothsaying in a matter-of-fact way.

Whatever Plato's opinion of vulgar magic, his view of nature was much like that of primitive man. He humanized material objects and materialized spiritual characteristics. For instance, he asserted that the gods placed the lungs about the heart "as a soft spring that, when passion was rife within, the heart, beating against a yielding body, might be cooled and suffer less, and might thus become more ready to join with passion in the service of reason."³ He affirmed that the liver was designed for divination, and was a sort of mirror on which the thoughts of the intellect fell and in which the images of the soul were reflected, but that its predictions ceased to be clear after death.⁴ Plato spoke of the existence of harmonious love between the ele-

¹ *Timaeus*, pp. 53-56 (Steph.); Jowett, vol. iii, pp. 473-476.

² *Laws*, bk. xi, p. 933 (Steph.).

³ *Timaeus*, p. 70 (Steph.). The translation is that of Jowett, vol. iii, p. 492.

⁴ *Ibid.*, p. 71 (Steph.).

ments as the source of health and plenty for vegetation, beasts and men. Their "wanton love" he made the cause of pestilence and disease. To understand both varieties of love "in relation to the revolutions of the heavenly bodies and the seasons of the year is," he tells us, "termed astronomy."¹ This suggests that he believed in astrology—in the potent influence of the stars over all changes in earthly matter. He called the stars "divine and eternal animals, ever abiding."² The "lower gods," of whom many at least are identical with the heavenly bodies, form men who, if they live well, return after death each to a happy existence in his proper star.³ The implication is, though Plato does not say so distinctly, that the stars influence human life.

Aristotle's doctrine was similar. Windelband has well expressed his view:

The stars themselves were . . . for Aristotle beings of super-human intelligence, incorporate deities. They appeared to him as the purer forms, those more like the deity, and from them a purposive rational influence upon the lower life of the earth seemed to proceed—a thought which became the root of mediæval astrology.⁴

Moreover, "his theory of the subordinate gods of the spheres of the planets . . . provided for a later demonology."⁵ And a belief in demons fosters a belief in magic. For such subordinate gods—on the one hand movers of nature's forces, and on the other hand subject to passions like man and open to influence through symbols and con-

¹ *Symposium*, p. 188 (Steph.). Translated by Jowett, vol. i, p. 558.

² *Timæus*, p. 40 (Steph.). Jowett, vol. iii, p. 459.

³ *Ibid.*, pp. 41, 42 (Steph.).

⁴ W. Windelband, *History of Philosophy*, p. 147. English translation by J. H. Tufts. Macmillans, 1898.

⁵ Windelband, *Hist. of Ancient Philos.*, p. 272. Eng. transl. by H. E. Cushman. Scribners, 1899.



jurations—are evidently most suitable agents for the worker of magic to employ. We must also mention Aristotle's attribution of "souls" to plants and animals, a theory which would readily lend itself to an assumption of magic properties in herbs and beasts.

Aristotle himself in his works upon natural science accepts such properties to a considerable extent. A few citations from his *History of Animals*¹ will show that we have not been misled in inferring from Pliny that Greek science at its best was not untainted by magic. The *History of Animals* seems to attribute undue influence to the full moon and the dog-star,² and to hold that honey is distilled from the air by the stars and that the wax alone is made by the bees.³ Aristotle repeats the story that the salamander is a fire-extinguisher.⁴ He mentions as a cure for the sting of a certain snake the drinking of a small stone "taken from the tomb of one of the ancient kings." Like Pliny, he makes human saliva a defense against serpents.⁵ He says of certain things that they are ominous of certain events.⁶

¹ *Aristotelis De Animalibus Historiae Libri X* (Graece et Latine. Io. Gottlob Schneider. Lipsiae, 1811). Vol. i contains the Greek text. In the following foot-notes I shall refer to the book, chapter and section by Roman and arabic numerals, but in the text the book and chapters are denoted by letters of the Greek alphabet. There is an English translation of the work by Richard Creswell, London, 1862. (Bohn Library.)

² Bk. v, ch. xx, sec. 2; bk. vi, ch. xi, sec. 2; bk. vi, ch. xiv, sec. 1; bk. vii, ch. xi; bk. viii, ch. xvii, sec. 4; bk. viii, ch. xx, sec. 12.

³ Bk. v, ch. xix, sec. 4. Γίγνεται δὲ κηρίον μὲν ἐξ ἀνθῶν. κήρωσιν δὲ φέροσιν ἀπὸ τοῦ δακρύου τῶν δένδρων, μέλι δὲ τὸ πίπτον ἐκ τοῦ ἀέρος καὶ μάλιστα ἐν ταῖς τῶν ἀστρων ἐπιτολαῖς, καὶ ὅταν κατασκήψῃ ἡ Ἥρις. Ὅλος δ' οὐ γίγνεται μέλι πρὸ πλειάδος ἐπιτολῆς. τὸν μὲν οὖν κηρὸν ποιεῖ, ὡσπερ εἴρηται, ἐκ τῶν ἀνθέων, τὸ δὲ μέλι ὅτι οὐ ποιεῖ, ἀλλὰ φέρει τὸ πίπτον, σημεῖον. ἐν μῆ γὰρ ἢ ἐν δυοῖν ἡμέραις πλήρη εὐρίσκουσι τὰ σμήνη οἱ μελιττοουργοὶ μέλιτος. Ἐτι δὲ τοῦ μετοπώρου ἀνθη γίγνεται μὲν, μέλι δ' οὐδ', ὅταν ἀφαιρεθῇ.

⁴ Bk. v, ch. xvii, sec. 13.

⁵ Bk. viii, ch. xxviii, sec. 2.

⁶ Bk. iii, ch. ix, sec. 7 and bk. vi, ch. ii, sec. 4.

He affirms that the hen-partridge is affected by the mere breath of the cock or by a breeze from his direction.¹ He thinks that insects are spontaneously generated from mud, dung, wood, or flesh.² He says it is plain that the Narce causes stupefaction in both fish and men.³ He has not only an idea that those with lice in their hair are less subject to headaches, but also a notion that those who have lice and take baths become more liable to the pest when they change the water in which they wash themselves.⁴ Another amusing illusion which he records is that calves will suffer less in their feet if their horns are waxed.⁵ Thus the pages of Aristotle give ground for belief that the fantasticalness of mediæval science was due to "the clear light of Hellas" as well as to the gloom of the "Dark Ages."

The book by a Roman which we are to consider as illustrative of the condition of science before the age of the Empire is Cato's treatise on agriculture. Several passages emphasize the importance of such conditions as that the moon should be new or waning or not shining during the performance of such acts as the transplanting of trees or the manuring of meadows.⁶ It is also directed that in administering medicine to oxen the man giving the dose shall have fasted previously and that both he and the ox stand upright during the operation.⁷ One medicine prescribed

¹ Bk. v, ch. iv, sec. 7 and bk. vi, ch. ii, sec. 9. See also bk. vi, ch. xvii, sec. 4.

² Bk. v, ch. xvii, sec. 2.

³ Bk. ix, ch. xxv, sec. 2.

⁴ Bk. v, ch. xxv, sec. 2.

⁵ Bk. viii, ch. ix, sec. 1.

⁶ *De Re Rustica*, chs. 26, 31, 37, 40, 50. *Scriptores Rei Rusticæ Veteres Latini. Tomus Primus.* Io. Matthias Gesnerus, Lipsiæ, 1773. The speed with which I progressed through the *De Re Rustica* was accelerated by the fact that Mr. E. H. Oliver, Ph. D., then of the School of Political Science, Columbia University, kindly lent me an English translation which he had made of that work.

⁷ *De Re Rustica*, ch. 71. See also *ibid.*, ch. 70.

for cattle is a mixture of 3 grains of salt, 3 leaves of laurel, 3 fibres of leek, 3 tufts of ulpican leek, 3 sprigs of the savin, 3 leaves of rue, 3 stalks of the white vine, 3 white beans, 3 live coals, 3 sextarii of wine. Each ox is to be given a portion for three days and the whole is to be divided so that it will suffice for exactly three doses.¹ To heal a sprain or fracture the singing of the following nonsensical incantation or formula is recommended: "In alios S. F. motas vaeta daries dardaries astataries dissunapiter."² This was written by a man generally supposed to have had much common sense and who was enlightened enough to wonder how two augurs could let their eyes meet without laughing.

¹ *De Re Rustica*, ch. 70.

² *De Re Rustica*, ch. 160. "S. F." probably means "Sanitas Fracto." Two alternative charms are also suggested, namely, "Huat hanat huat ista pista sista domiabo damnaustra" and "Huat huat huat ista sis tar sis ardannabon dunnaustra."

CHAPTER V

BELIEF IN MAGIC IN THE EMPIRE

HAVING shown reason for believing that the *Natural History* is a fairly accurate mirror of the science of the past, we come now to examine Pliny's own age and to observe to what extent his attitude towards magic was characteristic of it. "His own age," I say, but this is only roughly speaking, for it is the general period of the Roman Empire that we shall now consider, with the exception of the closing century which we reserve for later discussion. We shall have now to speak first of the general attitude towards magic in the Empire, and then in particular of two or three men or works that corroborate the rich evidence which Pliny, for the most part unconsciously, gave of the place of magic in the intellectual life of the time.

I. *General attitude.*—At the start, just as in our discussion of the *Natural History*, we find it necessary to distinguish the position of men towards what they called "magic." Pliny's condemnation of the magi and of all their beliefs as a matter of general principle was probably the regular attitude. A stigma seems to have been attached to the word "magic;" and magi seem to have been regarded as dangerous characters. In his history Dio Cassius represents Mæcenas as warning Octavius Cæsar that while the practice of divination is necessary, and augury by sacrifices and flight of birds an art to be encouraged, magicians ought to be entirely done away with. For, telling the truth in some cases

but lying in more, they incite many persons to revolt.¹ The prejudice in the Empire against magic is further illustrated by the fact that pagan and Christian controversialists seldom failed to impute to the opposing religion the practice of this malign art.

Now and then some learned man like Eudoxus might hold that the doctrines of the magi of Persia called for eulogy rather than reproach. Thus Apuleius, in his *Defense* against the accusation of magic brought against him, explained that *magus* in the Persian language was equivalent to the Latin *sacerdos* or priest, and that, among the four greatest men of the realm selected to educate the heir to the Persian throne, one had the task of instructing him in the magic of Zoroaster. This magic dealt with "the rules of ceremonial, the due observance of things sacred, the law of religious rites."² It was the cult of the gods.

Do you hear, you who rashly charge me with magic, that this art is acceptable to the immortal gods, consists of celebrating and reverencing them, is pious and prophetic, and long since was held by Zoroaster and Oromagus, its authors, to be noble and divine? Nay, it is included among the chief studies of royalty, and the Persians no more think of rashly allowing any one to become a magician than to become a king.³

¹Dio Cassius, ch. lii, sec. 36. *μαντικὴ μὲν γὰρ ἀναγκαία ἐστὶ, καὶ πάντως τῶνδ' καὶ ἱερότητας καὶ οἰωνιστὰς ἀπόδειξον, οἷς οἱ βουλευόμενοι τι κοινώσασθαι συνέσσονται. τοὺς δὲ δὴ μαγευτὰς πάνν οὐκ εἶναι προσήκει. πολλοὺς γὰρ πολλακίς οἱ τοιοῦτοι, τὰ μὲν τινα ἀληθῆ, τὰ δὲ δὴ πλείω ψευδῆ λέγοντες, νευχμοῦν ἐπαίρουσι.*

Lecky translates the passage in his *History of European Morals* (1889), vol. i, p. 399. The next sentence of the passage is also worth quoting: τὸ δ' αὐτὸ τοῦτο καὶ τῶν φιλοσοφῆιν προσποιουμένων οὐκ ὀλίγοι ποιοῦσι.

²*Apologia*, ch. xxv (Van der Vleet, *Apologia et Florida*. Lipsiae, 1900). "Leges cerimoniarum, fas sacrorum, ius religionum."

³*Ibid.*, ch. xxvi. "Auditisne, magiam, qui eam temere accusatis, artem esse diis immortalibus acceptam, colendi eos ac venerandi pergnaram,

But if his accusers mean magic in the popular sense, that is, Apuleius grants, a different matter.

Even educated men, however, probably more often, like Pliny, regarded the magi as all one with other magicians. Philostratus, in his life of Apollonius of Tyana, seems to approximate much closer to this position than to that taken by Apuleius, although one would expect a biographer of that mystic personage to view the magi with favor. Philostratus declares that Apollonius was no magician, although he did associate with the magi of Babylonia, the Brahmins of India, and the gymnosophists of Egypt. For he was like Empedocles, Pythagoras, Democritus and Plato who frequented those sects and yet did not embrace the (magic) art.¹

Of what we should call magic, however, there was a plenty in the Roman Empire, as in fact the words of Dio Cassius have indicated.² Besides the general acceptance of divination there was a great deal of superstitious medicine. There seems to be little room for doubt that Pliny's diatribes against the medical art were justifiable, and that his own trust in marvelous medicinal properties of animals and plants was often equalled. Men of the highest eminence in public life, whom one would expect to have had at their disposal the best medical talent of the time, are reported to

piam scilicet et divini scientem, iam inde a Zoroastro et Oromazo, auctoribus suis nobilem, caelitum antistitam? Quippe qui inter prima regalia docetur, nec ulli temere inter Persas concessum est magum esse, haud magis quam regnare." This definition reminds one of Agrippa von Nettesheim's praise of "that science divine beyond all human tracing." In a less degree—for with Apuleius magic is the cult of the gods and not much concerned with material things—it recalls the high place assigned to magic by Porta and Francis Bacon.

¹ Bk. i, ch. 2 of the life of Apollonius in the works of Philostratus as edited by Gottfridus Olearius. Lipsiae, 1709. *ὀμιλήσαντες μάγοις καὶ πολλὰ δαιμόνια εἰπόντες οὕτω ἰπήχθησαν τῇ τέχνῃ.*

² Indeed "magic," though condemned, was popular, and charlatans calling themselves "magi" did a thriving business.

have employed the most absurd remedies. Suetonius tells us that the Emperor Augustus wore seal's skin, his successor Tiberius laurel leaves, as a protection against lightning.¹ Pliny recounts how M. Servilius Nonianus, *princeps civitatis*, fearing ophthalmia, had fastened to his neck a piece of linen containing some paper on which were written the Greek letters P and A. This was done before any mention of the disease was allowed to be made to him or by him. Mucianus, thrice consul, carried a live fly around in a bit of white linen for a similar purpose, and of course both men attributed their escape from disease to these bizarre methods.² Moreover, much magic has been supposed to have been involved in the numerous Mysteries to which men sought initiation and in the Oriental cults which became so popular. Astrology was seemingly as universally cultivated as in the Middle Ages, and that, too, though perhaps in Roman times it was in appearance less of a science and more of a superstition.

There were occasional imperial edicts against astrologers, it is true, and even sporadic persecution of them. But the explanation of such measures is belief, not scepticism, and they denote not disbelief in the art itself but disapproval of the use to which it was put—such as revealing the fate of the present and the name of the coming ruler. Almost every emperor had an astrologer at his court, and the historians of the period delighted in telling stories of astrologers who foretold their own deaths, or of monarchs who in vain attempted to thwart the decrees of fate.³ Alexander Seve-

¹ Suetonius, *Aug.*, ch. xc; *Tiber.*, ch. lxix. Cited by W. E. H. Lecky. *Hist. of European Morals* (London, 1899), vol. i, p. 367. Lecky gives a large amount of material on superstition in the Roman Empire.

² *Nat. Hist.*, bk. xxviii, ch. 5.

³ A. Bouché Leclercq. "L'Astrologie dans le monde romain." *Revue Hist.*, vol. lxxv, pp. 249 *et seq.* If we may believe the Roman historians,

rus is said to have founded chairs of astrology salaried by the state and with provision for scholarships for students.¹ Occasional persecution perhaps made the *mathematici* more highly valued, and the jibes of the satirists against astrologers and their followers attest rather than disprove the popularity of the art. Pliny the Elder and Tacitus asserted its great currency.²

The best science of the Empire reflected to a considerable extent these superstitions sanctioned by public opinion, as our discussion of Seneca and Ptolemy will indicate in some detail. For the present we may observe how the great Galen—whose authority reduced to a single school the many quarreling medical sects of his day, was later implicitly accepted by the Arabs, and then dominated European medicine to the time of Paracelsus—was not above astrological medicine or the use of fantastical remedies. He displayed trust in amulets and believed that such things as the ashes of frogs or “hippocampi” have remedial power.³ He held that the critical days of disease are largely influenced by the moon, and affirmed that we receive “the force of all the stars above.”⁴ It should be noted moreover that in one passage,

Tiberius was a devotee of astrology; Caligula was warned of his death by the stars; Nero, among other acts dictated by his trust in the art, ordered a number of executions in order to avoid the evils threatened by a comet; Galba, the three Flavians and Vespasian all had their astrologers; Titus was himself an adept in the art; Domitian, when disposing of persons whom the stars designated as dangerous, made the fatal error of sparing Nerva because the constellations allowed him but a brief additional term of life; *etc.*

¹ *Revue Hist.*, vol. lxxv, p. 252.

² *Nat. Hist.*, bk. xxx, ch. 1, and Tacitus, *Annals*, bk. vi, ch. 22 (28 in some editions).

³ Carolus Gottlob Kuhn. *Claudii Galeni Opera Omnia*. (Lipsiae, 1821, 19 vols.), vol. xii, p. 362. *De simplicium medicamentorum temperamentis ac facultatibus*.

⁴ *De diebus decretoriis*, *ibid.*, vol. ix, pp. 901 *et seq.* πάντων μὲν τῶν ἀνωθεν ἀστρῶν ἀπολαύμεν τῆς δυνάμεως.

in giving expression to his zeal for astronomy as the handmaid of the healing art, Galen accused many physicians of paying no attention to the stars. But he asserted that in this neglect they were no true followers of the great Hippocrates, whom they extolled but never imitated, for Hippocrates had maintained that astronomy had no small bearing on the art of the physician and that geometry was its indispensable precursor.¹

Philosophy as well as science was not unfavorable to some varieties of magic. Neo-Platonism, the most prominent school of philosophy in the Empire, probably led men on to belief in magic more than any previous classical system. Nature was looked upon as real only in so far as it was soul, and its process were regarded as the expression of the world-soul's mysterious working. The investigation of nature thus tended to become an inquiry concerning spirits and demons, a study into the strange and subtle relations existing between things united, as all things are, by bonds of spiritual sympathy. True, the earlier Alexandrines are said to have condemned magic arts,² but we have seen that such condemnation need not amount to much. Plotinus attacked only the most extreme pretensions of astrology, and was ready to grant that the stars were celestial characters and signs of the future. He even conceded that prediction might be made from birds. But to him astrology and augury seemed of comparatively small importance, for he believed everything to be joined to and dependent upon every other thing and that in any object the wise man might see signs of everything else.³ Succeeding Neo-Platonists,

¹ "Quod optimus medicus sit quoque philosophus." *Ibid.*, vol. i, p. 53.

² Vacherot, *L'Ecole d'Alexandria*, vol. ii, p. 115.

³ Ricardus Volkmann, *Plotini Enneades*, Lipsiae (Teubner) 1883. *Ennead* ii, ch. iii, sec. 7. ἀλλ' εἰ σημαίνουσιν οὔτοι τὰ ἐσόμμενα, ὥσπερ φαμέν πολλά καὶ ἄλλα σημαντικὰ εἶναι τῶν ἐσομένων, τί ἂν τὸ ποιοῦν εἴη; καὶ ἡ τάξις

at any rate, were often devoted to magic. The name of Iamblichus, for instance, is one of the most prominent in the field of the occult.

Moreover, in the time of the Empire a tendency was noticeable to confuse philosophy with magic. If this tendency was not justifiable, it is at least suggestive. Dio Cassius, in the passage above quoted, represents Maecenas as saying that not a few of those who pretend to be philosophers practice magic.¹ Apuleius, accused of magic, stated in his *Apologia* that he was undertaking not only his own defense but that of philosophy.² The accusation against him also suggests similar charges brought against mediæval men of learning during their lives or reputations which they won after death. Apuleius, having married a rich widow older than himself, was charged by some sycophant, jealous rival or other personal enemy with having obtained her affections by use of sorcery. Apuleius seems

πῶς; οὐ γὰρ ἂν ἐσημαίνετο τεταγμένως μὴ ἐκάστων γιγνομένων. ἔστω τοίνυν ὡσπερ γράμματα ἐν οὐρανῷ γραφόμενα αἰεὶ ἢ γεγραμμένα καὶ κινούμενα, ποιοῦντα μέντοι ἔργον καὶ ἄλλο, ἐπακολουθεῖτω δὲ τὶ δεῖ ἢ παρ' αὐτῶν σημασία, ὡς ἀπὸ μιᾶς ἀρχῆς ἐν ἐνὶ ζήφῳ παρ' ἄλλον μέρους ἄλλο ἂν τις μάθοι. καὶ γὰρ καὶ ἦθος ἂν τις γνοίη εἰς ὀφθαλμούς τινος ἰδῶν ἢ τι ἄλλο μέρος τοῦ σώματος καὶ κινδύνους καὶ σωτηρίας. καὶ οὖν μέρη μὲν ἐκεῖνα, μέρη δὲ καὶ ἡμεῖς. ἄλλα οὖν ἄλλοις. μετὰ δὲ πάντα σημείων καὶ σοφός τις ὁ μαθὼν ἐξ ἄλλου ἄλλο. πολλὰ δὲ ἤδη συνηθεία γιγνώμενα γινώσκειται πάσι. τίς οὖν ἢ οὐνταξίς ἢ μία; οὕτω γὰρ καὶ τὸ κατὰ τοὺς ὄρνεις εὐλογον καὶ τὰ ἄλλα ξῶα, ἀφ' ὧν σημαίνοντο ἕκαστα. συνηρτησθαι δὴ δεῖ ἀλλήλοις τὰ πάντα, καὶ μὴ μόνον ἐν ἐνὶ τῶν καθ' ἕκαστα τοῦ ἐν εἰραμένον σύμπνοια μία, ἀλλὰ πολὺ μᾶλλον καὶ πρότερον ἐν τῷ παντί. This entire third chapter of the *Ennead* deals with the subject. περὶ τοῦ εἰ ποιεῖ τὰ ἄστρο.

See *The Philosophy of Plotinus*, Dunlap Printing Co., Phila., 1896, page 40, for further references to passages in his works giving his views anent astrology. He believed that the souls of the dead are still able to benefit men and to inspire with powers of divination. *Ennead*, iv, ch. vii, sec. 15.

¹ Page 66, note 1.

² *Apologia*, ch. iii. Even if the oration was a satire and not a speech actually delivered, the inferences to be drawn from it would be practically the same.

to have studied medicine, if no other branch of physical science, for he asserts that certain verses laid to his charge by the accuser deal with nothing more harmful than a recipe for making tooth-powder, and that a woman whom he was said to have bewitched had merely fallen into an epileptic fit while consulting him concerning an ear-ache.¹ This might be taken to show that the pursuit of science was already liable to give one a bad reputation as a wizard; but it should be said that the love-verses of Apuleius, as well as his poetical prescriptions, were used to support the accusation, and that the purchase of fish was also brought forward as a suspicious circumstance. Apuleius affirms in his oration that "philosophers" have always been subjected to such charges. He says, however, that the investigators of physical causes like Anaxagoras, Leucippus, Democritus and Epicurus generally have the epithet atheist cast in their teeth, while it is the seekers into the mysteries of theology and religion like Epimenides, Orpheus, Pythagoras and Ostanus who are reputed to be magi.²

II. *Philo of Alexandria and allegorical interpretation.*—Allegorical interpretation, unless of a very mild character, is usually a fantastic and mystical method of deriving information or inspiration. Even if an author intended to conceal secret mysteries beneath the letter of his text, there

¹ Apuleius may have been guilty of attempting to practice magic. Certainly he believed in its possibility. He affirmed the existence of subordinate gods, or demons,—interpreters and ambassadors between mankind and the superior gods, who live far away from us and have no direct concern with our affairs. The demons, he believed, were susceptible to human influence and capable of working marvels. He stated that the art of divination was due to them. See his *De Deo Socratis*.

² *Apologia*, ch. xxvii. Evidently hostility to magic did not commence with Christianity. Not even, as Roger Bacon thought, did the practice of confusing philosophy with magic originate among Christian writers. Bridges, *Opus Maius*, vol. i, p. 29.

is very slight chance that the far-fetched and intricate mode of solution employed by the interpreter will be the one which the writer had in mind. In most cases, however, after due allowance has been made for figures of speech and play of poetical imagination, it is an erroneous and absurd assumption to suppose that an author did not mean what his language indicates and no more. Therefore the believer in allegorical interpretation would seem to be accepting something quite like a magical doctrine. Indeed, allegorical interpretation is liable to lead one into a belief that words, besides possessing a mystical significance with which the thought of their writer had endowed them, have in and of themselves great power. It borders upon the occult reveries of the Cabalists and upon that magic power of words which we have seen upheld by Roger Bacon, John Reuchlin and Henry Cornelius Agrippa.

This allegorical interpretation of literature has played a great part in human history. It was rife in the age of the Roman Empire, when Philo Judaeus of Alexandria (approximate date, 30 B. C. to 54 A. D.) was perhaps its greatest exponent, as he was also the chief member of the Jewish-Alexandrian school of philosophy.

Philo carried allegorical interpretation to an absurd extreme even if he did not go quite so far as Reuchlin and Agrippa. Not only did he make such assertions as that by Hagar was typified "encyclical education," that Ishmael was her "sophist son," and that Sarah stood for "the ruling virtue,"¹ but in general he tried to read into the Old

¹ See Philo's treatise *De Cherubim*, cited in vol. ii, p. 243, of Rev. James Drummond's *Philo Judaeus; or The Jewish Alexandrian Philosophy in its Development and Completion* (2 vols., London, 1888). Concerning Philo see also Edouard Herriot, *Philon le Juif* (Paris, 1898), where a full bibliography of Philonian and Jewish-Alexandrian literature may be found. A third important secondary book on Philo is by Siegfried: *Philo von Alexandria* (Jena, 1875).

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Testament all the doctrines of Greek philosophy and science. He declared that all knowledge, whether in religion, philosophy or natural science, might be acquired by allegorical interpretation of the Pentateuch. Now we can say without manifesting any semblance of irreverence towards true religion, that to endeavor to gain from the books of the Old Testament—especially by the methods which Philo employed—either the key to all philosophy or adequate knowledge of natural science and extensive control of the forces of nature, would, if possible, be as marvelous a feat, and is as fallacious and fantastic a proceeding, as to try to coin gold from copper, or to learn the future from the stars, or even to obtain a solution of the problems of philosophy and a knowledge and control of nature by invoking demons to instruct and to assist you. The very notion that some man like Moses a thousand or more years ago had at his command all the knowledge that can ever be got is magical itself. Moses must have been a magician to know so much. Philo, moreover, if he did not believe in a magic power of words, at least showed that they seemed to him to have a most extraordinary significance. In his treatise, *De Mutatione Nominum*, he relates with great unction the just punishment of hanging which overtook an impious scoffer who derided the notion that the change in the names of Abraham and of Sarah had any profound meaning.¹ As one would naturally expect from what has been said about Philo thus far, he regarded knowledge as something sacred and esoteric. In his writings he liked to talk of mysteries and to request the uninitiated to withdraw. This attitude, while in itself not exactly magic, is, as has been already suggested, the product of a mind attuned to magic. Finally, Philo, following Pythagoras, attached great significance to numbers.

¹ Drummond, vol. i, p. 13.

Philo not only represents a widespread tendency during the Roman Empire, but probably well illustrates the influence of that tendency upon later times. His numerous works were apparently much consulted by the church fathers, and thereby exerted a strong influence upon the Middle Ages. It is needless to enlarge upon the prominence of allegorical interpretation in the works of mediæval ecclesiastical writers. The conception of knowledge as esoteric was also prevalent then, though perhaps to a less extent. To give an early instance from patristic literature, Clement of Alexandria, in his *Stromata*, insists upon the necessity of veiling divine truth in allegories, and has a long discussion in favor of mysticism in learning, citing as examples Greek philosophers as well as Hebrew writers.¹ Moreover, to Philo as source we may trace back the disquisitions upon the mystic, if not magic, properties of six and other numbers which we find in Augustine² and apparently in almost every mediæval writer who had occasion to speak of the six days of creation and of the seventh day of rest.

III. *Seneca's Problems of Nature and divination.*—We shall next consider the *Problems of Nature*—or *Natural Questions*, if one prefers merely to transcribe the Latin—of Seneca, who was practically a contemporary of Pliny. Seneca impresses one as a favorable representative of ancient science. He tells us that already in his youth he had written a treatise on earthquakes and their causes.³ His

¹ *Stromata*, bk. v, ch. 9. Nor was such mysticism advocated by theological writers alone. Roger Bacon—but one instance from many—declared that one lessened the majesty of knowledge who divulged its mysteries, and even went to the length of enumerating seven methods by which the arcana of philosophy and science might be concealed from the crowd (*a vulgo*), *De Secretis Artis et Naturae et de Nullitate Magiae*. Rolls Series, vol. xv, pp. 543-544.

² *De Civitate Dei*, bk. xi, ch. 30.

³ "Aliquando *De Motu Terrarum* volumen iuvenis ediderim." L.

aim is to inquire into the natural causes of phenomena; he wants to know why things are so. He is aware that his own age has only entered the vestibule of the knowledge of natural phenomena and forces, that it has but just begun to know five of the many stars, that "there will come a time when our descendants will wonder that we were ignorant of matters so evident."¹

One must admit, however, that along with Seneca's consciousness of the very imperfect knowledge of his own age there goes a tendency to esotericism. The following language would come fittingly from the mouth of a magician:

There are sacred things which are not revealed all at once. Eleusis reserves sights for those who revisit her. Nature does not disclose her mysteries in a moment. We think ourselves initiated; we stand but at her portal. Those secrets open not promiscuously nor to every comer. They are remote of access, enshrined in the inner sanctuary.²

Seneca seems to regard scientific research as a sort of religious exercise. His enthusiasm in the study of natural forces appears largely due to the fact that he believes them to be of a sublime and divine character, and above the petty affairs of men.

Annaei Senecae *Naturalium Quaestionum Libri Septem*, bk. vi, ch. 4. The edition by G. D. Koeler, Gottingen, 1819 has convenient summaries indicating contents at the head of each book, and devotes several hundred pages to a "Disquisitio" and "Animadversiones" upon Seneca's work. In Pancoucke's *Library*, vol. cxxxxvii, a French translation accompanies the text.

¹ "Veniet tempus, quo posteri nostri tam aperta nos nescisse mirentur. Harum quinque stellarum . . . modo coepimus scire." Bk. vii, ch. 25.

² Bk. vii, ch. 31. "Non semel quaedam sacra traduntur. Eleusin servat quod ostendit revisentibus. Rerum natura sacra sua non simul tradit. Initiatos nos credimus; in vestibule eius haeremus. Illa arcana non promiscue nec omnibus patent; reducta et in interiore sacrario clausa sunt."

Indeed, the phenomena which he discusses are mainly meteorological manifestations, such as winds, rain, hail, snow, comets, rainbows, and—what he regards as allied subjects—earthquakes, springs and rivers. Probably he would not have regarded the study of zoölogy or of physiology as so sublime. At any rate he considers only a comparatively few “natural questions,” and hence the amount and variety of belief in magic which he has occasion to display is correspondingly limited.

It is evident enough, however, that Seneca by no means accepted magic as a whole. He tells us that uncivilized antiquity believed that rain could be brought on or driven away by incantations, but that to-day no one needs a philosopher to teach him that this is impossible.¹ And, although he affirms that living beings are generated in fire, believes in some rather peculiar effects of lightning, such as removing the venom from snakes which it strikes, and recounts the old stories of floating islands and of waters with power to turn white sheep black, he is sceptical about bathing in the waters of the Nile as a means of increasing the female's capacity for child-bearing.² He qualifies by the phrases, “it is believed” and “they say,” the assertions that certain waters produce foul skin-diseases and that dew in particular, if collected in any quantity, has this evil property.³ I imagine he did not believe the story he repeats that the river Alphæus of Greece reappears in Sicily

¹ Bk. iv, ch. 7. “Et apud nos in duodecim tabulis cavetur ne quis alienos fructus excantassit. Rudis adhuc antiquitas credebat et attrahi imbres cantibus, et repelli; quorum nihil posse fieri, tam palam est, ut huius rei causa nullius philosophi schola intranda sit.”

² Bk. v, ch. 6 for animals being generated in flames.

Bk. ii, ch. 31 for snakes struck by lightning.

Bk. iii, ch. 25 for the Nile. Bk. iii *pàssim*, for marvelous fountains, etc.

³ Bk. iii, ch. 25.

as the Arethusa, and there every four years, on the very days when the victims are slaughtered at the Olympian games, casts up filth from its depths.¹ The themes Seneca discusses of course afford him less opportunity for the taking up of the magic properties of plants, animals and other objects, but he was probably less credulous in this respect than Pliny, unless his pretensions are even more deceptive.

Seneca did believe, however, that whatever is caused is a sign of some future event.² He accepts divination in all its ramifications. Only he holds that each flight of a bird is not caused by direct act of God nor the vitals of the victim altered under the axe by divine interference, but that all has been arranged beforehand in a fatal and causal series.³ He believes that all unusual celestial phenomena are to be looked upon as prodigies and portents.⁴ But no less truly do the planets in their unvarying courses signify the future. The stars are of divine nature and we ought to approach the discussion of them with as reverent an air as when with lowered countenance we enter the temples for worship.⁵ Not only do the stars influence our upper atmosphere as earth's exhalations affect the lower, but they announce what is to occur.⁶ Seneca employs the statement of Aristotle that comets signify the coming of storms and winds and foul weather, to prove that comets are stars;

¹ Bk. iii, ch. 26.

² Bk. ii, ch. 32. "Quidquid fit, alicuius rei futurae signum est."

³ Bk. ii, ch. 46.

⁴ Bk. i, ch. 1.

⁵ Bk. vii, ch. 30. "Egregie Aristoteles ait, numquam nos verecundiores esse debere, quam quum de diis agitur. Si intramus templa compositi, si ad sacrificium acceduri vultum submittimus, togam adducimus, si in omne argumentum modestiae fingimur; quanto hoc magis facere debemus, quum de sideribus, de stellis, de deorum natura disputamus, ne quid temere, ne quid impudenter, aut ignorantes affirmemus, aut scientes mentiamur?"

⁶ Bk. ii, ch. 10.

and declares that a comet is a portent of a storm in the same way as the Chaldeans say that a star brings good or ill fate to men at birth.¹ In fact, his chief, if not sole, objection to the Chaldeans would seem to be that in their predictions they take into account only five stars.

What? Think you so many thousand stars shine on in vain? What else, indeed, is it which causes those skilled in nativities to err than that they assign us to a few stars, although all those that are above us have a share in the control of our fate? Perhaps those nearer direct their influence upon us more closely; perhaps those of more rapid motion look down on us and other animals from more varied aspects. But even those stars that are motionless, or because of their speed keep equal pace with the rest of the universe and seem not to move, are not without rule and dominion over us.²

Seneca accepts a theory of Berossus, whose acquaintance we have already made, that whenever all the stars are in conjunction in the sign of Cancer there will be a universal conflagration, and a second deluge when they all unite in Capricorn.³

It is on thunderbolts as portents of the future that Seneca dwells longest, however. "They give," he declares, "not

¹ Bk. vii, 28. "Chaldean" was often used to denote an astrologer without reference to the person's nationality.

² Bk. ii, ch. 32. "Quinque stellarum potestatem Chaldaeorum observatio exceptit. Quid tu? tot millia siderum judicas otiosa lucere? Quid est porro aliud, quod errorem incutiat peritis natalium, quam quod paucis nos sideribus assignant: quum omnia quae supra nos sunt, partem sibi nostri vindicent? Submissiora forsitan in nos propius vim suam dirigunt; et ea quae frequentius mota aliter nos, aliter cetera animalia prospiciunt. Ceterum et illa quae aut immota sunt, aut propter velocitatem universo mundo parem immotis similia, non extra ius dominiumque nostri sunt. Aliud aspice et distributis rem officii tractas. Non magis autem facile est scire quid possint, quam dubitari debet, an possint."

³ Bk. iii, ch. 29.

signs of this or that event merely, but often announce a whole series of events destined to occur, and that by manifest decrees and ones far clearer than if they were set down in writing.”¹ He will not, however, accept the theory that lightning has such great power that its intervention nullifies any previous and contradictory portents. He insists that divination by other methods is of equal truth, though perhaps of minor importance and significance. Next he attempts to explain how dangers of which we are warned by divination may be averted by prayer, expiation or sacrifice, and yet the chain of events wrought by destiny not be broken. He maintains that just as we employ the services of doctors to preserve our health, despite any belief we may have in fate, so it is useful to consult a *haruspex*. Then he goes on to speak of various classifications of thunderbolts according to the nature of the warnings or encouragements which they bring.²

IV. *Ptolemy's Tetrabiblos and astrology*.—Astrology was more than a popular belief which extended to men high in social rank and public life; it was held by scientists as well, though naturally in a less naïve and more scientific form. Nevertheless, the astrology of the scientist might be of an extreme enough type and of a more clearly magical variety than we were able to gather from Pliny, who, moreover, does not seem to have been acquainted with any systematic doctrine of the influence of the stars.

Such a systematized treatment Claudius Ptolemaeus set

¹ Bk. ii, ch. 32. Seneca has been describing other manifestations of the “divina et subtilis potentia” of thunderbolts; he proceeds, “Quid, quod futura portendunt: nec unius tantum aut alterius rei signa dant, sed saepe totum fatorum sequentium ordinem nuntiant, et quidem decretis evidentibus, longeque clarioribus, quam si scriberentur?”

² His discussion of divination by thunderbolts is contained in bk. ii, ch. 31-50.

forth in the little volume known as the *Tetrabiblos*, or *Quadripartitum*. It would seem as if we ought to be able to regard a book by that noted geographer and astronomer as an example of the best science of his time, the middle of the second century. His works quickly became classics, and in the third century Porphyry commented on the *Tetrabiblos*. The Arabs eagerly accepted his writings, and it is generally held that in the Middle Ages his word was law in all the subjects of which he treated. The *Tetrabiblos*, therefore, would seem a landmark in the entire history of astrology as well as a crucial instance of how that branch of magic formed a part of science in the Roman Empire. True, Ptolemy does not cover the whole field of sidereal influence. He limits himself to the effects of the stars on man and does not attempt to trace out how they affect all varieties of matter and of life upon our globe. However, to make the stars control each individual man is the climax of astrology and implies that the heavenly bodies govern everything else here on earth. So the *Tetrabiblos* is a very satisfactory instance of belief in astrology by a scientist and its contents may well be briefly considered.¹

The first of the four books opens with the trite contention that the art itself is not to be rejected because fre-

¹ The edition of the *Tetrabiblos* which I used is that by Philip Melanchthon, 1553. It gives the Greek text, a Latin translation and an introduction of interest, in which Melanchthon affirms his own more modest trust in astrology.

Two other treatises of considerable length setting forth the principles of astrology and which have come down to us from the Roman Empire, are a poem consisting of five books of about 900 lines each by Manilius, probably of the Augustan age; and a prose treatise in eight books, and apparently left unfinished, by Firmicus who was a Neo-Platonist of about 350 A. D. M. Manilii *Astronomicon*, London, 1828, Delphin edition. Iulii Firmici Materni *Matheseos Libri VIII*, (ediderunt W. Kroll et K. Skutsch, Lipsiae, 1897, 2 vols., (Teubner edition). The essay on astrology purporting to be by Lucian is probably spurious.

quently abused by imposters, and with the admission that even the skilful investigator often makes mistakes owing to the incompleteness of human knowledge. In the first place, our doctrine of the nature of matter rests, Ptolemy says, more on conjecture than on certain knowledge. Secondly, old configurations of the stars cannot be safely used as the basis of present-day predictions. Indeed, so many are the different possible positions of the stars and the different possible arrangements of terrestrial matter in relation to the stars that it is difficult to collect enough instances on which to base judgment. Moreover, such things as diversity of place, of education and of custom must be reckoned with in foretelling the future of persons born under the same stars. But although predictions frequently fail, yet the art is not to be condemned any more than one rejects the art of navigation because of frequent shipwrecks.

Thus far one might take Ptolemy for a well-balanced and accurate scientist in the modern sense of the term, but he does not maintain this level. After showing that it is useful to know the future and that astrology does not depend on fatal necessity, he proceeds to explain why the stars give knowledge of the future. This he intends to show from natural causes: *ubique naturalium causarum rationem sequentes*. This sounds well but his reasoning is superficial and childish, as his discussion of the influence exercised by the planets will indicate.

In each planet one of the four elemental qualities predominates (or perhaps two divide the supremacy) and endows the star with a peculiar nature and power. The sun warms and, to some extent, makes dry, for the nearer it comes to our pole the more heat and drought it produces. The moon, on the contrary, causes humidity, since it is close to the earth and gets the effect of vapors from the latter. Evidently the moon influences other bodies

in this way, rendering them soft and producing putrefaction. It also warms a little owing to the light it receives from the sun. Saturn, however, chills and, to some extent, dries, for it is very far from the heat of the sun and the damp mists of the earth. Mars emits a parching heat, as its color and proximity to the sun lead one to infer. Jupiter, situated between cold Saturn and burning Mars, is of a sort of lukewarm nature, but tends more to warmth and moisture than to the other two qualities. So does Venus, but conversely, for it warms less than Jupiter but makes moist more, since its large area catches many damp vapors from the neighboring earth. In Mercury, situated near the sun, moon and earth, neither drought nor dampness predominates; but that planet, incited by its own velocity, is a potent cause of sudden changes. In general, the planets are of good or evil influence according as they abound in the two rich and vivifying qualities, heat and moisture, or in the detrimental and destructive ones, cold and drought.

Ptolemy then goes on to discuss the powers of fixed stars. These powers he would seem to make depend chiefly on the relation of the fixed star to the planets or on its position in some constellation. Then he treats of the influence of the seasons and of the four cardinal points, to each of which he assigns some one predominating quality. A discussion of the importance of such things as the twelve signs of the zodiac, the twelve "houses," the *Trigones* (equilateral triangles each comprising three signs of the zodiac), and the position of the star in reference to the horizon, ends the first book and also the presentation of fundamental considerations.

The other three books contain "doctrinam de praedictione singularium." The second book, however, deals in the main with four points of general though subordinate bear-

ing: under what stars different regions belong, how the effects of the stars vary according to time as well as place, how the heavenly bodies influence the nature of events, and finally how they determine their quality, good or bad. The third and fourth books, besides taking up separately the particular effects of each planet as it enters into conjunction with each of the others, comprise chapters with such headings as the following: "*de parentibus*," "*de fratribus*," "*de masculis et femellis*," "*de geminis*," "*de natis qui nutrire non possunt sed mox extinguuntur*," "*de dignitate*," "*de magisterio*," "*de coniugiis*," "*de liberis*," "*de amicis et inimicis*," "*de servis*," "*de perigrinatione*," "*de genere mortis*." These two books discuss how length of years, fortune, diseases, and various qualities of body and mind may be predicted from the stars; in short, how man's entire life is ordered by the constellations. Such is the book which Bouché-Leclercq calls "science's surrender."¹

V. *The hermetic books and occultism.*—An account of belief in magic in the Roman Empire would be incomplete without some reference to the famous hermetic books. Hermes Trismegistus might, as deservedly as any other man—had he only been a man and not a myth—be called the father of magic, just as he used to be known as the father of Egyptian science and just as he was regarded by many as the inventor of all philosophy.² In the time of Plato the Egyptian god Thoth acquired the name of Hermes from the similarity of his functions to those of the Greek god. He also came to be considered as the author of pretty much all knowledge and was given the epithet of "Thrice Great." The entire body of Egyptian occult lore

¹ "C'était la capitulation de la science." *Rev. Hist.*, vol. lxxv, p. 257, note 3.

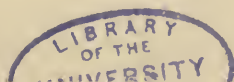
² Roger Bacon, *Opus Minus*, Rolls Series, vol. xv, p. 313, speaks of "Hermes Mercurius, pater philosophorum."

was attributed to him, and Manetho, who pictured him as reigning over the ancient Egyptians, declared that in addition to his royal duties he succeeded in turning off some 36,000 volumes. Clement of Alexandria, however, speaks of but forty-two books as "indispensably necessary," and says that the priests having charge of the hermetic books, by memorizing these forty-two, cover the entire philosophy of the Egyptians.¹ Diocletian is said to have dispersed the priests and burned their books, because he came to the conclusion that the frequent revolts in the locality received pecuniary aid by means of gold artificially manufactured in the temples.² Before that, however, lore supposed to be similar to that contained within the books had become disseminated. In the days of Hadrian and the Antonines, Jews and other Orientals at Rome offered to initiate persons into those occult sciences previously the monopoly of the Egyptian priesthood. Marcus Aurelius, in his later years, was thus instructed by an Egyptian diviner, who followed him in all his campaigns.³ Also the custom grew up rather early of passing off works on occult subjects under Hermes' name and of ascribing to him all such books which were of doubtful authorship. Of alchemy was this tendency especially true, so that it came to be known as the hermetic art. Sossimus, Stephanus and other Greek writers cited alchemical treatises under Hermes' name, and the practice of publishing spurious hermetic books continued well into

¹ *Stromata*, bk. vi, ch. 4.

² Ammianus Marcellinus, however, writing during the latter fourth century, says of Egypt: "Hic primum homines longe ante alios ad varia religionum incunabula, ut dicitur, pervenerunt et initia prima sacrorum caute tuentur condita scriptis arcanis." Bk. xxii, ch. xvi, sec. 20. Again, in bk. xxii, ch. xiv, sec. 7, Ammianus speaks of the Egyptian mystical books as still extant.

³ F. J. Champagny, *Les Antonins*, vol. iii, p. 81 (Paris, 1863).



the Middle Ages.¹ Several such alchemical treatises are still extant; and writings on astrological medicine and the magical powers of gems, plants and animals have also come down to us under Hermes' name.²

Some of the supposed writings of Hermes were mystical rather than magical; for instance, the famous *Poemander*,³ which consists mainly of brief and disconnected utterances concerning God and the human soul and other subjects of a religious character. Still, one does not have to read far into its sixteen "books" before finding evidence of belief in astrology, of the mysticism of number and of an esoteric view of knowledge. It tells us "to avoid all conversation with the multitude" and to "take heed of them as not understanding the virtue and power of the things that are said." It speaks frequently of the seven circles of heaven, the seven zones, and the seven "Governors." It affirms that "the

¹ See article on "Hermes" in *La Grande Encyclopédie* by Berthelot who has made an extended study of the history of alchemy; and who, in his *La Chimie au Moyen Age* holds that Greek alchemistic treatises were continuously extant in Italy during the Dark Ages—a circumstance which diminishes the importance of Arabian influence on the study of the hermetic art in the later Middle Ages.

² See Anthon's *Classical Dictionary*, 1855 (no adequate account of Hermes Trismegistus exists in any of the more recent classical dictionaries).

³ The *Poemander* (or *Pymander*) has been reproduced in the Bath *Occult Reprint Series* (London, 1884) from the translation "from the Arabic by Dr. Everard, 1650." It has an introduction by Hargrave Jennings, "author of the Rosicrucians," giving some account of Hermes Trismegistus. Vol. ii in the same Bath *Occult Reprint Series*—which seems to have been instituted on behalf of "students of the occult sciences, searchers after truth and Theosophists"—is Hermes' *Virgin of the World*. Besides Berthelot's article, an account of Hermes may be found in pages 181-190 of *The Literary Remains of the late Emanuel Deutsch* (London, 1879). There is a French translation of the *Poemander* by Menard with an introductory essay which, however, Deutsch characterized as "deplorably shallow."

Gods were seen in their Ideas of the Stars with all their signs, and the stars were numbered with the Gods in them." Hence, it is probably safe enough, when, for instance, we hear that Theon, father of Hypatia, celebrated in his day as a mathematician, and professor at the Alexandrian Museum, lectured upon the writings of Hermes Trismegistus and of Orpheus¹—another legendary worthy charged with works of an occult character—to conclude that we have met one more case of the mingling of magic with learning.

In short, then, the mythical figure of Hermes Trismegistus became an actuating ideal to the Middle Ages, and the works appearing under his name had a considerable influence in extending belief in magic. Secondly, the hermetic books serve to typify that mass of Eastern occult philosophy and occult science which was so strong a force in the mental life of the Roman Empire.

¹ J. B. Bury, *Later Roman Empire* (N. Y., 1899), vol. i, p. 208.

CHAPTER VI

CRITICS OF MAGIC

THE reader will remember how men in the Roman Empire condemned "magic" but understood the word in a restricted and bad sense; how Pliny made pretensions to complete freedom from all belief in magic and how inconsistent was his actual attitude; how Seneca rejected magic only in part, accepting divination in all its ramifications. This partial rejection and partial acceptance of magic by the same individual seem characteristic of the age of the Empire, as one would expect of a time when magic was in a state of decay and science in a process of development. It is true that this rejection of certain varieties of magic often proceeded from the motive of morality rather than of scepticism. Thus in Cicero's *De Divinatione*, Quintus Cicero is represented as closing his long argument in favor of the truth of divination by solemnly asserting that he does not approve of sorcerers, nor of those who prophesy for sake of gain, nor of the practice of questioning spirits of the dead—which nevertheless, he says, was a custom of his brother's friend Appius.¹ But there were some men, we may well believe, who would reject even those varieties of magic which found a welcome in the minds of most educated people and in the general mass of the thought and science of the age. Such cases we shall now consider.

¹ *De Divinatione*, bk. i, ch. 58. "Haec habui, inquit, de divinatione quae dicerem. Nunc illa testabor non me sortilegos neque eos qui quæstus causa hariolentur, ne psychomantia quidem quibus Appius amicus tuus uti solebat, agnoscere."

I. *Opponents of astrology.*—Astrology, as we have seen, was very popular. Yet there was some scepticism as to its truth beyond the ridicule of satirists, who perhaps at bottom were themselves believers in the art. Outside of Christian writers the three chief opponents of astrology in the Roman world, judging by the works that have come down to us, were Cicero—who lived before the Empire in the constitutional sense can be said to have begun—in his *De Divinatione*; Favorinus, a Gaul who resided at Rome in the reigns of Hadrian and Trajan, and was a friend of Plutarch, and whose arguments against astrology have been preserved only in the pages of Aulus Gellius; and Sextus Empiricus, a physician who flourished at about the beginning of the third century of our era.¹

When, however, we come to examine both the men and their arguments, we somehow do not find their assault upon astrology especially impressive or satisfactory. First, as to the men. Gellius says that he heard Favorinus make the speech the substance of which he repeats, but that he is unable to state whether the philosopher really meant what he said or argued merely in order to exercise and to display his genius.² There was reason for this perplexity of Gel-

¹ For the arguments of Favorinus, see Aulus Gellius, *Noctes Atticæ*, bk. xiv; ch. 1. (Delphin & Variorum Classics [1824] ex editione Jacobi Gronovii.) Fragments of Favorinus's writings are also to be found in Stobæus.

The edition of the *Opera* of Sextus Empiricus which I used was that by Johannes Albertus Fabricius, (Lipsiæ, 1718), giving the Greek text and a Latin translation.

For Cicero's arguments, see *De Divinatione*, bk. ii, chs. 42-47.

² "Adversum istos qui sese chaldæos seu genethliacos appellunt, ac de motu deque positu stellarum dicere posse, quæ futura sunt, profitentur, audivimus quondam Favorinum philosophum Romæ Græce disserentem egregia atque illustri oratione; exercendine autem, anne ostentandi gratia ingenii, an quod ita serio judicatoque existamaret, non habeo dicere. *Noctes Atticæ*, bk. xiv, ch. 1, sect. 1. A foot-note in the

lius, since Favorinus was fond of writing such essays as Eulogies of Thersites and of Quartan Fever. There is no particular reason for doubting Sextus's seriousness, but, besides being a medical man, he was a member of the sceptical school of philosophy, a circumstance which warns one not to attribute too much emphasis to his attack on astrology. Indeed, the attack occurs in a work directed against learning in general, in which he assails grammarians, rhetoricians, geometricians, arithmeticians, students of music, logicians, "physicists," and students of ethics as well as astrologers. Cicero was not prone to such sweeping scepticism or sophistry, but the force of his opposition to astrology is somewhat neutralized by the fact that in his *Dream of Scipio* he apparently attributes to planets influence over man.

Now as to their arguments. We have spoken of their "attack on astrology," but in reality they can scarcely be said to attack astrology as a whole. Indeed, it is the doctrines of the Chaldeans which Cicero makes the object of his assault; he says nothing about astrology. Favorinus will not even admit that he attacks the "disciplina Chaldæorum" in any true sense, but affirms that the Chaldeans were not the authors of such theories at all, but that these have originated of late among traveling fakirs who beg their bread by means of such deceits and trickeries.¹ Some of the arguments of our sceptics are really directed merely

Delphin edition expresses preference in place of the words "exercendine autem, anne ostentendi" for the shorter reading "exercendi autem, non ostentandi"—which reading is adopted by Hertz in his edition of the year, 1885.

¹ "Disciplinam istam Chaldaeorum tantæ vetustatis non esse, quantæ videri volunt; neque eos principes eius auctoresque esse, quos ipsi ferant: sed id præstigiæ atque offuciarum genus commentos esse homines aëruscatorum, et cibum quaestumque ex mendaciis captantes." *Noctes Atticæ*, bk. xiv, ch. 1, sect. 2.

against the methods of interpreting the decrees of the stars which they give us to understand that the astrologers employ. Such objections might suffice to pierce the presumption of the ordinary popular astrologer but they fall back blunted from the system of Ptolemy.¹ If our sceptics thought that they were overthrowing the astrology of the man of learning by such arguments, they labored under a misapprehension, and in the eyes of one who really understood the art must have cut the figure of ignoramuses making false charges against a science of which they knew next to nothing.

As some of the arguments of our sceptics apply solely to defects in method of which the best astrologers were not guilty, so others do not deny the existence of sidereal influence over the life of man, but contend that it is impossible to determine with essential accuracy what will be the effects of that influence. Sextus, for example, seems to lay most stress upon such points as the difficulty of exactly determining the date of birth or of conception, or the precise moment when a star passes into a new sign of the zodiac. He calls attention to the fact that observers at varying altitudes, as well as in different localities, would arrive at different conclusions, that differences in eyesight would also affect results, and that it is hard to tell just when the sun sets owing

¹ For instance, the charge that astrologers disregard the differing aspects of the heavens in different regions does not hold true in the case of Ptolemy. Also the objection to the doctrine of nativities, that men born at different times often suffer a common fate in battle or some such general disaster, is a weak argument at best, for the fact that you and I are born under different stars does not necessitate that our careers have absolutely nothing in common, and it was nullified by Ptolemy's explanation that great general events like earthquakes, wars, floods and plagues overrule any contradictory destiny which the constellations may seem to portend for the individual. See Bouché-Leclercq, *Rev. Hist.*, vol. lxx, p. 268.

to refraction.¹ He almost becomes scholastic in the minuteness of his objections, leaving us somewhat in doubt whether they are to be taken as indicative of a spirit of captious criticism towards an art the fundamental principles of which he tacitly recognized as well-nigh incontestible, or whether he is simply trying to make his case doubly sure by showing astrology to be impracticable as well as unreasonable.

The main thing to be noted about Cicero, Favorinus and Sextus is that they pay almost no attention to the general problem of sidereal influence on terrestrial matter and life. It is to the denial of an absolute, complete and immutable rule of the heavenly bodies over man that they devote their energies. The premises of astrology they leave pretty much alone. One might accept almost all their statements and still believe in a large influence of the stars over our physical characteristics and mental traits. The question of sidereal influence upon lower animal life, vegetation and inert matter they avoid with a sneer.²

¹ Similarly Favorinus declared that, if the different fate of twins was to be explained by the fact that after all they are not born at precisely the same moment, then to determine one's destiny the time of his birth and the position of the stars at the same instant must be measured with an exactness practically impossible. "Atque id velim etiam, inquit, ut respondeant: si tam parvum atque rapidum est momentum temporis, in quo homo nascens fatum accipit, ut in eodem illo puncto, sub eodem circulo coeli, plures simul ad eandem competentiam nasci non queant; et si idcirco gemini quoque non eadem vitae sorte sunt, quoniam non eodem temporis puncto editi sunt; peto, inquit, respondeant, cursum illum temporis transvolantis, qui vix cogitatione animi comprehendi potest, quonam pacto aut consulto assequi queant, aut ipsi perspicere et deprehendere; quum in tam praecipiti dierum noctiumque vertigine minima momenta ingentes facere dicant mutationes." *Noctes Atticae*, bk. xiv, ch. I, sect. 10.

² Favorinus declares that the astrologers may congratulate themselves that he does not propose such a question to them as that of astral influence on minute animals; Cicero says that if all animals

II. *Cicero's attack upon divination.*—A more satisfactory example of scepticism may be found in other chapters of the *De Divinatione* than those which assail the art of the Chaldeans. Moreover, although the discussion is limited to the specific theme of divination, still that is a subject which admits of very broad interpretation, and Cicero employs some arguments which are capable of an even wider application and oppose the hypotheses on which magic in general rests. He rejects divination as unscientific. It is to such arguments that we shall confine our attention. "Natural divination," that is, predictions made under direct divine inspiration without interposition of signs and portents, is not magic and so the discussion of it will not concern us. Much less shall we waste any time over such trite contentions against divination in general as that there is no use of knowing predetermined events since you cannot avoid them,¹ and that even if we can learn the future we shall be happier not to do it.

are to be subjected to the stars, then inanimate things must be too, than which nothing could be more absurd.

"Illud autem condonare se iis dicebat, quod non id quoque requireret, si vitæ mortisque hominum rerumque humanarum omnium tempus et ratio et causa in coelo et apud stellas foret, quid de muscis aut vermiculis aut echinis, multisque aliis minutissimis terra marique animantibus, dicerent? An ista quoque isdem, quibus homines, legibus nascerentur, isdemque itidem exstinguerentur." Aulus Gellius, *Noctes Atticæ*, bk. xiv, ch. 1, sect. 12.

"Et si ad rem pertinet, quo modo coelo affecto compositisque sideribus quodque animal oriatur; valeat id necesse est etiam in rebus inanimis. Quo quid dici potest absurdius?" *De Divin.*, bk. ii, ch. 47.

Favorinus, however, does hint in one place that the sole evidence that we possess of any influence of the stars upon us is a few such causal connections as that between the phases of the moon and the tides of the ocean.

¹ Ptolemy made a fair retort to this argument by holding that fore-knowledge, even if it could not enable us to avoid the coming event, at least served the purpose of breaking the news gently and saving us the more vivid shock which the actual event, if unexpected, would cause by its raw reality.

De Divinatione takes the form of a suppositious conversation, or better, informal debate, between the author and his brother Quintus. In the first book Quintus, in a rather rambling and leisurely fashion, and with occasional repetition of ideas, upholds divination to the best of his ability, citing many reported instances of successful recourse to it in antiquity. In the second book Tully proceeds, with an air of somewhat patronizing superiority, to pull entirely to pieces the arguments of his brother, who assents with cheerful readiness to their demolition.

It is interesting to note that as Pliny's magic was not his own, so Cicero's scepticism did not originate wholly with himself. As his other philosophical writings draw their material largely from Greek philosophy, so the second book of the *De Divinatione* is supposed to have been under considerable obligations to Clitomachus and Panætius.¹ As for the future, the *De Divinatione* was known in the Middle Ages but its influence seems to have often been scarcely that intended by its author.

One of the main points in the argument of Quintus had been his appeal to the past. What race or state, he asked, has not believed in some form of divination?

For before the revelation of philosophy, which was discovered recently, public opinion had no doubt of the truth of this art; and after philosophy came forth no philosopher of authority thought otherwise. I have mentioned Pythagoras, Democritus, Socrates. I have left out no one of the ancients save Xenophanes. I have added the Old Academy, the Peripatetics, the Stoics. Epicurus alone dissented.²

¹ See T. Schiche, *De Fontibus Librorum Ciceronis qui sunt de Divinatione*, (Jena, 1875) and K. Hartfelder, *Die Quellen von Ciceros zwei Büchern de Divinatione* (Freiburg, 1878).

² Bk. i, ch. 39. "Neque ante philosophiam patefactam, quae nuper

When Tully's turn to speak came, he rudely disturbed his brother's reliance upon tradition. "I think it not the part of a philosopher to employ witnesses, who are only haply true, often purposely false and deceiving. He ought to show why a thing is so by arguments and reasons, not by events, especially those I cannot credit."¹ "Antiquity," Cicero declared later, "has erred in many respects."² The existence of the art of divination in every age and nation had little effect upon him. There is nothing, he asserted, so widespread as ignorance.³

Both brothers distinguished divination from the natural sciences and assigned it a place by itself.⁴ Quintus said that medical men, pilots and farmers foresee many things, yet their arts are not divination. "Not even Pherecydes, that famous Pythagorean master, who prophesied an earthquake when he saw there was no water in a well usually full, should be regarded as a diviner rather than a physicist."⁵ In like manner Tully pointed out that the sick seek a doctor, not a soothsayer, that diviners cannot instruct us in astron-

inventata est, hac de re communis vita dubitavit; et postea, quam philosophia processit, nemo aliter philosophus sensit, in quo modo esset auctoritas. Dixi de Pythagora, de Democrite, de Socrate; excepi de antiquis praeter Xenophanem neminem; adiunxi veterem academiam, peripateticos, stoicos. Unus dissentit Epicurus." This trust in tradition, it may be here observed, formed one of the chief grounds for mediæval belief in magic as well.

¹ Bk. ii, ch. 11. "Hoc ego philosophi non arbitror, testibus uti, qui aut casu veri aut malitia falsi fictique esse possunt. Argumentis et rationibus oportet quare quidque ita sit docere, non eventis, iis praesertim quibus mihi liceat non credere."

² Bk. ii, ch. 33. "Errabat enim multis in rebus antiquitas."

³ Bk. ii, ch. 36.

⁴ As Tully (bk. ii, ch. 5) puts it, "Quae enim praesentiri aut arte aut ratione aut usu aut conjectura possunt, ea non divinis tribuenda putas sed peritis."

⁵ Bk. i, ch. 50.

omy, that no one consults them concerning philosophic problems or ethical questions, that they can give us no light on the problems of the natural universe, and that they are of no service in logic, dialectic or political science.¹ Such would be the ideal condition, but in practice, as we have seen much reason to believe, divination, at least in the broad sense, was confused with science and with other subjects to no small extent both under the Empire and in the Middle Ages. A doctor might be something of a diviner as well: the astrologer was skilled in astronomy; "mathematicus" came within a short time after Cicero's own day to be the word regularly used to denote a soothsayer;² Pierre du Bois and Bodin found astrology an aid to political science.

Cicero, however, went further than the assertion that divination had no connection with science and declared that it was contrary to science. Such a figment, he scornfully affirmed, as that the heart will vanish from a corpse for one man's benefit and remain in the body to suit the future of another, was not believed even by old wives now-a-days.³ Nay more, he asked, how can the heart vanish from the body? Surely it must be there while life lasts, and can it disappear in an instant?

Believe me, you are abandoning the citadel of philosophy while you defend its outposts. For in your effort to prove soothsaying true you utterly pervert physiology. . . . For there will be something which either springs from nothing or suddenly vanishes into nothingness. What scientist ever said that? The soothsayers say so? Are they then, do you think, to be trusted rather than scientists?⁴

Cicero does not think they are.

¹ Bk. ii, chs. 3, 4.

² We saw Pliny use "mathematicae artes" as an equivalent of divination or astrology.

³ Bk. ii, ch. 15.

⁴ Bk. ii, ch. 16. "Urbem philosophiae, mihi crede, proditis dum

Also he shows that the methods of divination are not scientific. He asks: Why did Calchas deduce from the devoured sparrow that the Trojan war would last ten years rather than ten weeks or ten months? ¹ He points out that the art is conducted in different places according to quite different rules of procedure, even to the extent that a favorable omen in one locality is a sinister warning elsewhere. ² In short, whether he got his idea from the Greeks or not, he has come, long before most men had reached that point, to have a clear idea of the essential contradiction between science and magic. "Quid igitur," he asks, "minus a physicis dici debet quam quidquam certi significari rebus incertis?" ³

Besides this sharp separation of divination from science and besides his rejection of tradition, a third creditable feature of Cicero's book is his question: What intimate connection, what bond of natural causality can there be between the liver or heart or lung of a fat bull and the divine eternal cause of things which rules the world? ⁴ He refuses to believe in any extraordinary bonds of sympathy between things which, in so far as our daily experience and

castella defenditis. Nam dum aruspicinam veram esse vultis, physiologiam totam pervertitis. Caput est in jecore, cor in extis: iam abscedet, simul ac molam et vinum inspersionis; deus id eripiet, vis aliqua conficiet, aut exedet. Non ergo omnium interitus atque obitus natura conficiet; et erit aliquid quod aut ex nihilo oriatur, aut in nihilum subito occidat. Quis hoc physicus dixit unquam? Aruspices dicunt? His igitur quam physicis potius credendum existimas?"

¹ Bk. ii, ch. 28.

² Bk. ii, ch. 12.

³ Bk. ii, ch. 19.

⁴ Bk. ii, ch. 12. "Atqui divina cum rerum natura tanta tamque praeclara in omnes partes motusque diffusa, quid habere potest commune, non dicam gallinacum fel (sunt enim qui vel argutissima haec exta esse dicant) sed tauri opimi jecur aut cor aut pulmo, quid habet naturale, quo declarari possit quid futurum sit?"

our knowledge of nature's workings can inform us, have absolutely no connection. He appeals to the canons of common sense. In fact, it is generally true throughout his treatise that where he cannot disprove, he pooh-poohs superstition.

On the whole Cicero's attitude probably represents the most enlightened scepticism to be found in the ancient world. Though some of his arguments seem weak, he deserves credit for having argued at all. Against what they were pleased to call magic, men, especially during the Middle Ages, were apt to rant rather than reason.

But, alas, unless we assume that the famous *Dream of Scipio* is a purely imaginative production, that the fantastic beliefs there set forth (borrowed, no doubt, from Greek thought) are presented for dramatic purposes alone and do not represent Cicero's actual views, we must grant that our sceptical Cicero believed in some magic after all. For the *Dream*, despite its author's animadversions against Chaldean astrology, speaks of Jupiter as a star wholesome and favorable to the human race, of Mars as most unfavorable.¹ Also it calls the numbers seven and eight perfect and speaks of their product as signifying the fatal year in Scipio's career.²

¹ "Deinde est hominum generi prosperus et salutaris ille fulgor qui dicitur Jovis. Tum rutilus horribilisque terris, quem Martium dicitis. Deinde subter mediam fere regionem Sol obtinet, dux et princeps et moderator luminum reliquorum, mens mundi et temperatio," etc.

² "Nam cum aetas tua septenos octies solis anfractus reditusque converterit, duoque hi numeri, quorum uterque plenus, alter altera de causa habetur, circuitu naturali summam tibi fatalem confecerint, etc."

CHAPTER VII

THE LAST CENTURY OF THE EMPIRE

WE come now to consider some indications of the intermixture of magic with learning in the last century of the Roman Empire, the border-time of the Middle Ages. It was a time when interest in science was slight and when the ability to use florid rhetoric was apparently the chief aim of those who assumed to be the highest intellectual class. What science there was was largely permeated with magic, as a glance at a few men of intellectual prominence then will illustrate.

Marcellus of Bordeaux, court physician of Theodosius I, and a writer upon medicine, throws some light upon the state of medicine in his day. He affirmed that pimples might be removed by wiping them the instant you saw a falling-star. He said that a tumor could be cured if one half of a root of vervain were tied about the sufferer's neck and the other half suspended over a fire. His theory was that as the vervain dried up in the smoke of the fire, the tumor would by force of magic sympathy likewise dry up and disappear. Marcellus added for the benefit of unpaid physicians that so persistent would be the sympathetic bond established that if the root of the vervain were later thrown into water, its absorption of moisture would produce a return of the tumor.¹

Ammianus Marcellinus, who wrote at the close of the

¹ These recipes are given in Frazer's *Golden Bough*, vol. i, p. 23, from the *De Medicamentis* of Marcellus, bk. xv, ch. 82 and bk. xxxiv, ch. 100.

fourth century, and who has been regarded by his critics from Gibbon down as a historian of distinguished merit, gives us an idea of mental conditions in his time, and was himself not free from belief in magic. It is true that in declaiming against the degeneracy of the Roman aristocracy he ridicules their trust in astrology, saying that many of them deny the existence of higher powers in heaven, yet think it imprudent to appear in public or dine or take a bath without first having consulted an almanac as to Mercury's whereabouts or the exact position of the moon in Cancer.¹ Yet he believed in omens, portents and auspices, as the following citations will indicate and as one might show by other passages.

The first passage is one in which Ammianus speaks of Alexandria as formerly having been a great place of learning and as even in his degenerate days a considerable intellectual centre. According to him, it is a sufficient recommendation for any medical man if he say that he was educated at Alexandria.²

There whatever lies hidden is laid bare by geometry; music

¹ Ammianus Marcellinus. *Rerum gestarum libri qui supersunt*. F. Eyssenhardt recensuit. Berlin, 1871. Book xxviii, ch. iv, sec. 24. "Multi apud eos negantes esse superas potestates in caelo, nec in publico prodeunt nec prandent nec lavari arbitrantur se cautius posse, antequam ephemeride scrupulose sciscitata didicerint, ubi sit verbi gratia signum Mercurii, vel quotam cancri sideris partem polum discurrens optineat luna." Very likely, however, Ammianus—whom we shall see defending divination in general—himself cherished a moderate trust in astrology and was rather satirizing the infidelity of the nobles—their inconsistency in so minutely ruling their lives by the planets when they denied the existence of "superas potestates in caelo." There is an English translation of Ammianus by C. D. Yonge (London, 1862; Bohn Library).

² *Ibid.*, bk. xxii, ch. xvi, sec. 18. "Pro omni tamen experimento sufficiat medico ad commendandam artis auctoritatem, si Alexandriae se dixerit eruditum."

is not utterly forgotten nor harmony neglected; among some men, though their number may not be great, the motion of the world and stars is still a matter of consideration; there are not a few of those skilled in numbers.

This is not all. "Besides these things they cherish the science which reveals the decrees of fate."¹

The Emperor Julian was continually inspecting entrails of victims and interpreting dreams and omens, and even proposed to reopen a prophetic fountain which Hadrian was said to have blocked up for fear that others, like himself, might win the imperial throne through obedience to its predictions.² The mention of such practices of Julian leads Ammianus in another passage to attempt a justification of divination as a science worthy of the study and respect of the most erudite and intelligent. He says:

Inasmuch as to this ruler, who was a man of culture and an inquirer into all branches of learning, malicious persons have attributed the use of evil arts to learn the future, we shall briefly indicate how a wise man is able to acquire this by no means trivial variety of knowledge. The spirit behind all the elements, seeing that it is incessantly and everywhere active in the prophetic movement of everlasting bodies, bestows upon us the gift of divination by those methods which we acquire through divers studies; and the forces of nature, propitiated by various rites, as from exhaustless springs provide mankind with prophetic utterances.³

¹ *Ibid.*, bk. xxii, ch. xvi, sec. 17. "Et quamquam veteres cum his, quorum memini florere conplures, tamen ne nunc quidem in eadem urbe doctrinae variae silent; nam et disciplinarum magistri quodam modo spirant et nudatur ibi geometrico radio quidquid reconditum latet, nondumque apud eos penitus exaruit musica nec harmonica conticuit, et recalet apud quosdam adhuc licet raros consideratio mundani motus et siderum, doctique sunt numeros haud pauci; super his scientiam calent quae factorum vias ostendit."

² Bk. xxii, ch. xii, sec. 8.

³ Bk. xxi, ch. i, sec. 7. "Et quoniam erudito et studioso cognitionum

That is, we can foreknow, if not control, the results of the processes of universal nature. Since it is through the forces of nature that we do this, augury, oracular utterances, oneiromancy and astrology all become for Ammianus but subdivisions of physical science. He admits that there are persons who disagree with him, who object that predictions are often erroneous; but against such persons he employs the old refutation that occasional mistakes are to be attributed to man's imperfect knowledge and faulty observation, and that by such mistakes the validity of divination is no more disproved than is grammar forever discredited because a grammarian speaks incorrectly, or music because a musician sings out of tune.¹ Opposition to the arts of divination he calls "vanities plebeia," and upon such loud-mouthed ignorance of the vulgar he looks down with much the same superior smile that the lover of speculative philosophy to-day bestows upon the man in the street who irritably disputes the utility of that subject.

Indeed, the strength of Ammianus's attachment to divination is so great that he quotes its arch-opponent, Cicero, in its support. For he concludes his discussion of the subject in these words: "Wherefore in this as in other matters Tully says most admirably, 'Signs of future events are shown by the gods.'" ² Unless perchance Ammianus was

omnium principi malivoli praenoscenti futura pravas artes adsignant, advertendum est breviter unde sapienti viro hoc quoque accidere poterit doctrinae genus haud leve. Elementorum omnium spiritus, utpote perennium corporum praesentendi motu semper et ubique vicens ex his quae per disciplinas varias affectamus, participat nobiscum munera divinandis; et substantiales potestates ritu diverso placatae, velut ex perpetuis fontium venis vaticina mortalitati subpeditant verba."

¹ Bk. xxi, ch. i, sec. 13.

² Bk. xxi, ch. i, sec. 14. "Unde praeclare hoc quoque ut alia Tullius 'signa ostenduntur' ait 'a dis rerum futurarum.'" "Dis" seem to be practically identical in Ammianus's mind with natural forces.

acquainted with the first book only of *De Divinatione*, this remark—which ought to have proved more potent than any necromantic spell in invoking Cicero's slandered Manes—must be taken as a startling revelation of the mental calibre of both its maker and his age.

Synesius (370-430 A. D.), Bishop of Ptolemais, furnishes a good example of what was probably the position of the average Neo-Platonist who did not go to extremes in the last period of the Roman Empire. In the present survey we are not concerned with Christian belief in the Empire, and so it is only as a Neo-Platonist that Synesius will at present interest us. He is the more interesting for us in that he was a man with some taste for science. He knew some medicine and was well acquainted with geometry and astronomy, subjects which he probably studied under his friend Hypatia. He believed himself to be the inventor of an astrolable and of a hydroscope. He played his part in secular politics and as bishop defended his people from oppression. He was fond of the chase and of his dogs and horses, and said so. He was a great lover of books also, but thought that their true use was to call one's own mental powers into action. Philosophy, mathematics and literature all claimed his attention. Yet broad and independent-minded as he was for his age, and interested as he was in science, he believed in magic. Indeed, there was apparently no form of magic in which he would not have believed.

Synesius regarded the universe as a unit and all its parts as closely correlated. This belief not only led him to maintain, like Seneca, that whatever had a cause was a sign of some future event, or to hold with Plotinus that in any and every object the sage might discern the future of every other thing, and that the birds themselves, if endowed with sufficient intelligence, would be able to predict the future by

observing the movements of human bipeds.¹ It led him also to the conclusion that the various parts of the universe were more than passive mirrors in which one might see the future of the other parts; that they further exerted, by virtue of the magic sympathy which united all parts of the universe, a potent active influence over other objects and occurrences. The wise man might not only predict the future; he might, to a great extent, control it.

For it must be, I think, that of this whole, so joined in sympathy and in agreement, the parts are closely connected as if members of a single body. And does not this explain the spells of the magi? For things, besides being signs of each other, have magic power over each other. The wise man, then, is he who knows the relationships of the parts of the universe. For he draws one object under his control by means of another object, holding what is at hand as a pledge for what is far away, and working through sounds and material substances and forms.²

Synesius explained that plants and stones are related by

¹ *Περὶ ἐνυπνίων*. (*On Dreams*) ch. 2. *Synesii Cyrenæi Quæ Extant Opera Omnia*. Io. Georgius Krabinger. Landshuti, MDCCCL. Tomus I.) All following references to and quotations from the works of Synesius apply to this edition. There is a French translation with several introductory essays by H. Druon, Paris, 1878. For an account in English of Synesius and his writings see W. S. Crawford, *Synesius the Hellene*, London, 1901. See also, H. O. Taylor, *Classical Heritage of the Middle Ages*, pp. 78-82, New York, 1901. This interesting work gives illustrations in various fields of the continuity of culture during the transition from Roman times to the Middle Ages.

² *Περὶ ἐνυπνίων* (*On Dreams*) ch. 3. "Ἐδει γὰρ, οἶμαι, τοῦ παντὸς τούτου συμπαθοῦς τε διπτος καὶ σύμπνον τὰ μέρη προσήκειν ἀλλήλοις, ἅτε ἐνὸς ὄλου τὰ μέλη τυγχάνοντα. Καὶ μὴ ποτε αἱ μάγων ἵγγες αὐταὶ· καὶ γὰρ θελγεται παρ' ἀλλήλων, ὥσπερ σημαίνεται· καὶ σοφὸς ὁ εἰδὼς τὴν τῶν μερῶν τοῦ κόσμου συγγενειαν. Ἐλκει γὰρ ἄλλο δι' ἄλλου, ἔχων ἐνέχυρα παρόντα τῶν πλεῖστον ἀπόντων, καὶ φωνὰς, καὶ ὕλας καὶ σχήματα Evidently Synesius did not regard the magi as mere imposters.

bonds of occult sympathy to the gods who are within the universe and who form a part of it, that plants and stones have magic power over these gods, and that one may by means of such material substances attract those deities.¹ He evidently believed that it was quite legitimate to control the processes of nature by invoking demons. His devotion to divination has been already implied. He regarded it as among the noblest of human pursuits.² Dreams he viewed as significant and very useful events. They aided him, he wrote, in his every-day life, and had upon one occasion saved him from magic devices against his life.³ Of course, he had faith in astrology. The stars were well-nigh ever present in his thought. In his *Praise of Baldness* he characterized comets as fatal omens, as harbingers of the worst public disasters.⁴ In *On Providence* he explained the supposed fact that history repeats itself by the periodical return to their former positions of the stars which govern our life.⁵ In *On the Gift of an Astrolabe* he declared that "astronomy" besides being itself a noble science, prepared men for the diviner mysteries of theology.⁶ Finally, he held the view common among students of magic that knowledge should be esoteric; that its mysteries and marvels should be confined to the few fitted to receive them and that they should be expressed in language incomprehensible to the vulgar crowd.⁷

¹ Περὶ ἐννυνίων, ch. 3. Καὶ δὴ καὶ θεῶ τινὶ τῶν εἰσω τοῦ κόσμου λίθος ἐνθένδε καὶ βοτάνη προσήκει, οἷς ὁμοιοπαθῶν εἶκει τῇ φύσει καὶ γοητεύεται. In his *Praise of Baldness* (Φαλάκρας ἐγκώμιον), ch. 10, Synesius tells how the Egyptians attract demons by magic influences.

² Περὶ ἐννυνίων, ch. 1. Αὐται μὲν ἀποδείξεις ἔστων τοῦ μαντεῖαν ἐν τοῖς ἀρίστοις εἰσὶ τῶν ἐπιτηδευομένων ἀνθρώποις.

³ *Ibid.*, ch. 18.

⁴ Φαλάκρας ἐγκώμιον, ch. 10.

⁵ Αἰγύπτιοι ἢ περὶ προνοίας, bk. ii, ch. 7.

⁶ Πρὸς παῖδιον περὶ τοῦ δώρου, ch. 5.

⁷ Δίον, ch. 7. Περὶ ἐννυνίων, ch. 4. Ἐπιστολαί, 4 and 49.

Macrobius, who wrote at the beginning of the fifth century and displayed considerable interest in physical questions for a person of those days, reinforces the evidence of Ammianus and of Synesius, although he held no very extreme views. Unless, however, we except his Philonian notion that all knowledge may be derived from a few past writings. For Macrobius affirmed that Virgil contains practically all man needs to know, and that Cicero's brief story of the dream of Scipio was a work second to none and contained the entire substance of philosophy.¹ Macrobius also believed that numbers possess occult power. He dilated at considerable length upon each of those from one to eight, emphasizing their perfection and far-reaching significance. He held the good old Pythagorean and Platonic notions that the world-soul is constructed of number, that the harmony of celestial bodies is ruled by number, and that we derive the numerical values proper to musical consonance from the music of the spheres.² He was of the opinion that to the careful investigator dreams and other striking occurrences will reveal an occult meaning.³ As for astrology, he believed that the stars are signs but not causes of future events, just as birds by their flight or song reveal matters of which they themselves are ignorant.⁴ The sun and planets, though in a way divine, are but material bodies, and it is not from them but from the world-soul (pure mind), whence they too come, that the human spirit takes

¹ "Universa philosophiae integritas." Commentary on *Dream of Scipio*, bk. ii, ch. 17. For Macrobius on Virgil see T. R. Glover, *Life and Letters in the Fourth Century A. D.* (Cambridge, Eng., 1901), p. 181, and Macrobius, *Saturnalia*, bk. i, ch. xvi, sec. 12. Macrobius has been edited in French and Latin by Nisard. Paris, 1883.

² *Commentary*, bk. i, chs. 5 and 6; ii, ch. 1 and 2.

³ *Ibid.*, bk. i, ch. 7.

⁴ *Ibid.*, bk. i, ch. 19.

its origin.¹ Macrobius also displayed some belief in the possession of occult properties by objects about us. In the *Saturnalia*, Disaurius the physician is asked and answers such questions as why a brass knife stuck in game prevents decay.² Macrobius by the way, had considerable influence in the Middle Ages. Abelard makes frequent reference to him, and called him "no mean philosopher."³ Aquinas cited him as an authority for the doctrines of Neo-Platonism.

¹ *Commentary*, bk. i, ch. 14.

² Glover, *op cit.*, p. 178.

³ Glover, *op cit.*, p. 187, note 1.

CHAPTER VIII

CONCLUSION

OUR survey of the Roman Empire and of the ancient world of thought which it represented is finished. We have found reason to believe that hatred and dread of "magic," the confusion of science or of philosophy with magic, the incurring of reputations as wizards by men of learning, were phenomena not confined to the Middle Ages. We have seen some evidence of the prominence of magic in the intellectual life of the Roman Empire, in the writings and in the conduct of physicians and astronomers, of statesmen and philosophers. Just how prominent magic was one hesitates to estimate, but one may safely affirm that it was sufficiently prominent to merit the attention of the student of those times. It is almost useless to chronicle the events if we do not understand the spirit of an age.

Can the student of that age, we may ask in concluding, rightly interpret and appreciate it, can he make proper use of its extant records, unless he recognizes not merely that men made mistakes then and accepted a mass of false statements concerning nature, but that the best minds were liable to be esoteric and mystical, to incline to the occult and the fantastic, to be befogged by absurd credulity and by great mental confusion, to be fettered by habits of childish and romantic reasoning such as occurs in Ptolemy's *Tetrabiblos* and in Plato's *Timaeus*? Have we a right to attribute to the minds of that age our definiteness and clarity of thought, our common sense, our

scientific spirit? Is it fair to take the words in which they expressed their thought and to interpret these according to our knowledge, our frame of mind; to read into their words our ideas and discoveries; to rearrange their disconnected utterances into systems which they were incapable of constructing; to endeavor by nothing else than a sort of allegorical interpretation to discover our philosophy, our science, our ideals in their writings? Have not even words a greater definiteness and value now than once? When we translate a passage from an ancient language are we not apt to transfigure its thought? These are, however, only questions.

Certainly there was much true scientific knowledge in the Roman Empire. There was sane medical theory and practice, there was a great deal of correct information in regard to plants, animals and the stars. Science was in the ascendant; magic was in its latter stages of decay. We flatter ourselves that it has now quite vanished away; then its doctrines were accepted only in part or in weakened form by men of education. Perhaps, though I am far from asserting this, magic played a less prominent part than in science and in philosophy than in the later Middle Ages. Perhaps we may picture to ourselves the minds of men in the twelfth and thirteenth and succeeding centuries as awakening from a long, intellectual torpor during the chaotic and dreary "Dark Ages," and, eager for knowledge and for mental occupation, but still inexperienced and rather bewildered, as snatching without discrimination at whatever came first to hand of the lore of the past. Thus for a time we might find the most able men of the later age taking on the worst characteristics of the earlier time. But this again is mere speculation.

Moreover, we must remember that, if magic was accepted only in part by men of learning in the Roman Empire, there

was no thoroughgoing scepticism. We sought in vain for an instance of consistent disbelief. If, too, there was an effort to make the magic, which was accepted, scientific by basing it upon natural laws, as Quintus Cicero, Seneca and Ptolemy tried to do, there was also, besides the definite approval of magical doctrines, often a mystical tone in the science and philosophy of the time. The question of the relative strength of magic and of science in those days must, then, be left unsettled. It is difficult enough to judge even a single individual; to tell, for instance, just how superstitious Cato was.

In closing we may, however, sum up very briefly those elements which we selected as combining to give a fairly faithful picture of the belief in magic which then prevailed among educated people. Native superstitions from which science had not yet wholly freed itself; much fantastical and mystical lore from Oriental nations; allegorizing and mysticizing in the interpretation of books — which in Philo went to the length of a belief that all knowledge could be secured by this means; a portrayal of nature which attributed to her many magic properties and caused medicine to be infected with magic ceremony and to be based to some extent on the principle of sympathetic magic; a widespread and often extreme belief in astrology; a speculative philosophy which was often favorable to the doctrines of magic or even advanced some itself; and the system of Neo-Platonism in especial, with which we may associate the view—prevalent long before Plotinus, however—that everything in the universe is in close sympathy with everything else and is a sign of coming events—these were the forces ready at the opening of the Middle Ages to influence the future.

2

**THE ECCLESIASTICAL EDICTS OF THE
THEODOSIAN CODE**

STUDIES IN HISTORY, ECONOMICS AND PUBLIC LAW

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THE ECCLESIASTICAL EDICTS

OF THE

THEODOSIAN CODE

BY

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PREFACE

THIS monograph has been prepared as a dissertation to complete the requirements for the degree of Doctor of Philosophy in Columbia University. The subject was suggested by a discussion in the seminar of Professor James H. Robinson and by the lectures of Professor Munroe Smith on the History of European Law. To these gentlemen I am indebted for criticisms of style, and to Professor Munro Smith for invaluable aid in the interpretation of certain texts. I am also under obligation to Mr. F. W. Erb, of the Columbia University Library, for courtesies in the loan of books.

WILLIAM K. BOYD.

DARTMOUTH COLLEGE, SEPT. 27, 1905.

ERRATA

Pp. 10, l. 12, and p. 12, l. 5, read *responsa* for *responsae*.

P. 11, last paragraph, after "so-called Law of Citations," insert "published by Valentinian III."

P. 22, l. 26, read "without the walls" for "without walls."

P. 23, l. 13, read "restored" for "destroyed."

P. 49, l. 10, read "Arianism" for "paganism."

P. 52, l. 9, omit the words "cast out and banished" and the remainder of the paragraph. The correct reading is: "We would order them to be cast out and banished if it were not a greater penalty for them to remain among men, deprived of the privileges of men. However, they can never regain their former condition; the shame of their evil actions cannot be obliterated by penance nor by show of reparation, however elaborate, since insincere and invented excuses are not able to protect those who pollute the faith which they have vowed to God and, betraying the divine mystery, follow after profane things. While there may be aid for the lapsed and erring ones, for the lost, namely, those who profane sacred baptism, no remedy of penance which is beneficial to other criminals, may suffice."

P. 76, between lines 3 and 4, insert "who had become clerks, to resume their obligations to the state unless they had entered."

P. 77, n. 1, read "vocantur" for "vacantur."

INTRODUCTION

THE blending of civil and ecclesiastical authority in the later Roman Empire is a subject of vast and permanent historic interest. In it the philosophical historian has seen only one of the many evidences of a decline in classical civilization; while the moralist has found it to be the source of all the humane and beneficent influences of the age.¹

There is one phase of this union of secular and religious forces, the position of the church in the later Roman law, which has never received comprehensive or judicious treatment. For this neglect the large number of edicts on ecclesiastical subjects, their confused style and frequent obscurity, as well as the general unproductiveness during the fourth and fifth centuries of those influences that create law, are responsible. But the subject is an important one, and when some of the difficulties are mastered it has an attraction of its own. For legislation, as no other historical source, reveals the complexity of good and evil in society, and the ecclesiastical edicts of Constantine and his successors show that the church, while a philanthropic institution, was also a disintegrating factor in Roman civilization. Moreover the imperial legislation discloses the origin of those political and social privileges that characterized the church in the middle ages, some of which survive in modern life. The motive underlying the present monograph has been the desire to reach some appreciation of the

¹ Reference is here made to Gibbon, *Decline and Fall of the Roman Empire*, and Schmidt, *Social Aspects of Christianity*.

relationship between church and state in the fourth and fifth centuries, as revealed in the laws of the emperors, and to estimate the influence of that relationship in shaping conditions in mediæval Europe.

The source for our knowledge of the subject is the Theodosian code. Since it was a product of the conditions which characterized the jurisprudence and culture of the later Empire, those conditions demand some preliminary examination.

The fourth century marks an epoch in the history of Roman jurisprudence. The principal influence in the making of law in the Republic had been the *responsæ* of the jurists, given in reply to legal questions presented by public officials. These had been given the sanction of the government through the *ius respondendi*, or right of making binding decisions, conferred upon favored jurists by Augustus. The existing law courts were also brought under the imperial authority, and, toward the close of the third century, the legislation of the emperors began to supplant the decisions of the jurists as the supreme source of justice. Law-making was thus governmentalized; and the administration of justice was centered in that vast bureaucracy which tended to dominate every phase of public life.

The beneficent results of this movement were that the ancient law of the city (*ius civile*) was modified, and that the antithesis between *ius civile* and the law developed by the administrative officials (*ius honorarium*) was removed. Consequently the law and custom of Rome and the provinces were blended into one harmonious unity. On the other hand, the centralization of justice resulted in an unfortunate increase of legislation. Anything and everything from the *fiscus*, the court system and social problems, to the obscure sect of the *Tascodrogitæ* and the minor issues of ecclesiastical life were subjects of imperial edicts and con-

stitutions. Consequently there was a distinct decline in the knowledge and study of jurisprudence. The laws were frequently drafted by court politicians and rhetoricians. Their language bears evidence of their authorship, for the Latin of the Theodosian code has not the simplicity and strength of the juristic literature of the second and third centuries, while the formation of a vast administrative system necessarily caused the introduction of new words into Roman legal vocabulary.

This confused condition of the law, as well as a general decline in letters, led Theodosius the Younger (408-450) to undertake a revival of Roman culture. To this end he established a university at Constantinople, whose tone, positively Christian, should counteract the influence of a similar institution in Athens, which was pagan in spirit. Two of the chairs in the new university were devoted to jurisprudence. Then, astonished "that so few are found who are endowed with a full knowledge of the Civil Law," impressed with the "enormous multitude of books, the diverse modes of procedure and the difficulty of legal cases and the huge mass of imperial constitutions which, hidden as it were under a veil of gross mist and darkness, preclude men's intellects from gaining a knowledge of them," Theodosius decided to meet "a real need of the age" by attempting two important reforms.¹

The first of these was outlined in the so-called Law of Citations. It designated the jurists Papinian, Paul, Gaius, Ulpian and Modestinus as legal authorities, confirmed their writings as sources of law, and ordered that, in points of conflict between them, the opinion of the majority should be decisive; if there were an equal division of opinion,

¹ *De Theodosiani Codicis Auctoritate*, p. 90 of Haenel's edition of the Theodosian code.

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Valent

Papinian should be followed, and, in cases in which these writers made no comment, the judge might form an independent decision. The second reform was the codification of imperial constitutions since Constantine, "so that men may no longer have to await formidable *responsae* from expert lawyers as from an inner shrine."¹

This work was entrusted to two commissions. The first, of the year 429, was composed of eight noblemen and one jurist; the second, which completed the work, was composed of sixteen members and was appointed in 435. Three years later the result of their labors was published in the east by Theodosius and in the west by Valentinian III. The code is an historical one, its model being the Gregorian and Hermogenian codes—private collections of the third century. This explains the excessive number of edicts, the confusion and conflict in this "short compendium." It was the hope of Theodosius to issue another code for more practical use, a summary of the law "which would not admit of any error or ambiguity and which would show to all what should be followed and what could be avoided";² but this purpose he did not realize.³

¹ *De Theodosiani Codicis Auctoritate.*

² *Codex Theodosianus*, bk. i, tit. 1, art. 5. (In the following pages this code will be referred to as *C. Th.*)

³ A word regarding the literary history of the code. An incomplete embodiment of its legislation was preserved in the *Lex Romana Visigothorum* or *Breviary of Alaric*, a Visigothic compilation of the sixth century, which was the principal source of Roman law in southern Europe prior to the twelfth century. The earliest modern editions of the Theodosian code were based upon the *lex romana*. Gradually other fragmentary manuscripts of the code were discovered and these, with the *lex romana*, formed material for textual criticism. Cujacius, the French jurist of the sixteenth century, did more than any other of the earlier editors for the formation of a comparative, critical text. The greatest deficiencies were in the first five books. In the early nineteenth century Peyron and Clossius discovered new manuscripts which

The character and environment of Theodosius, in addition to the forces just reviewed, influenced the selection of the ecclesiastical edicts to be preserved in the code, in all one hundred and forty in number.¹ By nature and education the emperor was as devout as the ascetic ideals of the age could demand. He made "his palace little different from a monastery, for he with his sisters rose in the morning and recited responsive hymns in praise of the Deity." He is said to have learned the Holy Scriptures by heart and he would often discourse with the bishops on scriptural subjects as if he had been an ordained priest of long standing.² Consequently the legislation of the Arian emperors in regard to heresy was not included in the code, while the police edicts touching heresy, as well as the more important legislation of those who professed the Nicene faith, were preserved. The edict of Honorius which provided against imperial intervention in episcopal elections was not incorporated, for it was not in keeping with the custom of the east; the edict of Gratian dealing with the authority of the Bishop of Rome over other churches was likewise omitted.

Clerical authorship is evident in this ecclesiastical legis-

corrected many of these defects, and the way was thus opened for the editions of Haenel (*Codex Theodosianus*, 1842, vol. ii of his *Corpus Juris ante-Justiniani*) and of Vesme (*Corpus Juris Romani*, pars i, tom. i, 1839). Theodore Mommsen left uncompleted a new edition for a *Collectio librorum juris ante-Justiniani in usum scholarium*, which has been published since his death in 1903. The ablest commentator on the legislation of the code was Godefroy, a jurist of the seventeenth century. His edition of the code, to which he devoted thirty years, is one of the monuments of legal scholarship (*Codex Theodosianus*, Lyons, 1665). It is indispensable to any historical or comparative study of the code. In this study I have followed the text of Haenel and the criticisms of Godefroy, since the text of Mommsen did not come to hand until after the work was finished.

¹ A few are repeated in different books and titles of the code.

² Socrates, *Historia Ecclesiastica*, vii, 22.

lation, especially from the reign of Gratian. The ordination of bishops, the age of deaconesses, the tonsure, celibacy, as well as the weightier problems of episcopal jurisdiction, heresy and apostasy, the immunity of the clergy from taxation, are among the subjects treated. In the language we find such ancient words as *saeculi*, *antistis*, *sacrosancta* converted to an ecclesiastical usage and the expressions *lumen de lumine*, *Deus de Deo*, *nefariae praevaricationis altaria*, and *sanctissimo catholicae venerabili concilio*, used in an ecclesiastical sense—ample evidence that here the clergy began that participation in civil legislation which characterized European life for so many centuries.



CHAPTER I

THE CONFLICT BETWEEN PAGANISM AND CHRISTIANITY, AS IT APPEARS IN THE CODE

AN introduction to the ecclesiastical legislation of the Roman Empire, suggestive of the vast influence which the church acquired in public affairs, is to be found in the attitude of the Christian emperors toward the ancient national religious system, popularly known as paganism. The relation of this system to the Roman government had been primarily political. Since the dawn of Roman history its representatives had received political privileges and exemptions from economic obligations to the state, while in return religion gave a moral support to political institutions. The new career of the church that began with Constantine wrought a vast change in this aspect of Roman civilization. The alliance of paganism and the Empire was dissolved; in its place there developed a union of the Christian church and the state. Yet the ancient religious institutions were so intimately associated with national tradition and custom that the transition from the old order to the new was a gradual one, and in the legislation which discloses it there are three distinct periods.

The first of these includes the laws of Constantine and his sons, which reveal all the characteristics of the religious problem. Constantine, by conferring the rights of a corporation on the church, by exempting the clergy from the economic burdens of citizenship and by introducing the episcopal court into the judicial system, made himself the

subject of praise and reverence in ecclesiastical tradition. But he never withdrew the support which the state had always given to the established religious institutions, and the pagan mould of Roman society was not decisively changed. The exact nature of his religious policy has been the subject of more than three hundred books and monographs since the sixteenth century.¹ Was he actuated by political motives, the desire to balance the Christian and the pagan forces in the Empire, or did political conditions prevent him from making an open attack on the institutions of paganism in behalf of Christianity? Was he at heart a pagan, playing a political game with the church, or was he a Christian, forced by circumstances to tolerate and endure moral and religious conditions with which he had no sympathy?

For the answer to these inquiries there are four classes of evidence; the opinions of literary contemporaries, the testimony of inscriptions, Constantine's general conduct and attitude toward religious institutions, to be gathered from the existing accounts of his life, and lastly his legislation.

As to the first of these, the Christian writers are unanimous in their belief in Constantine's piety and devotion to the church, while the pagan authors never accuse him of hypocrisy. The principal literary source relied upon by those who have doubted the sincerity of his religious professions is Zosimus, the embittered pagan historian of the fifth century.² He tells the story of Constantine without reference to Christianity, repeats the slanders upon his character made by Julian, and describes him as a man devoid of humane and religious instincts. But the reliabil-

¹ For bibliography of the literature relating to Constantine, see McGiffert's edition of *Eusebius*, in Schaff's *Select Library of Nicene and Post-Nicene Fathers of the Christian Church*, series 2, vol. i (1890).

² *Historia Romana*.

ity of Zosimus is impeached by the contradiction of other sources. His account of the erection of temples in Constantinople by the emperor is not only contrary to Eusebius, but there is evidence that the edifices mentioned were older than the new city.¹ The death of Licinius through the treachery of Constantine is likewise discredited by the probability that his execution was demanded by the army; while the story of Constantine's murder of his wife Fausta is false, since she was living as late as 340, three years after the death of her husband.² The general inaccuracy of Zosimus and the anti-Christian tone of his work therefore prevent any reliance upon his narrative unless confirmed by other authorities.

Certain inscriptions have been frequently cited in evidence of Constantine's attachment to paganism, but they are far from conclusive. The petition of the citizens of Hispellum, a town in Umbria, for permission to institute games and a temple in honor of the Flavian gens was indeed granted by Constantine, but with the command that "no building dedicated to our name shall be polluted by the contagion of any superstition;" and no imperial cult in his memory was established until after his death.³ The claim that the cross was not a symbol of Christianity before the fourth century, and that therefore the *labarum* did not indicate Constantine's conversion from paganism, can no longer be supported. Moreover, the introduction of coins with Christian symbols when the conservative influence of commerce would oppose any alteration in the customary standards of trade,

¹ Victor Schultze, in *Zeitschrift für Kirchengeschichte*, vol. vii, p. 352. He also shows that it is doubtful if pagan ceremonies were used at the foundation of Constantinople.

² Schultze, *ibid.*, vol. viii, p. 534.

³ *Ibid.*, vol. vii, pp. 343, 360.

suggests more than a political motive in the toleration of the church.¹

If the common criticisms of Constantine's religious character and policy are viewed in the light of the Christian culture of his age, many of their inconsistencies are explained. He lived at a time when many pagan and Christian customs coalesced. If sensuous celebrations in honor of the gods were perpetuated as feasts commemorative of the martyrs, why should the apotheosis of Constantine excite surprise?² His baptism, deferred until his last days, was in accord with the Christian custom derived from a belief that that sacrament cleansed its recipient from the guilt of all previous sins. His friendship and association with prominent pagans is no more an impeachment of the sincerity of his religious profession than the similar conduct of Theodosius, the patron of Libanius and Symmachus, men who represented the higher aspirations of Roman religion in its age of decadence. His acceptance of the title of Pontifex Maximus involved no participation in the ceremonial functions of paganism—those were performed by the promagister—it was but a recognition of his control over the institutions of paganism which was necessary if their connection with Roman life was ever to be dissolved.

If the conditions of Christian custom and culture are reflected in Constantine's attitude toward the religious problem, how much more important must have been the fact that a majority of his subjects were non-Christian in their sym-

¹ Schultze, vol. vii, p. 344.

² *Ibid.*, vol. vii, p. 367. The value of these articles of Schultze is that they show how readily certain writers like Burckhardt (*Die Zeit des Konstantin des Grossen*) and Brieger (*Konstantin der Grosse als Religion-Politiker*) have accepted as evidence for the support of the thesis that Constantine's religious policy was dictated by political motives, statements that they have not subjected to the test of thorough criticism.

pathies? Under such conditions any attack by him upon the prerogatives of paganism in the interest of the church required unusual tact. The situation is clearly revealed in his legislation upon the pagan cults, which falls into two distinct periods, separated by the death of Licinius.

The problems of the first period seem to have been mainly political. In the east Licinus appealed to the religious prejudices of his non-Christian subjects—even resorted to persecution of the church—in preparation for the inevitable conflict with Constantine. It was therefore necessary for Constantine to secure control of the pagan cults in the west in order to prevent any political use of them by the Licinian party. To this end the practice of secret divination and the consultation of the haruspices, except through the regular ceremonies of the temples, were forbidden.¹ The use of magic arts against life or chastity was punished by death; the interpretations of public calamities by the haruspices were required to be transmitted to the emperor; and the compulsive observance of, or participation in, pagan rites by Christians was forbidden.² As his panegyrist declares that Constantine fought Maxentius “against the council of men, against the advice of the haruspices,” this legislation does not signify a belief in the divinatory arts, rather an effort to forestall any attempt to make use of divination in any political conspiracy against the fortunes of the Flavian family.

The legislation of the second period, which extends from the fall of Licinius, is inspired by something more than a political motive. Its first statute was an edict directed to

¹ *C. Th.*, ix, 16, 1, 2 (A. D. 319). Penalty, death for the divinator and the confiscation of property and exile of the one patronizing him.

² *C. Th.*, ix, 16, 3 (Magic); *C. Th.*, xvi, 10, 1. The occasion of the second edict was the injury of the Flavian amphitheatre by lightning in 321.

Palestine, recalling the Christians who had been exiled for their faith, restoring their confiscated property, and relieving them from service in the courts.¹ A general edict was addressed to the provinces which recounted the suffering of the Christians, the vengeance of God on the persecutors, the divine guidance in the personal fortunes of the emperor, and confirmed the policy of toleration established by Galerius and Licinius in the following words:

Let those therefore who still delight in error be made welcome to the same degree of peace and tranquillity which they have who believe. For it may be that this restoration of equal privilege to all will prevail to lead them into the strait path. With regard to those who hold themselves aloof from us, let them have if they please, their temples of lies; we have the glorious edifice of Thy truth, which Thou hast given us, our native home.²

This was really a censure of paganism under the guise of an avowal of tolerance. It was followed by the appointment of Christian governors in the east and the renewal of the edicts against divination and domestic sacrifice, which Licinius had not enforced.³ A more direct attack

¹ Euseb., *Vita Const.*, ii, 34-42.

² The authenticity of this edict has been questioned by Schultze (*Ztsch. für K. G.*, vol. xiv) and by Crivellucci (*Della fede storiadi Eusebi nella vita di Constantino*). But Seeck has ably defended it and criticized the objections to it (*Ztsch. für K. G.*, vol. xviii). The chief criticism offered is the blending of the rhetorical and ecclesiastical language. This indicates that it was not the work of Constantine but of several authors. But similar objections might be made to other edicts which are generally accepted as expressing the wishes of some emperor or king. This edict is also the first official declaration of a policy of religious toleration by Constantine. The so-called Edict of Milan was the work of Licinius and was directed to a part of the empire only. (Seeck in *Ztsch. für K. G.*, vol. xii, p. 381). The first edict of toleration was by Galerius in 311.

³ Euseb., *Vita*, ii, 44, 45.

on the ancient religious system was then instituted by a general prohibition of sacrifices, public as well as private, and of the rebuilding of fallen temples.¹

After these prohibitions of divination, of sacrifice and of the repair of temples, nothing remained to paganism but its legal privileges. As the cults and the religious sentiment of Rome were associated with the amusements, games, festivals and other phases of popular life, the overthrow of these privileges would have provoked serious protest. Moreover, paganism had still a strong hold on the official and administrative classes, and the legislation against it could be enforced only in those provinces where it was approved by public opinion and imperial officials. These facts explain Constantine's association with prominent men who were devoted to the ancient religious system and his confirmation of the legal rights of paganism. In the light of these conditions, the words of Zosimus that the emperor "indeed used the ancient worship of his country, though not so much out of honor or veneration as of necessity," have an interpretation not implied by their context. Constantine was more than a patron of Christianity, for with him began that legislation by which pagan rites were deprived of their position in Roman civilization, and by which the mould of antique life was replaced by the Christian church.

The policy of Constantine was continued by his sons. While nothing is known of the attitude of Constantine II toward the religious problem, Constans seems to have concurred in the policy of his elder brother, Constantius. In 341 that emperor published an edict which prohibited sacrifices, and five years later he ordered the temples to be closed, that "the possibility of sin might be taken from the lost."²

¹ *C. Th.*, xvi, 10, 2; xv, 1, 3. Cf. Euseb., *Vita*, iv, 25.

² *C. Th.*, xvi, 10, 2, 4.

Soon after, a far more radical insult to religious traditions was offered by Constans. In the senate house stood the altar of Victory, the statue of a woman standing on a globe, with arms extended and a wreath of laurel on her head. Before this altar an offering of wine and incense was made as a prelude to all senatorial deliberations. This symbol of Rome's majesty and grandeur was removed from its place of honor by an imperial order. The indignity became a source of political revolt in the military rebellion led by Magnentius, nominally a Christian, and supported by the discontented pagans in the west, which cost Constans his life in 350.

Constantius, after suppressing the rebellion, emphasized its religious character by interdicting the "nocturnal sacrifices" which Magnentius had tolerated, and in later legislation he threatened with death those who participated in sacrifices, consulted the haruspices, augurs, soothsayers or the magic arts.¹

Although confiscated temples were often transformed into churches, and sometimes, as at Alexandria, the public officials co-operated with ecclesiastical enthusiasts in the destruction of the memorials of heathenism, these laws restricting paganism were not universally or continuously executed.² The association of paganism with Roman life remained unbroken. Constans excepted from the edict closing the temples such as were "without walls," and connected with the games and amusements.³ While Constantius distributed some of the property of the proscribed cults as gifts to his friends, he entrusted the execution of the laws against the violation of sepulchres to the pagan priesthood. In 356, the

¹ *C. Th.*, xvi, 10, 5, 6; ix, 16, 4, 5, 6 (A. D. 357-358).

² Sozomenus, iii, 17; *C. Th.*, x, 1, 8. Sozomenus, iv, 10, is authority for a special edict against paganism at Alexandria.

³ *C. Th.*, xvi, 10, 3.

year of his last prohibition of sacrifices, he expressed admiration for the temples at Rome and confirmed the legal privileges of the vestals.¹ The enforcement of these edicts against paganism therefore must have been occasional, depending on the temporary passion which inspired them and the public sentiment in the various provinces. In spite of their severity Symmachus could say that, although Constantius followed another religion he conserved the ancient faith.²

The religious legislation of Constantine and his sons was rescinded by Julian. The privileges and immunities which had been conferred on the church and clergy were recalled; the pagan temples were ~~destroyed~~^{restored} and the services, which had been neglected in the reigns of his predecessors, were re-established. Jovian, the successor of Julian, was a Christian and restored to the church the privileges and some of the property it had lost; but in his short reign of eight months he did not have time to develop a distinct religious policy.³ Themistius, the pagan rhetorician, praises him for the decision that

what pertains to religion and the cult of the divine will should be according to the judgment of the individual, thus imitating the Deity, who placed in all men a natural appetite for religion, yet desired that the nature and method of propitiating the divine will should be determined by the preference and free choice of each personality.⁴

This policy of toleration was continued by Valentinian I

¹ *C. Th.*, ix, 17, 2; Symmachus, *Ep.*, x, 54; *C. Th.*, xvi, 10, 6. In 358 paganism was also tolerated in an edict which permitted a public assembly of the "priests of the Province of Africa."

² Symmachus, *Ep.*, x, 3.

³ Soz., vi, 4; Theodoretus, *Historia Ecclesiastica*, iv, 4.

⁴ *Oratio de Religione*.

and Valens.¹ The privilege of teaching which Julian had withdrawn from the Christian scholars was restored, and an ecclesiastical veneer was given public life by forbidding judicial processes against Christians to be heard on Sunday, granting amnesty to petty criminals at Easter and excusing members of the theatrical profession who had received baptism from continuing their career.² On the other hand, the legal rights of the national religious system were confirmed, and official impartiality toward the litigation over temples that had fallen into the hands of Christians in the reign of Constantine and his sons and had later been restored to the pagan cults by Julian, was preserved by confiscating them to the *fiscus*.³ To Ammianus Marcellinus, the pagan historian of this time, Valentinian was "especially remarkable for his moderation" in keeping a "middle course between the different sects of religion," for abstaining from the promulgation of "any threatening edicts to bow down the necks of his subjects to the form of worship to which he himself was inclined," and leaving religious parties "just as he found them."⁴

The official and legal relations existing between paganism and the government were first definitely attacked and abrogated by Gratian. A man of admirable disposition, "eloquent, war-like, and merciful, rivalling the most admirable of his predecessors, even while the dawn of youth was on

¹ Valentinian issued an edict of toleration in 371 (*C. Th.*, ix, 16, 9).

² *C. Th.*, xiii, 3, 6; viii, 8, 1; ix, 28, 3; xv, 7, 1. Valentinian was the first of the emperors to use the word *paganus* (countryman, rustic, soldier) to designate those who remained faithful to the non-Christian cults (*C. Th.*, xvi, 2, 18). It was so used by the ecclesiastics because the stronghold of the ancient Roman religion was in the rural communities.

³ *C. Th.*, xii, 1, 60.

⁴ *Historia Annorum*, xxx, 9, 5. Magic and the occult arts were suppressed by Valentinian but not the haruspices. *C. Th.*, ix, 16, 9.

his cheeks," he was more susceptible to ecclesiastical influences than any of the preceding emperors.¹ Previous emperors had followed the council of church officials in ecclesiastical matters, but Gratian was the first to seek their advice in secular affairs. An incident of his coronation is a prelude to his religious policy. It was the custom for the pontifices to place upon the new sovereign priestly robes and to hail him as Pontifex Maximus; but this part of the ceremony Gratian rejected, declaring that it did not become a Christian prince.²

Three years later, after the defeat and death of Valens at Adrianople, Gratian chose Theodosius, a Spanish general, as his associate in the administration of the empire, and left Sirmium for Italy. At Milan he met Ambrose, by far the ablest ecclesiastical politician of the west. There had been some correspondence between them. In a letter full of religious feeling Gratian had requested Ambrose not to depart from Milan before his arrival, for he wished to speak with him and to open his heart to him "for the entrance of divine light." In reply Ambrose sent his tract *On the Faith*.³ The first result of a friendship so cemented was a change in the emperor's attitude towards heresy from one of toleration to persecution; the second, an attack on the sentiment and institutions of the national religion.⁴ In 382 the Altar of Victory, which had, after its removal by Constans, been restored to the senate house by Julian

¹ Ammian. Mar., *Hist. Ann.*, xxxi, 10, 18. For a similar characterization by a Christian author, cf. Rufinus, *Hist. Eccles.*, ii, 13.

² Zosimus, iv, 36. This story has frequently been rejected, but Schultze has answered the objections to it. *Gesch. des Untergangs des griechisch-römischen Heidenthums*, p. 213, n. 2. Time, 375 or early in 376.

³ The letter of Gratian precedes the epistles of Ambrose in the edition of Migne's *Patrologia Latina*, vol. xvi, p. 913. *Ibid.*, *De Fide*.

⁴ For heresy, see following chapter.

was again taken away by an imperial order.¹ The same year the right to receive gifts and legacies was withdrawn from the pontifical and vestal colleges, their endowments were appropriated to the *fiscus*, and the privileges and exemptions of the priesthood were also abolished.² The pagan members of the senate appointed a committee to present their protest against this violation of the traditional rights of their faith. But the Christian faction sent a counter message through Pope Damasus and Ambrose, with the result that the pagan embassy did not obtain an audience with the emperor.³

These events were soon followed by the rebellion in Britain and Gaul, led by Maximus, and the murder of Gratian. The pagan party saw in his death divine vengeance for the desecration and sacrilege he had offered the gods. Its representatives in the senate decided to petition his younger brother and successor, Valentinian II, for the restoration of the Altar of Victory as a step toward the repeal of Gratian's legislation. Symmachus, Prefect of Rome, was leader and spokesman of the committee. His address, made in the presence of the emperor and the senate is a noble plea for the religious system so long and intimately associated with Roman life and institutions.

We ask peace for our native, indigenous gods. We cultivate the same soil, we are one in thought; we behold the same stars, the same heaven, and the same world surrounds us. Why should not each, according to his own prudence, seek the truth? The Great Mystery can not be approached by one road. The divine mind distributed various cults and guardians in the cities; as various spirits in youths, so the fatal

¹ Ambrose, *Ep.*, xvii, 18; Symmachus, *Ep.*, x, 3.

² Symmachus, *Ep.*, x, 3; Ambrose, *Ep.*, xvii, 18; *C. Th.*, xvi, 10, 20.

³ Ambrose, *Ep.*, xvii, 9, 10.

genii are divided among nations. Utility should decide what the gods of man should be. Since all reason is in darkness, what is better than that the recognition of the divinities should be decided by the memory and example of fortunate times. If great age gives authority to religion, such a faith is to be preserved for all ages, and our fathers who happily followed their fathers, are to be followed by us. I do not plead merely the cause of Roman religion; from these recent crimes [the legislation of Gratian] have come all the misfortunes of the Roman people. The law of our fathers honored the vestal virgins and the ministers of the gods with the necessities of life and just privileges. All of these are now diverted to degenerate money changers. Following this came the public famine and a blighted harvest deceived the hopes of all the provinces. Hence are all the misfortunes of the earth. Let us charge nothing to the stars. The year became one of drought through sacrilege, for it was necessary that all things denied to religion should perish.¹

These words of Symmachus had a profound effect on the Christian as well as the pagan members of his audience. The imperial consistory, in which the Arians held the majority, was inclined toward a favorable reply. But Ambrose, in an address full of sophistry, exhortation and intimidation, won the day. If the Romans were preserved by the gods in the wars with Hannibal, why were the hostages taken? All men serve the emperor, and he serves God. But he who would be loyal to the true God must have no indulgence for the gods that are demons. Idols must be burned and profane ceremonies abolished. To restore the Altar of Victory would be a persecution of Christianity and the emperor would thereby become an apostate. Ambrose even made the threat that if the demands of the pagan

¹ The best edition of the *Relatio* is that of Seeck in the *Mon. Germ. Hist. Antiquiss. Auct.*, vi, p. 280. The translation here given is an abridgment.

party were granted, the clergy would cease to perform their services. Finally, Valentinian's mind was directed to the memory of his deceased father and brother whose piety and loyalty to the church would be seriously offended by the proposed restoration of the Altar of Victory.¹

Four years later, in 388, Theodosius was called into Italy to protect Valentinian and his court from the invasion of Maximus.² He remained in the west three years, suppressing rebellion and reorganizing the imperial administration. During this time he was in intimate relations with Pope Siricius and Ambrose. In 390 the senate again sent an embassy to Theodosius at Milan to ask for the restoration of the Altar of Victory. The emperor hesitated; even the protest of Ambrose was at first ineffective; but finally the petition was refused.³ The following year Symmachus, who had participated in the rebellion of Maximus and had gained imperial favor through the intercession of Leontius of the Novatian sect, made another plea for the restoration of the Altar. The appeal was in vain; Symmachus was exiled.⁴ In the same season, probably after this event, two edicts were issued, one for Rome, the other for the east, which have been well named the requiem of paganism. They forbade any one to pollute himself with sacrifices, to slay an innocent victim, to enter temples, to approach shrines or to do reverence to statues formed by mortal hands.⁵ In 392 sacrifice was assimilated with the crime of lese-majesty, the property of the guilty and places of sacrifice were con-

¹ Ambrose, *Ep.*, xvii.

² The religious and political aspects of Maximus's revolt will be discussed in the following chapter.

³ There is some difference of opinion as to the date when the embassy met Theodosius. I follow Rauschen, *Jahrbücher der christlichen Kirche*, p. 316. Amb., *Ep.*, lvii.

⁴ Rauschen, *ibid.*, p. 335.

⁵ *C. Th.*, xvi, 10, 10, 11.

fiscated, and the cults of the Lares and Penates were prohibited.¹

When Theodosius returned to the east in 391 he left Valentinian II a protector against the influence of the courtiers in the person of Arbogastes, a Frankish general, who was given the power to appoint all civil and military officers. This authority he exercised in the interest of the Germans and the pagan party.² The pagan members of the senate again petitioned for the restoration of the Altar of Victory, but Valentinian declined to grant the request.³ Then came a quarrel between Valentinian and Arbogastes which resulted in the rebellion of Arbogastes and the murder of Valentinian. The Frankish leader placed Eugenius, a Roman noble and a Christian, on the vacant throne. His religious policy was one of toleration; but he needed the support of all parties and sects in the approaching conflict with Theodosius. He would not permit the restoration of the Altar of Victory, but under the guise of gifts to his friends, he restored many temples to their ancient cults.⁴ Pagan ceremonies and processions were revived at Rome and many Christians relapsed to the religious faith they had formerly professed.

In 394 Theodosius returned to the west with an army, defeated the forces of Eugenius and Arbogastes at Aquilea, and then visited Rome. He appeared before the senate and begged its members "to relinquish their former errors and to embrace the Christian faith, which promises absolution from all sins and impieties." When "not one individual could be persuaded," he abolished "the sacred rights and ceremonies recently revived." Many converts from paganism were now made by the church. Among

¹ *C. Th.*, xvi, 10, 12.

² Rauschen, *loc. cit.*, p. 360.

³ Ambrose, *Ep.*, lvii, 5.

⁴ *Ibid.*, 6, 8.

these were some of the prominent families of Rome, such as "the venerable assembly of Catos, the luminaries of the world, who stripped themselves of their pontifical garments, cast off the skin of the old serpent and assumed the snowy robes of baptismal innocence, and humbled the pride of the consular fasces before the tombs of the martyrs."¹

A few months later Theodosius died. It is not necessary to dwell on the importance of his reign in the history of the church. His last thoughts were more for its welfare than that of the empire. Ambrose well compared his zeal for the suppression of paganism to that of Jacob and King Josiah.² His religious policy was continued by his sons. Arcadius renewed the legislation of his father, abolished the legal privileges of the priesthood in the east and sanctioned the destruction of the temples.³ In the west, however, Stilicho, who was entrusted with the regency during the minority of Honorius, desired to moderate the temper of the religious conflict. While sacrifices and "profane rites" were prohibited, the destruction of temples, statues and ornaments of public buildings suggestive of paganism was forbidden and the ancient games were protected.⁴ But whatever hopes Stilicho cherished for religious toleration were futile. He alienated the sympathies of the Christians by his indifference toward their religious propaganda, by the introduction of pagans into the imperial service, and the reform of the episcopal courts.⁵ On the other hand his

¹ Prudentius; quoted by Gibbon. The authority for the visit of Theodosius to Rome and his effort to convert the Senate is Zosimus, iv, 59; v, 30. This is rejected by some modern writers as a confusion with a visit to Rome after the rebellion of Maximus. Cf. Bury's *Gibbon*, vol. i, appendix x.

² Ambrose, *De Obitu Theod.*, 4, 35, 38.

³ *C. Th.*, xvi, 10, 13, 14, 16.

⁴ *C. Th.*, xvi, 10, 15, 17, 18.

⁵ For episcopal court, see ch. v.

wife, Serena, a zealous Christian, aroused the prejudice of the pagan party. She was accused of taking ornaments from the temple of the Great Mother, and this story was probably responsible for the report that Stilicho had robbed the Temple of Jupiter and burned the Sibylline books.¹ The instability of Stilicho's administration is well illustrated by the invasion of Italy by Alaric in 404. The pagans saw in the event the punishment of the gods for his failure to champion their cause; the Christians explained it as the result of a conspiracy of Stilicho and Alaric and attributed the Roman success at Pollentia to supernatural intervention. After the murder of Stilicho the ecclesiastical party was again in the ascendant. The temples were confiscated and deprived of their remaining income, while bishops, as well as civil officers, were entrusted with the execution of religious law.²

Once more, however, the hopes of the pagan party revived when Attalus, a barbarian, placed on "an imperial throne with a purple robe and crown" by Alaric, addressed the senate as "consul and pontifex" and gave prominent pagans important offices of state. But the new régime was temporary; Alaric was soon dissatisfied with Attalus and deprived him of his crown, and with his fall the last hopes of paganism as a political force in Italy vanished.³

¹ Rauschen, *loc. cit.*, p. 558.

² Augustine, *De Civitate Dei*, v, 23; Orosius, *Historiarum adversum Paganos*, vii, 38.

³ In Africa the conflict was prolonged, for there the sentiment in favor of the ancient cults was especially strong. In 415 Honorius confiscated to the fiscus "all places which the error of the fathers dedicated to the service of the gods" in Africa, together with the religious corporations and their incomes, sanctioned the destruction of the statues in the public buildings and deposed the pagan priests from office. *C. Th.*, xvi, 10, 20. The legislation of Valentinian III on heresy and schismatics includes pagans. This indicates that paganism was no longer a political force and was not deemed worthy of much attention.

In the east Theodosius renewed the legislation of his father, abolished the legal privileges of the priesthood and sanctioned the destruction of temples. Here the resistance of paganism was far feebler than in the west, for here the Roman state religion was not indigenous. The decisive legislation was that of Theodosius the Younger in 416, during the regency of Pulcheria, which prohibited the future employment of pagans in civil or military administration.¹ This edict seems to have been effective, for seven years later an edict which renewed former legislation against the adherents of paganism contains the sentence: "We believe that they [the pagans] are no more."² Suggestive of the vast change wrought in the traditions of the empire from Constantine to Theodosius the Younger is the last edict of the code, which forbids sacrifices on penalty of death and orders the destruction of temples, if any exist.³

¹ *C. Th.*, xv, 10, 21.

² *Ibid.*, xvi, 10, 22.

³ *Ibid.*, xvi, 10, 25.

CHAPTER II

HERESY AND ECCLESIASTICAL INSTITUTIONS

THE legislation which severed the alliance that, for ages, had united the Roman government and the ancient pagan religious system, has been noted. The change thus wrought in classical traditions and culture is one unprecedented in the religious history of antiquity. It was, however, only one phase of the ever-increasing influence of the church, and its meaning cannot be fully realized without considering a parallel series of edicts, namely, those which treat of heresy and the Christian faith. In analyzing them, the same periods are distinguishable as in the suppression of paganism. Constantine established the precedent for imperial intervention in ecclesiastical affairs; Valentinian I held aloof from the religious conflict; while Gratian and Theodosius finally and decisively fixed the alliance of the state with ecclesiastical creed and persecution.

As all efforts to suppress religious dissension in the first two periods were made by emperors who were, to some degree, patrons of Arianism, their edicts were not preserved by the compilers of the Theodosian code, for they lived in a century when the triumph of the opposing party which pointed to Athanasius as its greatest champion, was complete. The ecclesiastical historians and the controversial writings are therefore the sole authority in forming an estimate of the imperial attitude toward heresy before the reign of Gratian.

Since Constantine desired that the church should contribute to the social and moral strength of the empire, religious dissension was a menace to the public welfare, and if necessary, secular authority might be exercised for its suppression.¹ Indeed, peace and political unity had hardly been established after the period of civil war which followed the death of Diocletian, when the Donatist schism arose in Africa and demanded some attention on the part of the secular authorities.

“The schism of that time throve on the wrath of an angry woman; ambition fostered, and avarice strengthened it,” says Optatus—a statement which, if true, indicates that little good was to be expected from the persecution endured by the African church under Diocletian; and unfortunately facts seem to confirm its truth. In 311 the presbyter Cæcilian was chosen bishop of Carthage. His defeated rivals found sympathy in the person of Lucilla, a wealthy matron whom Cæcilian had offended by reproof of her ardent devotion to the saints and martyrs. An issue which would serve to develop opposition to Cæcilian and afford a means of questioning his election was soon found. A few years previous (305), just after the close of the Diocletian persecution, a synod had been held for the election of a new bishop of Cirta. In that meeting Secundus, Primate of Numidia, accused some of the colleagues of betrayal of trust (*traditio*), *i. e.*, of having saved their lives by delivering to the state officials the scriptures and treasures of the church. The election resulted in the choice of Silvanus, one of those accused of this crime. Secundus and his followers were now invited to Carthage by Lucilla and her clerical friends. The validity of Cæcilian’s election was questioned. Felix of Aptunga, who had assisted in his

¹ Cf. *C. Th.*, xvi, 2, 3, 6; also Eusebius, *Vita Constantini*, ii, 64.

ordination, was accused of *traditio*, and the claim that only primates could ordain primates was also advanced. The discontented Carthaginian clergy and their imported adherents therefore held a synod and elected Majorinus, a friend of Lucilla, Bishop of Carthage.¹ Such was the origin of the Donatist schism.² As time passed, the schismatics emphasized the theory that sacraments administered by polluted hands are ineffective, and the Cæcilianists, when they saw that the Bishop of Rome favored their cause, elaborated the idea of a federation of churches.³

The conditions which made Donatism a problem of state were Constantine's restoration of church property that had been confiscated by Diocletian, his gift of money to the African church, and the exemption from public burdens that he conferred on the clergy.⁴ It was necessary for the secular officials to decide which party should be the beneficiary of these favors and when the decision was rendered in the interest of the Cæcilianists, the Donatists addressed a protest to the civil authorities, who wrote to Rome for instructions. In reply to a letter from Anulinus, Proconsul of Africa, Constantine, in 313, referred the decision of the schism to the bishop of Rome.⁵ A synod was held and its

¹ The Bishop of Carthage was Primate of the Proconsulate Province of Africa.

² So-called from Donatus, a reader and successor of Majorinus, who was a prominent leader of the schism.

³ Cf. Voelter, *Der Ursprung des Donatismus*, Freiburg, 1883.

⁴ Euseb., *Hist. Eccl.*, x, 5, 6, 7. The first of these documents restores property "to the Catholic church alone." This may mean the church in a general sense, not a distinction between orthodox and schismatical churches. The second, granting money to the African church, shows that Constantine had heard of the schism. The third limits the exemption from public burdens to the Cæcilianists.

⁵ The letter of appeal to Constantine given by Optatus (*De Schismate Donatistarum*, i, 22) is rejected by Seeck as a forgery (*Ztsch. für K. G.*, vol. x, p. 550). But that there was such an appeal is shown by

verdict was against the Donatists. They had complained that a complete examination of their cause had not been made, and Constantine therefore ordered another hearing at Arles in 314. In the early part of 315 Aelianus, a civil officer, made an examination, by order of Constantine, of the charges against Felix of Aptunga. Felix was cleared, his successors and prominent Cæcilianists were cited to appear before Constantine. In the meantime the synod of Arles had decided against the Donatists, who then made another appeal to Constantine.¹ A final hearing was granted in the presence of the emperor at Milan in 316, and the verdict was once more against the Donatists. It was ineffective, the schism continued, and this caused Constantine to resort to legislation.

The outlines of the edict authorizing persecution have not been preserved, but the sources indicate that Donatist churches were confiscated and that some of the Donatist leaders suffered death.² The fanaticism of the schismatics, however, did not abate and Constantine, seeing that his efforts for peace in the church were ineffective, put an end to the persecution, and during the remainder of his reign the Donatists prospered, establishing churches in Rome and Spain.³

the letter of Constantine to Miltiades, Bishop of Rome (Euseb., *H. E.*, x, 5) and by the letter of Anulinus given by Augustine (*Ep.*, 88).

¹ Euseb., *H. E.*, x, 5. Seeck makes the date of the synod 316 and thinks Constantine was present. But this view is not confirmed by the facts. The date is generally conceded to be 314.

² There is a reference to the legislation of Constantine in *C. Th.*, xvi, 6, 2, of Gratian. Cf. the *Monumenta vetera ad Donatistarum Historiam pertinentia* (Migne, *Pat. Lat.*, vol. viii, p. 750) for the confiscation of property and martyrs. A certain *Sermo de Vexatione Donatistarum temporibus Leontii et Ursatii*, recounts the martyrdom of Donatists at the hands of military authorities.

³ Augustine, *Brev. Collat. cum Donatist.*, iii, 40; Optatus, ii, 4.

The same desire to preserve unity within the church, rather than the protection of any creed or interpretation of Christian doctrine, led Constantine to intercede for the settlement of the Arian controversy. Soon after the defeat of Licinius in 324 this theological issue, which involved the diverging intellectual traditions of the church, seriously threatened the religious unity of Egypt and the entire east. Believing "disunion in the church" a danger to the state "more grievous than any kind of war," Constantine sent Hosius of Cordova to Alexander and Arius to exhort them to cease contending about "small and inconsiderable questions," for as "philosophers may belong to one system and take issue on certain points," yet "are recalled to harmony of sentiment by the untiring power of their common doctrines," why should not "the ministers of the Supreme God" be "of one mind respecting the profession of the same religion?"¹ When this appeal failed, the emperor, on the advice of the bishops, convoked the general synod of Nicea.² He made no attempt to influence the synod's solution of its problem. He desired that the ecclesiastical authorities should make an independent settlement, but he participated in the debates, and, at the critical moment, his influence was effective in the adoption of a creed. He then confirmed the synod's work by threatening with exile those who did not accept its standard of faith and, at the conclusion of the council, he gave its decrees the force of imperial laws.³

¹ Euseb., *Vita*, ii, 64.

² *Ibid.*, iii, 6. Rufinus, *Historia Ecclesiastica*, i, 5, for convocation by advice of bishops.

³ Rufinus, *H. E.*, i, 5; Euseb., *Vita*, iii, 17, 19; Socrates, *Historia Ecclesiastica*, i, 9. The Novatians were excepted from the operation of this legislation. *C. Th.*, xvi, 5, 2. The story given by Socrates, that Constantine called the Arians Porphyreans and ordered the works of

The weakness of the Nicene creed lay in the fact that it was in advance of the conservative doctrine of the east and west. However, the west, which habitually looked to authority for guidance, finally accepted the decision of the "great and holy council," while the tendency of the east was to look behind the work of the council to those inherited doctrines which were the predecessors of Arianism. Naturally the opinions in the east and the west at first shaped the policy of their rulers. When Constantine took up his permanent residence in the east, he was influenced by its attitude toward religious problems. Therefore, while he did not repeal the legislation which confirmed the work of Nicea, he permitted the return of the exiled Arians, countenanced the deposition of Athanasian bishops on various charges, and was finally baptized by an Arian bishop, Eusebius of Nicomedia.¹ Both of the efforts he made to restore unity in the church failed. The creed of Nicea, sanctioned by imperial decree, like the legislation against the Donatists, only added increased confusion and complication to the problem it was intended to solve.

The religious as well as the political conditions in the three years succeeding the death of Constantine are obscure. Aside from the statement of Athanasius that Constantine II recalled the exiled bishops, nothing is known of that emperor's policy; while the attitude of Constantius and Constans toward ecclesiastical problems seems to have been shaped by the dominant factions east and west.²

Arius to be burned, is spurious. Seeck regards it as a forgery of Athanasius (*Ztsch. für K. G.*, vol. xviii, p. 48), from whose writings Socrates derived the information.

¹ Examples of Constantine's policy are his confirmation of the condemnation of Eustathius of Antioch on a charge of Sabellianism in 330, his citation of Athanasius to the synod of Tyre in 335, and the exile of that ecclesiastic to Gaul after a personal appeal to Constantinople.

² Athanasius, *Hist. Ar.*, 8. It has been suggested that the return of

Constantius was gifted with a taste for polemical discussion, his mind had not the catholicity of taste or judgment of his father's, and he was more susceptible to clerical influence. His sympathies were won for Arianism by Eusebius of Nicomedia, and he did not hesitate to give religious intolerance the support of civil authority. Upon the return of Athanasius to Alexandria shortly after the death of Constantine, the Arians of that city met and elected a bishop in the person of Pistus, one of those radical members of their party who had been condemned at Nicea. The followers of Athanasius protested, sending letters to the neighboring bishops, among them to the Bishop of Rome, and perhaps to the emperor Constans, while Eusebius and his coterie in return preferred charges against Athanasius before both emperors.¹ The result was the election of a new Bishop of Alexandria, Gregory of Cappadocia, in the winter of 338-39, by a synod at Antioch, where Constantius was residing. In March 339 the exarch of Egypt published an imperial edict confirming this election, and, after a period of rioting, the new bishop entered Alexandria under military escort.²

Similar means were used to enforce conformity in other parts of the east. Bishops from Thrace, Syria, Phoenicia and Palestine were driven from their dioceses before the spring of 340. Of these Lucius of Adrianople, Marcellus the exiled bishops was due to the effort of Constans and Constantine II to win popularity in the west, and therefore it was not opportune for Constantius to protest. (Loofs, "Arianismus," in *Real-Encyclopedie*, 3d ed., Bd. ii). Seeck, on the other hand, thinks that it was the result of a common policy. He questions the letter of Constantine II which makes the recall of exiled bishops the wish of his deceased father. (*Ztsch. für K. G.*, vol. xvii).

¹ Athanasius, the leader in this movement of protest, defended himself in a letter to Constans. *Apologia ad Con.*, 4.

² Ath., *Ep. Encyl.*, written just after the event (*Hist. Ar.*, 14).

of Ancyra, Asklepos of Gaza, and Paul of Constantinople sought refuge at Rome.¹ Julius of Rome addressed a letter of protest in their behalf to the Arian leaders.² In reply the synod of Antioch anathematized all who had been associated with Marcella of Antioch, and adopted a statement of doctrine, ante-Nicene in character; while a few months later a new creed was formulated by a second synod at Antioch, which was sent to Constans in the hope that it would reconcile the west.³

In the meantime Constans, at the suggestion of some of the western clergy, gained the consent of Constantius for the convocation of a general synod of the church.⁴ This body met at Sardica late in 343. All hopes for the formation of a universal creed were defeated by the attitude of the western ecclesiastics, who opposed the reopening of the cases of the Arian bishops recently deposed, and by the consequent withdrawal of nearly all the eastern members from the council.⁵ The breach between the two parties was thus widened. The eastern members who had sympathized with the attitude of the west were deposed or exiled. But the succeeding years are notable for the absence of any imperial participation in the Arian controversy. Constantius permitted the return of Athanasius to Alexandria while Constans was engaged in a persecution of the Donatists,

¹ Ath., *Apol. c. Ar.*, 33; Soc. ii, 15. For references to the sources for individual cases, cf. Loofs, *loc. cit.*

² This was done after a synod of Rome had declared Athanasius and Marcellus illegally deposed. Cf. Ath., *Apol. c. Ar.*, 21, 35.

³ Harnack, *Hist. of Dogma*, vol. iv, p. 67. Athanasius, *De Synod.*, 22, 24. Date, 341.

⁴ Ath., *Apol. c. Ar.*, 4.

⁵ The eastern members then drew up a statement of doctrine, and also declared Athanasius, Marcellus, Julius of Rome and other leaders of Sardica excommunicated. Socrates, i, 20.

caused by their opposition to imperial gifts to the African church.¹

After the death of Constans and the end of the rebellion of Magnentius, more radical Arian opinions developed in the east and new accusations were preferred against Athanasius. Constantius, now sole emperor, fell under the influence of Ursacius, one of the most radical and unscrupulous of the Arian bishops. The synod of Arles (353) condemned Athanasius, and the reaction thus begun culminated in the synod of Milan, held in 355. A majority of its members were from the west, but an Arian creed was submitted to them by Constantius, with the order that those who would not subscribe should be exiled.² Liberius of Rome, Hilary of Poitiers, and Eusebius of Vercelli suffered the penalty of non-conformity, while Athanasius was expelled from Alexandria by imperial troops. Another radical creed was soon after formulated at Sirmium. The result was a new alignment of ecclesiastical parties. The conservative Arians could not be reconciled to the new radical movement, the resistance of the west to it was assured, while later councils at Ariminum and Seleucia only increased the confusion that already existed.³

The attempt of Julian to revive paganism and his hostility to Christianity for a time eliminated political influence from the religious controversy and made heresy once more a purely ecclesiastical problem. His successor, Jovian, professed the Nicene faith, but when "the ring-leaders of contrary factions" approached him "in the interests of their causes," he answered them "in gentle and courteous language" that he would not "molest any religion they pro-

¹ Optatus, *De Schismate Donatistatum*, iii, 3.

² Sulpicius Severus, *Chronicon*, ii, 39.

³ Cf. Harnack, *History of Dogma*, vol. i, pp. 75-80.

fessed, but above all others he honored and revered such as were peacemakers.”¹ In the divided administration which succeeded that of Jovian, the religious policy of the western emperor, Valentinian I, was also one of neutrality. In the beginning of his reign he issued an edict of toleration and when ecclesiastics petitioned him in behalf of their doctrine he replied, “It is not right that I, one of the laity, should examine curiously things of this nature. This is for the consideration of priests, and whatever they shall decide should come to pass.”²

The policy of Valens, emperor of the east, was also at first one of toleration. But he soon fell under the influence of Eudoxius, one of the radical Arians. When representatives of the synod of Lampsacus (364) informed him of its work and the doctrine it represented, Valens “exhorted them not to be at variance with Eudoxius.” Upon their remonstrance he sent them into exile and “ejected from the churches or maltreated and harassed in some other form” those “not in communion with Eudoxius.”³ The conservative Arians suffered as much as the Athanasians and the result was to unite the two into a new Nicene party which gained ascendancy under Theo-

¹ Socrates, *H. E.*, iv, 25.

² The edict of toleration is not extant. It is referred to in *C. Th.*, ix, 16, 9. The quotation is from Soz., *H. E.*, vi, 7. The letter of Valentinian to an Illyrian synod, directing its members to subscribe to the Nicene creed, given by Theodoretus, *H. E.*, iv, 8, is doubtless a forgery. But in the year preceding his death (375), according to Theodoretus (*Historia Ecclesiastica*, iv, 7), Valentinian endorsed the dogma of the Athanasian party. This chapter of Theodoretus has been rejected by Hefele (*Concilien Geschichte*, vol. i, p. 741) and accepted by Schiller (*Gesch. der röm. Kaiserzeit*, vol. ii, p. 364). If the statement of Theodoret is true, the change in policy could have had but little effect, for the Gothic war opened the following year and prevented persecution.

³ Soz., vi, 7. Cf. vi, 12, which says that the bishops exiled by Constantius and recalled by Julian were ejected from the churches.

dosius. Yet the extent and nature of the persecution by Valens are uncertain. Only six cases of the deposition of bishops as the result of his reactionary policy are known, and of these, Athanasius was finally recalled to Alexandria. The statement of Sozomenus, that the persecuted "sustained torture of body, were carried to the tribunals of the presidents [of the provinces], and on account of the faith of which they were found guilty were deprived of their property" may be the result of a confusion of the police measures against the Egyptian monks with the persecution of doctrine.¹ Yet, in 373 Themistius, a distinguished pagan philosopher, addressed an oration to Valens on behalf of the persecuted. Finally, at the opening of the Gothic war in 376, an edict of toleration to all sects was issued and the persecution ceased.²

The reigns of Gratian and Theodosius, decisive for the relation between the government and paganism, were equally decisive for the problem of heresy. One of the first acts of Gratian was to reverse the tolerant policy of his father, Valentinian I, and, in the interest of the Nicene party, always dominant in the west, to forbid meetings of heretics and to confiscate their places of assembly to the *fuscus*.³ In 378 this law was re-enacted, but later in the same year, perhaps after the death of Valens, toleration was granted to all sects except the Eunomians, Photinians and Manichæans.⁴ But after the meeting of Gratian and

¹ Soz., vi, 14; *C. Th.*, xii, 1, 63; Soc., iii, 22, 23.

² The oration of Themistius is not extant. It is mentioned by Soz., vi, 36. The twelfth oration on tolerance was made at an earlier date, perhaps at the beginning of the reign. For the edict of 376, *cf.* Soc. iv, 35.

³ This edict is not extant. It is referred to in *C. Th.*, xvi, 5, 4. Date, late in 375 or early in 376.

⁴ *C. Th.*, xvi, 5, 4. Haenel makes the date 376. Rauschen (*loc. cit.*, p. 330, n. 1) and Godefroy make it 378; *cf.* Soc. v, 2; Soz., vii, 1. The

Ambrose in 379, the edict of toleration was rescinded, and all heresies opposed to laws divine and imperial were ordered to come to an end.¹ Gratian, however, was by nature humane and moderate. In spite of this legislation and the influence of Ambrose, the Arians of Milan were permitted to retain possession of one basilica until the insult of Ambrose by the Arians of Sirmium.

A far more drastic policy toward heresy was pursued by Theodosius. In 380 he was seized with a serious illness at Thessalonica and was baptized by Acholeus, a Nicene bishop.² After his recovery he issued an edict to the people of Constantinople that "all who are under the sway of our clemency shall adhere to that religion which, according to his own testimony, coming down to our own day the blessed Peter delivered to the Romans, namely, that doctrine which the Pontiff Damasus, and Peter, Bishop of Alexandria,

Eunomians and Photinians were Arian sects; the former thought that the Son is of different essence from the Father and that he is created out of nothing; the latter made the divinity of Jesus a growth by moral improvement on the basis of human nature. The Manichæans will be discussed later.

¹ *C. Th.*, xvi, 5, 5. *Impp. Gratianus, Valentinianus et Theodosius A. A. A. ad Hesperium Pf. P.* Omnes vetitæ legibus et divinis et imperialibus hæreses perpetuo conquiescant. Quisquis opinionem plectibilibus Dei profanus imminuit, sibi tantummodo nocitura sentiat, aliis obfutura non pandat. Quisquis redempta venerabili lavacro corpora reparata morte tabificat, id auferendo, quod geminat, sibi solus talia noverit, alios nefaria institutione non perdat. Omnesque perversæ istius superstitionis magistri pariter et ministri, seu illi sacerdotali assumptione episcoporum nomen infamant, seu, quod proximum est, presbyterorum vocabulo religionem mentiuntur, seu etiam se diaconos, cum nec Christiani quidem habeantur, appellant, hi conciliabulis damnatæ dudum opinionis abstineant. Denique antiquato rescripto, quod apud Sermium nuper emersit, ea tantum super catholica observatione permaneant, quæ perennis recordationis pater noster et nos ipsi victura in æternum aequæ numerosa iussione mandavimus. Dat. III Non. Aug. Medioliano, Acc. XIII Kal. Sep. Ausonio et Olybrio Coss. (379).

² Soz., vii, 4.

men of apostolic sanctity, now follow," *etc.*¹ In January of the following year another edict forbade the heretics to assemble within the cities, required the name of the one and supreme God to be celebrated, and the Nicene faith, as handed down by the fathers and confirmed by the testimony and assertion of divine religion, to be always maintained.² In the same year, after the reformulation of the Nicene doctrine by the Council of Constantinople, which was convoked by the emperor to adjust problems of doctrine, the

¹ *C. Th.*, xvi, 1, 2.

² *C. Th.*, xvi, 5, 6; xvi, 5-6. *Ibid.*, A. A. A. (*Gratianus, Valentinianus et Theodosius*). *Eutropio Pp. P.* Nullus haereticis mysteriorum locus, nulla ad exercendam animi obstinatoris dementiam pateat occasio. Sciant omnes, etiamsi quid speciali quolibet rescripto per fraudem elicitum ab huius modi hominum genere impetratum est, non valere. § 1. Arceantur cunctorum haereticorum ab illicitis congregationibus turbae. Unius et summi Dei nomen ubique celebretur; Niceanae fidei, dudum a maioribus traditae et divinae religionis testimonio atque assertione firmatae, observantia semper mansura teneatur; Photinae labis contaminatio, Ariani sacrilegii venenum, Eunomiae perfidiae crimen et nefanda monstruosis nominibus auctorum prodigia sectarum ab ipso etiã aboleantur auditu. § 2. Is autem Nicaenae assertor fidei et catholicae religionis verus cultor accipiendus est, qui omnipotentem Deum et Christum filium Dei unum nomine confitetur, Deum de Deo, lumen de lumine; qui spiritum sanctum, qui id, quod ex summo rerum parente speramus, accipimus, negando non violat: apud quem, intemeratae fidei sensu, viget incorruptae trinitatis indivisa substantia, quae graeci assertione verbi *οὐσία*, recte creditibus dicitur. Haec profecto nobis magis probata, haec veneranda sunt. § 3. Qui vero iisdem non inserviunt, desinant affectatis dolis alienum verae religionis nomen assumere, et suis apertis criminibus denotentur. Ab omnium summoti ecclesiarum limine penitus arceantur, cum omnes haereticos illicitas agere intra oppida congregationes vetemus, ac, si quid eruptio factiosa tentaverit, ab ipsis etiam urbium moenibus exterminata furore propelli iubeamus, at cunctis orthodoxis episcopis, qui Nicaenam fidem tenent, catholicae ecclesiae toto orbe reddantur. Dat. IV Id. Ian. Constantinopoli, Eucherio et Syagrius Coss. (381).

The phrases, "Deum de Deo, lumen de lumine," lead Godefroy to think that the edict was published after the council of Constantinople, for they appear in the creed formulated at the council. But the date of the edict in both the Theodosian and the Justinian codes is January, while the council did not convene until May, 381.

proconsul of Asia was ordered to deliver all churches to those bishops "who profess that the Father, Son, and Holy Spirit are one majesty and virtue, the same glory, one light making no confusion by profane division, but are the order of the Trinity, the incorporation of persons, and unity of the Divinity."¹

The Arians did not surrender without protesting their right to exist. In the east "great disturbances arose as they were ejected from the churches."² This and the conflicting claims of orthodox churches to the property of heretical congregations led Theodosius to convene a general conference of all sects at Constantinople in 383. He also hoped that by a discussion with their bishops unanimity of belief might be established.³ But instead of a free exchange of opinion, the members of the council were asked if they would accept as authoritative the teaching of those fathers who lived previous to the dissension in the church. When Theodosius received no satisfactory reply, he commanded the sects—the Arians, Eunomians, Macedonians and Novatians—to draw up written statements of

¹ *C. Th.*, xvi, 1, 3. The bishops representing the faith are named. They are Nectarius of Constantinople, Nectarius of Alexandria, Pelagius of Laodicea, Diodorus of Tarsus, Amphilocus of Iconia, Optimus of Antioch, Helladius of Cæsarea, George of Nyssa, Terrenus of Scythia, Marmoria of Martianopolis and Olreius of Meletus. All bishops who differed from the faith of these were to be expelled from their dioceses. (*Cf.* Soz., vii, 9.) It is notable that there is no mention of any western bishops. The reason is obvious. Arianism was primarily an eastern problem and Theodosius wished to solve it by appealing directly to the east and avoiding any appearance of tutelage of the east by the west. *Cf.* Harnack, *History of Dogma*, vol. ii, p. 95, n. 1, on the policy of Theodosius.

² Soz., v, 10.

³ *Ibid.* This procedure was adopted by Theodosius at the suggestion of Nectarius of Constantinople, to whom it was suggested by Sisennius, a Novatian.

their creeds. These were submitted to him at the palace, and after prayer, he destroyed them all except that of the Novatians. The other sects withdrew from the council and soon they were forbidden to hold meetings, to ordain priests or to promulgate their doctrines, and their places of assemblage were confiscated to the *fiscus*.¹

The hopes of Arianism now centered in the west. There the proscribed faith found a patron in the person of Justina, widow of Valentinian I and mother of Valentinian II. After the death of Gratian her influence at court was supreme and Arian officials and Gothic troops found their way into the imperial service. Ambrose was petitioned for the use of a small basilica near the city of Milan where the Arians might celebrate the Easter of 385 according to their own rites. He refused, and when the request was repeated, he advanced in his reply the theory that property once in

¹ *C. Th.*, xvi, 5, 11, 12, 13. Besides the sects above mentioned, the Apollinarists, Manichæans, and certain sects of minor importance were included. The twelfth edict is typical.

Vitiorum institutio Deo atque hominibus exosa, Eunomiana scilicet, Ariana, Macedonia, Apollinariana, ceterarumque sectarum, quas verae religionis venerabili cultu catholicae observantiae fides sincera condemnat, neque publicis, neque privatis aditionibus intra urbium atque agrorum ac villarum loca aut colligendarum congregationum aut constituendarum ecclesiarum copiam praesumat, nec celebritatem perfidiae suae vel solennitatem dirae communionis exerceat, neque ullas creandorum sacerdotum usurpet atque habeat ordinationes. Eaedem quoque demus, seu in urbibus seu in quibuscunque locis passim turbae professorum ac ministrorum talium colligentur, fisci nostri dominio iurique subantur, ita ut hi, qui vel doctrinam vel mysteria conventionum talium exercere consueverunt, perquisiti ab omnibus urbibus ac locis, propositiae legis vigore constricti expellantur a coelibus, et ad proprias, unde oriundi sunt, terras redire iubeantur, ne quis eorum aut commeandi ad quaelibet alia loca aut evagandi ad urbes habeat potestatem. Quod si negligentius ea, quae serenitas nostra constituit, impleantur, et officia provincialium iudicum et principales urbium, in quibus coitio vetitae congregationis repta monstrabitur, sententiae damnationique subdantur. Dat IV Non. Sept. Constantinopoli, Merobaude II et Saturnino Coss. (383).

the possession of the church is the property of God, that priests must administer it and never permit its reversion to the world.¹ When it seemed that the court party would resort to force, Ambrose threatened the soldiers with excommunication. Public opinion was with him; the Nicene soldiers left their Arian captains and a temporary reconciliation between Ambrose and Valentinian followed.² But in 386 the emperor gave the Arians the right of assemblage and declared that its violators would be guilty of *maiestas* and liable to the death penalty.³ When Ambrose again refused to allow the Arians the use of church property Valentinian issued a decree exiling him. Ambrose replied that the emperor was within the church, not over it, and that in matters of faith the layman has no jurisdiction over the priest.⁴ The sympathies of the people were again with him, and Valentinian did not attempt to enforce the decree of exile.

This quarrel of Ambrose and the Arian court was interrupted, in 387, by the invasion of Italy by Maximus. In 383 Maximus had been proclaimed Augustus by the army in Britain; after the murder of Gratian he extended his authority to Gaul and Spain, and was recognized by Valentinian and Theodosius.⁵ He now appeared in Italy as the champion of the Catholic faith.⁶ Justina and Valentinian

¹ Amb., *Ep.*, xx.

² See Rauschen, *loc. cit.*, pp. 212-214, for summary of events, with references to the sources.

³ *C. Th.*, xvi, 1, 4; 4, 1.

⁴ Amb., *Ep.*, xxi.

⁵ All the sources except Zosimus agree that the elevation of Maximus was the work of the army. Cf. Rauschen, *loc. cit.*, p. 143, n. 2. In regard to the death of Gratian the sources vary. Cf. the discussion of Rauschen, p. 482. For recognition by Valentinian and Theodosius, *ibid.*, pp. 144 and 172.

⁶ There is a letter of Maximus to Valentinian threatening him with war if he did not cease his opposition to the Catholic faith. (Theo-

fled to Thessalonica and implored the aid of Theodosius. After cementing a political alliance by marriage with Galla, sister of Valentinian, Theodosius assembled a large army and, in the summer of 388, invaded Italy, and defeated Maximus in two battles in Pannonia, where he was taken prisoner and executed. At the opening of the campaign Valentinian had withdrawn from the Arians their rights of assemblage, of erecting altars for worship and of celebrating the sacraments.¹ Since Justina died during the war, there was no hope for the toleration of paganism in the reorganization of administration in the west.

While Theodosius was in Italy the activity of the heretics in Constantinople also demanded the attention of the civil authorities. The legislation of the previous years had not been rigorously enforced. In 387 the Arians and Apollinarians held public meetings at Constantinople and the Eunomians conducted a religious propaganda in Cappadocia.² Consequently, before the invasion of Italy, an edict was published which withdrew from the heretics the right of residence in the cities and forbade the ordination of their officials.³ Then, before the decisive battle with Maximus, a report was circulated in Constantinople that Theodosius had been "cut to pieces and that he himself had been captured." The Arian sects were elated and burned the house of Bishop Nectorius, and another report, that the emperor had issued a tolerant edict, was circulated.⁴

doret., *H. E.*, v, 14.) This writer also says that Theodosius wrote to Valentinian that it was no wonder that Maximus was successful, for he defended, while Valentinian persecuted, the orthodox faith. *Ibid.*, v, 15.

¹ *C. Th.*, xvi, 5, 15. ² *Greg. Naz., Ep.*, 202. *Cf. Soz.*, vi, 27.

³ *C. Th.*, xvi, 5, 15. This was probably due to the influence of Gregory Nazianzus and Nectorius of Constantinople.

⁴ *Soz.*, vii, 14.

These conditions were responsible for two edicts which forbade public discussions of religion, the publication of religious tracts, and threatened with the punishment of a forger (*falsi reus*) the one responsible for the report of the tolerant legislation.¹ After the return of Theodosius to the east he repeated the prohibition of the residence of heretics in Constantinople, and of their ordination, as well as the confiscation of places of worship, in 392 and 394—sufficient evidence that heresy was one of the numerous problems which the imperial administration could not promptly or efficiently solve.² But when Arcadius, in a series of edicts, confirmed and re-enacted his father's legislation, many heretics became reconciled to the orthodox church and heresy ceased to be a political problem of importance in the east.³

In the policy of Gratian and Theodosius toward heresy there is a perceptible change from that of their predecessors. The motive which actuated Constantine's interest in problems of faith was one of expediency, a desire for unity in the church, because that was conducive to the welfare of the state. After all is said of Constantius's religious opinions, the political aspects of heresy were to some extent responsible for his policy, while the military character of Valens and his toleration of paganism suggest that a desire for ecclesiastical unity rather than personal interest in any one creed was responsible for the persecution he instituted. The efforts of these emperors to establish religious unity

¹ *C. Th.*, xvi, 4, 2; *ibid.*, 5, 16. A special edict for the Apollinarists was drafted. *C. Th.*, xvi, 5, 14.

² *C. Th.*, xvi, 5, 21, 22, 24; *cf.* 4, 3.

³ *C. Th.*, xvi, 5, 25, 26, 30. *Cf.* Soz., viii, 1. The character of Arcadius's legislation shows that heresy was not a serious political problem. It repeats the penalties so frequently inflicted on heresy and is directed against heretics in general.

were directed against ecclesiastical leaders and officials. In the legislation of Gratian and Theodosius, however, religious conviction was a stronger motive than political expediency. Therefore the lay as well as the ecclesiastical members of the sects were proscribed. An evidence of this change in purpose is the conception of heresy as it affected the rights of citizenship. Theodosius made the violation of divine law equivalent to sacrilege, and such violation involved the loss of certain rights of Roman citizenship.¹ First, the power of leaving or receiving legacies, one of the distinctive privileges of Roman citizens, was taken from the Manichæans in 381, then from the Eunomians in 389.² Honorius extended this legal disability to the Donatists and Priscillianists, while Theodosius the Younger applied it to all sects.³ The right to hold office at court or in the army was withdrawn from the Eunomians by Theodosius; Honorius excluded all enemies of the Catholic sect from service in the palace; and, finally, Theodosius the Younger forbade heretics to take the military oath of allegiance or to serve in the imperial army.⁴ Apostates—those forsaking the

¹ *C. Th.*, xvi, 2, 25. Qui divinae legis sanctitatem aut nesciendo confidunt aut negligendo violant et offendunt, sacrilegium committunt (380).

² *C. Th.*, xvi, 5, 7, 17. The latter edict imposing the disabilities on the Eunomians was repealed in 394 on account of domestic troubles and the friendship of Eutropius for the heretics. *C. Th.*, xvi, 5, 23. It was re-enacted by Arcadius, *ibid.*, 5, 25.

³ *C. Th.*, xvi, 5, 40, 65.

⁴ *C. Th.*, xvi, 5, 29. *Marcello Magistro officiorum.* Sublimitatem tuam investigare praecipimus, an aliqui haereticorum vel in scriniis vel inter agentes in rebus vel inter palatinos cum legum nostrarum iniuria audeant militare; quibus, exemplo divi patris nostri, omnis et a nobis negata est militandi facultas. Quoscumque autem deprehenderit culpa huius affines, cum ipsis, quibus et in legum nostrarum et in religionum excidium conniventiam praestiterunt, non solum militia eximi, verum etiam extra moenia urbis huiusce iubebis arceri. Dat. VIII Kal. Dec. Constantinopali, Olybrio et Probino Coss. (395). *Ibid.*, 42. Eos, qui

Christian faith—suffered likewise. Constantius had deprived Christians who became converts to Judaism of their testamentary privileges, and Theodosius extended the penalty to those forsaking the church for the pagan rites, permitting the revocation of their testaments.¹ The ecclesiastical conception of the offence is reflected in an edict of Valentinian II which declares that those who desert and profane the right of sacred baptism “should be segregated from the companionship of all,” [cast out and banished unless they do major penance; not even then can they return to their former position in society “since those who pollute the faith which they have vowed to God are not able to behold those things which are ideal and just.”²]

catholicae sectae sint inimici, intra palatium militare prohibemus, ut nullus nobis sit aliqua ratione coniunctus, qui a nobis fide at religione discordat. Dat. XVIII Kal. Dec. Ravenna, Bosso et Philippo Coss. (408). Ibid., 48. Montanestas et Priscillianistos et alia huiusce modi genera nefariae superstitionis per multiplicata scita divalia diversa ultimum supplicia contemnentes, ad sacramenta quidum militiae, quae nostris obsecundat imperiis, nequaquam admitti censemus, etc. Ibid., 65.

¹ *C. Th.*, xvi, 8, 7; *ibid.*, 7, 1. Eis, qui ex Christianis pagani facti sunt, eripiatnr facultas iusque testandi, et omne defuncti, si quod est, testamentum summata conditione rescindatur (381). Such legislation would naturally cause confusion in the possession and administration of Roman property. It was, therefore, modified by subsequent edicts. Theodosius allowed catechumens relapsing to paganism to leave their property to their children and brothers (*C. Th.*, xvi, 7, 2), and Arcadius forbade apostates to alienate property from their own blood (*ibid.*, 7, 6). Other legislation determined the method by which testaments might be revoked. According to the edict of Gratian, an action to declare a testament void (*inofficiosum*) must be brought within five years of the testator's death. (*C. Th.*, ii, 19, 5.) Valentinian II states that this rule applies to actions against apostate testaments, but the action cannot be instituted by an apostate against an apostate. (*C. Th.*, 7, 3.) But Valentinian III abolished the time limit and the prohibition of apostates from bringing an action. (*Ibid.*, 7, 7.)

² *C. Th.*, xvi, 7, 4. Impp. Valentinianus, Theodosius et Arcadius A. A. Flavianus Pf. P. Hi, qui sanctam fidem prodiderint et sanctum baptisma profanerint, a consortio omnium segregati sint, a testimoniis

The attitude of the state toward the Jews also seems to have been affected by clerical influences. Honorius and Theodosius the Younger excluded them from military and all other public services except municipal offices, while an even stronger suggestion of their position in mediæval society was the law which gave temporal officials the right to inspect and increase the taxes paid into the public treasury by the Jewish communities.¹

alieni, testamenti, ut ante iam sanximus, non habeant factionem, nulli in hereditale succedent, a nemine scribantur heredes. Quos etiam praecepissemus procul abiici ac longius amandari, nisi poenae visum fuisset esse maioris, versari inter homines et hominum carere suffragiis, § I. Sed nec unquam in statum pristinum revertentur, non flagitium morum obliterabitur poenitentia neque umbra aliqua exquisitae defensionis aut muniminis obducetur, quoniam quidem eos, qui fide, quam Deo dicaverant, polluerunt et prodentes divinum mysterium in profana migrarunt, tueri ea, quae sunt commenticia et concinnata non possunt. Lapsis etenim et erantibus subvenitur, perditis vero, hoc est sanctum baptisma profanantibus, nullo remedeo poenitentiae, quae solet aliis criminibus prodesse, succurritur. Dat. V Id. Maii Concordiae, Tatiano et Symmacho Coss. (391).

¹ *C. Th.*, xvi, 7, 6, 7; 8, 24, 29. There are twenty-nine edicts on Judaism in the eighth title of the code, and five in the ninth. There are three periods in this legislation. First, the reigns of Constantine and Constantius, in which Jews were prohibited from punishing those leaving their faith, from circumcising their slaves and trafficking in Christian slaves, while the marriage of Jews to Christian women and the conversion of Christians or Roman citizens to the Jewish faith was also forbidden. Jews were also subjected to curial obligations. The second period extends from Julian to Theodosius, a period of toleration, in which there was no new legislation. Theodosius was urged to legislate against the Jews by Ambrose (*Ep.*, 29), but we find him comparatively tolerant. The third period is that of the sons and successors of Theodosius. Rufinus and Eutropius were generous to the Jews, but Theodosius II interdicted the erection of new synagogues, forbade Jewish patriarchs to decide cases between Jews and Christians, and the possession of Christian slaves by Jews; but an exception was made in favor of Gamaliel, a patriarch in honor at the court. For the condition of the Jews at Alexandria, cf. *Socrat.*, vii, 15. Also *C. Th.*, xvi, 8, 18, 21. On the condition of Jews in the later empire, see Gratz, *Geschichte der Juden*, vol. iv.

CHAPTER III

HERESY AND ECCLESIASTICAL INSTITUTIONS (CONTINUED)

THE Roman religion of the second and third centuries gives the impression of a mosaic to which tradition, superstition, poetry, and a genuine spirit of inquiry lend their shares, and in which persecution was the exception, not the rule. The repression of heresy by secular force therefore suggests two questions: what motive for persecution other than religious convictions appealed to the emperors, and what change was wrought in the tolerant spirit of the empire by the persecution of the Christian sects? No definite answers can be given, but there are certain conditions and facts which modify the impressions which the preceding legislation may leave concerning the intolerant influence of the church.

In the first place, the social aspects of certain sects made them the subject of legislation. Chief among these were the Manichæans. Their doctrines were never attractive to the multitude; only the thoughtful and devoutly minded were drawn into the sect, says Augustine. The ascetic, secret character of their teaching, their questionable attitude toward family life and the popular prejudice which associated with their services magical and immoral practices made them obnoxious. Diocletian ordered them to be exiled, their leaders to be subjected to capital punishment and their property to be confiscated to the *fiscus*.¹ The

¹ *Codex Gregorianus*, xiv, 4.

tolerant Valentinian I was active in the suppression of the magic arts and so ordered the Manichæan teachers to be fined, and their places of meeting to be confiscated.¹

Theodosius took from the Manichæans and similar obnoxious sects the right of making and receiving legacies, confiscated their property bequeathed to their sons, if these were of the same faith as their fathers, and interdicted any celebration of their rites, while Valentinian the Younger forbade their residence in all parts of the Roman world, especially at Rome, under penalty of death.² Their stronghold in the west was Africa, where, with the Donatists, they were the subject of frequent legislation by Honorius.³

The social aspects of the Donatist schism also made it a subject of legislation in the later fourth and early fifth centuries. The emperors from Constantine to Honorius, with the exception of Constans, permitted the Donatists to remain unmolested. The edicts of Gratian and Valentinian which mentioned them were not enforced outside of Italy. But finally when the schism broadened from an ecclesiastical quarrel to a source of civil disorder, persecution was resorted to.

The Circumcellions, a mendicant, socialist sect, were appealed to for aid by the Donatists at the time of the persecution of Constans. Northern Africa was soon infested with a body of religious fanatics, escaped slaves, erring priests and nuns who tortured the Catholics, defiled churches and forced the laity to accept Donatist baptism. In 395 Theodosius died and Gildo, a native prince and friend of the Donatists, usurped the administration of Africa. A period

¹ *C. Th.*, xvi, 5, 3. *Cf. C. Th.*, ix, 16, 7, 8, 10, 11.

² *C. Th.*, xvi, 5, 7, 18. The other sects were the Encraticæ, Apotactitæ, Hydropharastitæ and Saccafari.

³ *Cf.* the edicts mentioned in the following paragraphs.

of wild religious license now opened; when Gildo was overthrown in 398, the Catholics took vengeance by having Honorius repeal the privilege of assemblage given the Donatists by Julian.¹ In 405 Honorius, in reply to a petition of an African council of the preceding year, also declared the Donatists to be heretics, confiscated their places of assembly, excluded them from testamentary rights, and imposed fines upon them.²

A dreary civil war ensued. Upon the death of Stilicho in 408, the Donatists claimed that the laws made during his regency now passed out of effect. But Olympus, the successor of Stilicho, was a Christian, and in answer to petitions from Augustine and a synod of Carthage, the legislation against the schismatics was confirmed.³ The Catholic bishops then expressed their thanks to the emperor and informed the civil authorities of the nature of the law. In 409, on account of the sympathy of the Donatists for Attalus, the rival emperor set up by Alaric, the enforcement of the legislation against them was forbidden.⁴ But in the following year the army sent to Africa by Attalus was defeated, "the decree which the followers of heretical superstition had obtained to protect their rites" was rescinded, and "the penalty of proscription and death" was imposed for their "criminal audacity in meeting in public."⁵ The tribune Marcellinus was appointed to convoke and preside over a conference of Donatists and Catholics. This occurred in June, 411; the decision was in favor of the Catholics, and the Donatists were ordered to deliver up their

¹ *C. Th.*, xvi, 5, 37.

² *C. Th.*, xvi, 5, 38, 39. It is interesting to note that this was the first state legislation on heresy approved by Augustine.

³ *C. Th.*, xvi, 5, 44, 45, 46. The latter seems to be in response to the synod of Carthage.

⁴ *Ibid.*, 5, 47.

⁵ *Ibid.*, 5, 51.

churches and to accept the Catholic faith. Honorius renewed the penalties against them in 414, branded them with perpetual infamy, and in 415 threatened with death all Donatists who dared to celebrate their religious rites.¹ The persecution now began its final and most bloody period. The Donatists in despair grew indifferent to life. They attacked armed bodies of Catholics and, rather than fall into the hands of their enemies, often committed suicide.² The conflict continued until the invasion of Africa by the Vandals. The persecution of the church which the latter instituted, obliterated the rivalry of Donatist and Catholic.

Religious dissension was indeed one of the characteristics of the age. Gregory of Nyssa has left a graphic picture of mechanics and slaves who were profound theologians. "If you desire a man to change a piece of silver he informs you wherein the Son differs from the Father, and if you ask the price of a loaf you are told by way of reply that the Son was created out of nothing."³

Some interference in religious matters by the state was therefore only natural, perhaps unavoidable; but while the legislation regarding heresy is abundant, the information regarding its execution is meager. Sozomenus says of Theodosius that, "great as were the penalties adjudged by the laws against heretics, they were not always carried into execution, for the emperor had no desire to persecute his subjects, he desired only to enforce uniformity of belief about God through the medium of intimidation."⁴ If the

¹ *C. Th.*, xvi, 5, 55 (of 412); 54 (of 414); 55 confirms the penalties imposed during the administration of Marcellinus, its occasion being the appointment of a new governor of Africa. *Cf.* 56, 57, 58.

² Augustine, *Ep.*, 185.

³ *Oratio de Filio et Spiritu Sancto*. Migne, *Pat. Lat.*, vol. xlvi, p. 357.

⁴ *H. E.*, vii, 12.

edicts of Theodosius were not rigorously enforced, what must be said of the legislation of his inefficient successors?

No special courts were established for the prosecution of heretics. The laws against them were executed through the public tribunals.¹ As the civil officers were not skilled in matters of doctrine, the guilty must have escaped punishment by their ability to quibble and play with ecclesiastical words and phrases. This probably accounts for an edict of Arcadius which speaks of those who by slight arguments deviate from the standards of the Catholic religion.² The acceptance of an orthodox creed would therefore, according to a law of Honorius, quash all prosecution for heresy.³

¹ There is one edict which provides for special tribunals for heresy. It authorizes the pretorian prefect to appoint inquisitors, open a forum and receive reports of denunciators without the dishonor of delation. *C. Th.*, xvi, 5, 9. But there is no information regarding the execution of the edict. Its purpose was probably to intimidate.

² *C. Th.*, xvi, 5, 28. *Haereticorum vocabulo continentur et latis adversus eos sanctionibus debent succumbere, qui vel levi argumento a iudicio catholicae religionis et tramite detecti fuerint deviare. Ideoque experientia tua Euresium haereticum nec in numero sanctissimorum antistitum habendum esse cognoscat (395).*

³ *C. Th.*, xvi, 5, 41. *Licet crimina soleat poena purgare, nos tamen pravos hominum voluntates admonitione poenitentiae volumus emendare. Quicumque igitur haereticorum, sive Donatistae sint sive Manichaei vel cuiuscunque alterius pravae opinionis ac sectae, profanis ritibus aggregati catholicam fidem et ritum, quem per omnes homines cupimus observari, simplici confessione susceperint licet adeo inveteratum malum longa ac diuturna meditatione nutriverint, ut etiam legibus ante latis videnatur obnoxii: tamen hos, statim ut fuerint Deum simplici religione confessi, ab omni noxa absolvendos esse censemus, ut ad omnem reatum, seu ante contractus est, seu postea, quod volumus, contrahitur, etiamsi maxime reos poena vidatur urgere, sufficiat ad abolentionem, errorem proprio damnasse iudicio, et Dei omnipotentis nomen, inter ipsa quoque pericula requisitum, fuisse complexum, quia nusquam debet in misseriis invocatum religionis deesse subsidium. Ut igitur priores quos statuimus, leges in excidium sacrilegarum mentium omni excutionis argeri iubemus effectu, ita hos, qui simplicis fidem religionis, licet sera confessione, maluerint, censemus datis legibus non teneri.*

Finally, the interference of the state in matters of faith was a problem to the church fathers of the third and fourth centuries. Tertullian, early in the third century, declared that it is "a fundamental human right, a privilege of nature, that every man should worship according to his own convictions; it is assuredly no part of religion forcibly to impose religion, to which free will and not force should lead us."¹ Lactantius, a contemporary of Constantine, also laid down the principle that "religion can not be imposed by force; if you wish to defend religion by bloodshed and by torture and by guilt, it will no longer be defended but will be polluted and profaned."² Chrysostom, living in a later period, when the alliance of church and state had further developed, approved the withdrawal of the right of assemblage from heretics and the confiscation of their property, but he also recommended that Christian love be shown them.³ It was only gradually that Augustine, who moulded Christian thought in the west, was reconciled to enforced conformity to the Catholic faith. Long acquaintance with the Donatists, failure to convert them by argument, and the formulation of his theory of the Christian state led him, after the year 400, to decide that though it is "better that men should be brought to serve God by instruction than by fear or punishment," the latter means must not be neglected.⁴

Quae ideo sanximus quo universi cognoscant, nec profanis hominum studiis deesse vindictam et ad rectum redundare cultum, legum quoque adesse suffragium (407).

¹ *Ad Scap.*, 2; cf. *Apol.*, 24.

² *Div. Inst.*, v, 2; cf. Schaff, *Progress of Religious Freedom*, pp. 5, 6.

³ Hom. xxix and xlvi in Matt.

⁴ *Ep.* 185. In his *Con. Gaud. Don.*, i, 20, he advances the idea that if the state is not permitted to punish religious error, it cannot punish any other error, for religious error like secular crime proceeds from the evils of the flesh. Cf. *Ep.*, 123, for the evolution of his ideas on heresy.

The case frequently cited as typical of the conditions and opinions of the age regarding the treatment of heretics, is the execution of Priscillian and the persecution of his followers. In 384 Priscillian was condemned by the synod of Bordeaux for teachings tainted with Manichæism. He then appealed to Maximus, the usurping Augustus of the west. Martin of Tours and the better element of the Gallic church were alarmed, for to them it was sufficient "that condemned heretics be driven from the church by episcopal sentence," and it was "a new and unheard-of crime that the secular judge should hear a case of the church." They therefore advised Ithacus, the ecclesiastic pressing the case against Priscillian, to desist from prosecution in a secular court, and Maximus "to abstain from the shedding of blood." But their protest was without effect. Maximus appointed the Prefect Ennodius to conduct the trial and in a "twin judgment" Priscillian was found guilty of magic. After confirmation of the sentence by Maximus and a repetition of the procedure, Priscillian was put to death by the sword, and a number of his followers were executed or exiled.¹ The severity of the persecution as well as the violation of the law and custom that criminal charges against bishops should be examined by a synod before action by the civil authorities, made it repulsive to the more prominent ecclesiastics of the west. Ambrose, Martin of Tours and Pope Siricius expressed their disapproval and refused fellowship with Ithacus and his followers.

Not till the fifth century, when Germanic revolutions and invasions caused constant disorder and the administrative system was less efficient than ever, was the death penalty

¹ The source for the persecution of Priscillian is Sulpicius Severus, *Chronicon*, ii, 46, 5.

for heresy justified by ecclesiastical theory. Then Leo I, who secured imperial recognition of the authority of Rome over other churches of the west and anticipated the dogmatic arguments by which the papacy was later defended, approved the work of Maximus—indeed he “accepted as a duty the suppression of heresy and raised no objection to legislation which treated heresy as a crime against civil society, and declared it punishable with death.”¹ The legislation of the emperors therefore furnished a precedent for later ages, rather than a condition of constant and active persecution, and the opinion of the leading ecclesiastics regarding secular intervention in matters of faith was clearly not unanimous.

When the church began to supplant paganism, and non-conformity to its standards of faith caused the ejection of guilty clerks from their churches and brought legal disabilities to the laity, ecclesiastical institutions naturally became a subject of legislation.

There is no better example of the strong influence which ecclesiastical ideas exercised at the imperial court than the edicts which forbid repetition of sacred baptism.² Since that sacrament was believed to purify the recipient from the guilt of previous sins, the Donatist theory of the inefficacy of sacraments administered by polluted hands was a vital problem in the life of the church. While Valentinian would not proscribe heretics, he declared in reply to a petition of Gallic bishops that “the priest who repeats the rite of baptism and, contrary to all canons, defiles that sacrament by repetition, is unworthy of the priesthood.”³ Gratian also condemned “the error of those who, despising the precepts of the apostles, abuse the Christian sacraments by rebaptiz-

¹ Chreighton, *Persecution and Tolerance*, pp. 76, 77.

² *C. Th.*, xvi, 6.

³ *C. Th.*, xvi, 6, 1.

ing" and ordered their churches to be delivered to the Catholics and their secret places of meeting to be confiscated to the *fiscus*.¹ In the same year that Honorius began his stringent legislation against the Donatists, he issued three edicts against the rebaptizers, while the first edicts of Theodosius the Younger on heresy were directed against the Novatians, the rebaptizers of the east.²

The extent to which clerical conceptions of life might infiltrate Roman culture is well illustrated by the legislation on celibacy. There was a strong feeling in the early church, largely Gnostic in origin, that the sexual relation involved sin, but marriage of the clergy was never forbidden in apostolic times. Some of the sects went so far as to reject the institution of marriage and by the fourth century it was generally held that the celibate life was superior to the marital. In recognition of this sentiment Constantine repealed the disabilities which the Roman law had imposed on the celibate and gave to minors who expressed the intention of remaining celibate permission to make testaments.³ Constantius denied to violators of sacred virgins any escape from the penalty of the law, while Jovian made any attempt to seize consecrated virgins or widows for the purpose of marriage, even with their consent, a capital offence, and withdrew from children of such a union their right of succession to parental property.⁴

The relation of celibacy to clerical orders was also a subject of legislation. In the west, the radical opinion regard-

¹ *C. Th.*, xvi, 2.

² *Ibid.*, 3, 4, 5, 6, 7.

³ *C. Th.*, viii, 16, 1. *Soz.*, I, 9. The law referred to was the *Lex Poppæa*, enacted by Augustus. Tacitus, *Annal.*, iii, 25.

⁴ *C. Th.*, ix, 25, 1 (Constantius). The Roman law provided that if the violated woman should withdraw the accusation, the prosecution should end. Constantius made escape from the penalty, which was death, impossible. *Ibid.*, ix, 25, 2 (Jovian).

ing the sexual relation of the clergy was first expressed at the synod of Elvira in 306. There it was required that bishops, priests and all clerks should abstain from their wives and should not beget children. This rule, however, was not observed, and the marriage of clerks was recognized in the legislation of Constantius and Theodosius.¹ But in the later part of the fourth century the celibacy of the clergy was agitated by the papacy, and consequently African and Spanish councils required clerks who engaged in the administration of the sacraments to separate from their wives and forbade the promotion in orders of those who were fathers of children.² This legislation aroused much opposition. In Italy, Gaul and Spain many Christians held to the sanctity and purity of the marital relation and were consequently persecuted. Among them was Jovinian, who denied the value of the celibate life. He was scourged and driven from Rome, and his followers deported by Honorius in 412.³ However, actual separation of husband and wife who had been married before ordination was not required, only abstinence from sexual intercourse. Consequently, many of the clergy at the time of ordination designated their wives as sisters and so continued to live with them. Abuse of this custom and the protection of existing marriages led Honorius in 420 to forbid clerks of all grades to associate with "foreign women" (namely, all except mothers, daughters and blood relatives), and to state that celibacy did not require the divorce of wives wedded

¹ *C. Th.*, xvi, 2, 9, 10, 11, 14; v, 3.

² *Con. Carth.*, II, 2; V, 3; *Con. Toledo* (400); Lea, *History of Sacerdotal Celibacy*, ch. v.

³ *C. Th.*, xvi, 5, 53. Another edict of Honorius in 420, which punished with deportation any one who looks upon a sacred virgin as a violator, probably refers to the Jovinians. Cf. Godefroy, *C. Th.*, ix, 25, 3.

before entrance to the priesthood—a rule which, frequently cited by the councils, became the formal custom of the early middle ages.¹

The political and social power acquired by the bishops, as well as the enforced conformity to standards of faith, made their election in the days of the later Roman Empire, as in the Middle Ages, a matter of public importance.

With the transition from the conception of the episcopacy as an administrative office to an institution ordained by God, the consent of neighboring bishops as well as the choice of the people became necessary for investiture with its rights and duties. Consequently the election of patriarchs was often the occasion of an ecclesiastical synod and the emperors, through their relation to synods, which they often convened and attended, might exercise a direct influence on elections. Constantine wrote to the council and people of Antioch not to choose Eusebius of Cæsarea bishop of that city.² Constantius convened “an assembly of bishops of Arian sentiment” and deposed Paul of Constantinople. It is also probable that he deposed other bishops by similar methods.³ Valens ejected Eleusius, by an edict, and installed Eunomius as bishop of Cyzicus, and there are other instances of the Arian clergy securing investiture of their bishops through imperial favor during his reign.⁴

In the west Valentinian I instituted a new policy. Visiting Milan in 374 he found a synod assembled to elect a successor to Auxentius, the deceased bishop of the city. The synod asked him “by his wisdom and piety” to choose a

¹ *C. Th.*, xvi, 2, 44. The first part of this edict is similar to the third canon of Nicea. The latter part is the rule of the Roman church as stated by Leo I, *Ep.*, clxvii, in. 3; Löning, *Gesch. des deutschen Kirchenrechts.*, vol. i, p. 181.

² Euseb., *Vita*, 60, 62.

³ *Soc.*, ii, 7; *Soz.*, iii, 4; iv, 27.

⁴ *Soc.*, iv, 7, 15; *Soz.*, vi, 13, 14; *Theod.*, iv, 15.

new bishop. He replied, "That is an affair beyond my strength. You, who are ordained with divine grace and are illumined by its splendor, can decide better than I." The result was the election of Ambrose, a catechumen and a secular official, who formulated the clerical theory of the immunity of the church from any secular control.¹ This policy of non-intervention in ecclesiastical affairs was continued by Gratian, and Honorius, in deciding the contest of Eulalius and Boniface for the bishopric of Rome, made it definitely the policy of the state in disputed elections.

When Pope Zosimus died in 418, the efforts to choose a successor resulted in a double election. Honorius, influenced by the report of the city prefect, believed that Eulalius was canonically elected and therefore banished Boniface. But the friends of the defeated candidate appealed to the emperor in his behalf and Honorius ordered his case to be re-opened at a synod to be held at Rome. When the synod failed to make a decision, Honorius ordered another hearing at Spoleto and forbade either of the rival candidates to return to Rome in the meantime. Eulalius disregarded this order and Honorius promptly banished him and declared Boniface the legitimate Bishop of Rome. To provide for similar cases in the future, Honorius now issued an edict which declared that neither candidate of a double election should be installed in office, but that one "should remain in the apostolic seat whom the divine judgment and universal consent shall choose in a new election."²

¹ Theod., iv, 5, 6; Soc., iv, 30. The account of Socrates clearly shows that it was customary for the emperor to influence elections. Theodoret adds that the baptism and ordination were by order of the emperor. This and the fact that Ambrose was a civil officer are responsible for the popular opinion that imperial influence caused his election.

² Haenel, *Corpus Legum*, p. 239; Langen, *Gesch. der römischen Kirche*, vol. i, p. 763.

In the east, imperial participation in elections continued. Arcadius, with the consent of the people and clergy, called Chrysostom to the seat of Constantinople.¹ After the death of Sisinnius none of the candidates found favor with Theodosius the Younger and he caused Nectorius of Antioch to be invested with the patriarchate.² Under Marcian and Leo elections were free, but Zeno and Justin again made the episcopacy a part of their political patronage, while Justinian's legislation is notable for the absence of any prohibition of political influence in elections.³ The result of these conditions was the formation of an intimate relation between church and state in the east. The church became subservient to the state, to whose interests its ideals and work were deemed vital; while the independence of the church from temporal control became the working theory in the west—conditions of much significance in the separation of the eastern and western churches.

The relation of the Bishop of Rome to the other ecclesiastical authorities in the west was also a subject of civil legislation which, like that on elections, was not incorporated in the Theodosian code.

The participation and leadership of the Papacy in ecclesiastical affairs during the fourth century, and the attitude of the church toward the Roman See are obscure and indefinite. The Council of Nicea designated Rome as a patriarchate, but it did not state the extent of the jurisdiction of the

¹ Soc., vi, 2.

² Soc., vii, 30; cf. 39. Nicephorus, xiv, 47.

³ Nov., lxxiii, c. 1; cxxviii, c. 2. For elections in which Justinian exercised an influence, cf. Staudenmeier, *Gesch. der Bischofswahlen*, p. 46. This continual interference of the eastern emperors in episcopal elections explains the omission of the edict of Honorius from the Theodosian code.

Roman over other churches.¹ Eighteen years later the council of Sardica declared that a bishop deposed by a provincial synod might appeal to the Bishop of Rome, who should then convene a new synod to investigate his case. But no means for enforcing the decision of the synod or for reinstating the deposed bishop were prescribed; moreover, Sardica did not represent the opinion of the entire church, and as Constantius was hostile to the Athanasian clergy, its canons were not observed.² However, late in the century, when the Athanasian party had acquired abiding influence at the imperial court, Gratian defined the authority of the Bishop of Rome among the churches in terms very similar to the legislation of Sardica.

The condition that gave rise to this definition of power was the double election of Damasus and Ursinus to the See of Rome which soon extended from an ecclesiastical quarrel to an armed conflict in which blood was shed. The civil authorities called the clerks to account for their disturbance of the peace, but Valentinian I issued an edict, often cited by ecclesiastical authorities, that clerks should be heard only by clerks in matters of faith.³ Yet the emperor, in response to petitions of Damasus and his party, twice banished Ursinus. That unfortunate prelate had, however, such a strong following in Rome and southern Italy that when Gratian became sole administrator of the west in 375, the emperor deemed it necessary to renew the ban against him, and five years later he confirmed the election of Damasus in an edict which was probably issued at the instance of a Roman

¹ *Can. Nicea*, 6. Rufinus, *H. E.*, i, make the jurisdiction of Rome extend over the Suburbicarian provinces. This was the territory presided over by the *praefectus urbi*, but the jurisdiction of the Pope probably included more than this. Cf. Hefele, *Concilien Geschichte*, vol. i, p. 388; Löning, *Gesch. des deutschen Kirchenrechts*, vol. i, p. 436.

² *C. Sardica*, can. 3, 4, 5.

³ Ambrose, *Ep.*, xxi, 2.

synod. It declared that the sentence against one who "unjustly wishes to retain his church" after being "condemned by the judgment of Damasus, given with the advice of five or seven bishops," shall be enforced by the civil authorities; and that in future all disturbances in the churches of distant parts shall be decided by the metropolitan, or, if the metropolitan himself is concerned, the case shall go to Rome "or before him whom the Roman bishop shall indicate as judge;" and that if any priest or metropolitan is suspended unjustly, he may appeal to the Roman bishop or a council of fifteen neighboring bishops.¹ Two years later Theodosius, as we have seen, urged upon his subjects the acceptance of the faith professed by Rome; while the council of Constantinople in 381 gave the Bishop of Rome precedence over all other bishops.

A final and more definite statement of the authority of the Papacy was made in the fifth century by Valentinian III. Its purpose was to settle the rivalry of Arles and Rome for the ecclesiastical leadership of the west, a rivalry which was closely related to the political conditions of the age.

The military rebellions and depredations of the Germans in Gaul during the later fourth and early fifth centuries were a menace to the ecclesiastical as well as the civil administration. Therefore the Gallic clergy sought to form more intimate relations with Rome, and Innocent I. took advantage of this situation to claim for the See of Rome the highest judicial authority in the church. But in the reorganization of the Gallic provinces after the overthrow of Constantine

¹ Mansi, iii, 627. It is sometimes claimed that the edict of Valentinian extended the jurisdiction of the Bishop of Rome. This is hardly true. He simply gave the church authorities the right to decide ecclesiastical cases, while Gratian added the enforcement of ecclesiastical decisions by the secular authorities. The present edict concerning the Bishop of Rome was not observed in the church.

the Usurper in 411, Constantius, Master of Horse under Honorius, attempted to make Arles the centre of ecclesiastical as well as of political administration. In this plan he was supported, doubtless for political reasons, by Pope Zosimus, who informed the Gallic clergy that the Bishop of Arles had the exclusive right to ordain bishops in the provinces of Vienne and Narbonne I and II, and supported Patroclus of Arles in establishing his authority over the Bishop of Marseilles.¹ But after the death of Constantine there was a change in the attitude of the papacy toward the leadership of Arles. Boniface I lent a willing ear to the appeal of the clerks of Luteva who questioned the legality of the ordination of their bishop by Patroclus; and Coelestinus applied to conditions in Gaul the rule of Nicea, that each metropolitan should be content with his own province.²

The decisive period of this rivalry between Rome and Arles was in the pontificate of Leo I. The political disorder which followed the capture of Toulouse by the Visigoths in 419 and the constant menace of the Franks and Burgundians on the northern frontier of Gaul resulted in ecclesiastical as well as political confusion. The unity of the Gallic church, which represented social as well as religious interests, was threatened. Hilary, bishop of Arles, therefore resorted to extreme measures to realize Patroclus's ideal of an independent, unified Gallic church under the leadership of Arles. He held synods, ordained and deposed bishops of other provinces than his own, and was probably assisted by the civil authorities.³ In 444 he caused the deposition of Celidonius, bishop of Besançon, on charges of

¹ Zos., *Ep.*, i. Cf. *Constitutiones Sirmondi*, vi, in which Valentinian III recognizes the authority of Arles. (Haenel, *Corpus Juris Antic-Justinianae*, vol. iii.)

² Bon., *Ep.*, xii; Colest., *Ep.*, iv; Löning, *op. cit.*, vol. i, p. 472.

³ *Nov. Vcl.*, iii, 16.

marrying a widow and of rendering a sentence of death before his ordination to the episcopacy. Celidonius appealed to Leo. Witnesses were found who testified that the charges were false, and a Roman synod convoked by Leo declared Celidonius innocent and restored to him his episcopal rights and honors.

This is the first instance of the bishop of Rome exercising disciplinary authority over another metropolitan. The right to appeal through him to a synod had been granted at Sardica, but not the authority to enforce the synod's decision. Knowing that the claims of Arles had had the support of the civil power in Gaul, Leo forestalled any actions thereby in behalf of Hilary by securing an imperial confirmation of the authority he had assumed. In an edict Valentinian recognized the Bishop of Rome as the primate of the church, declared Hilary's investiture of bishops an offence "against the majesty of the empire and the honor of the apostolic see," forbade any deviation from ecclesiastical custom without "the authority of the venerable Pope of the Eternal City," and ordered the secular officials to enforce, if necessary, the obedience of bishops to a citation to "the court of the Roman bishop."¹

Thus, as the empire declined, the autonomy of the church, its independence from secular control and the leadership of the Bishop of Rome as its supreme head and authority were recognized in the jurisprudence of the west. The significance of this policy, the sanction by the empire of a social and political force which was to supplant it in the direction of human destinies, is more fully realized by a consideration of the purely secular phases of the ecclesiastical legislation preserved in the code of Theodosius.

¹ *Nov. Val.*, iii, 16. The conditions and events in Gaul during the period of the controversy of Rome and Arles are obscure. I have followed Löning, *G. d. d. K.*, vol. i, pp. 463-499.

CHAPTER IV

THE RELATION OF THE CHURCH TO THE SOCIAL ORGANIZATION OF THE EMPIRE

THE relation of the church to the economic and social structure of society has long been a problem of practical as well as speculative interest. The exemption of its property from taxation and its corporate privileges, the immunity of its officials from services to the state, the claim of its courts to exclusive jurisdiction over the litigation of all its servants—these problems of mediæval and modern government have their origin in the generosity of the Roman emperors. Indeed, their liberality speedily resulted in unforeseen perplexities with which legislation was not able to cope.

In the fourth century Roman economic and administrative development reached a crisis. Political centralization, the establishment of a system of public works, the maintenance of a great army and the extravagance of the emperors had increased the amount and variety of taxation to such an extent that, by the opening of the fourth century, the farmers, in many places, could not afford to till the soil, nor the artisans to continue their industries. There were two possible remedies for the situation: a radical change in the existing administrative policy or the maintenance of existing conditions through central control and governmental guidance of individual activity. The latter course was adopted by Diocletian and Constantine. Their solution of the economic problem was to force the individual, who could

no longer work for his own advantage, to work for that of the state. They therefore assumed control of industries and prevented the amelioration of the fortune of the citizen by making professions hereditary. The soldiers in the army, the workmen in the mines, the *coloni* on the plantations, as well as the higher classes, were bound to their positions in life, and their sons inherited their duties and obligations.¹

The caste-like organization which society was gradually assuming is well illustrated by the fate of the *curiales*. Originally they were members of the municipal senates composed mainly of those who had held offices; but with the centralization of government and the increasing need for revenue their ranks were recruited through appointments made by the imperial officials, and finally Constantius, in 342, made the curial order include all land-holders of fifty acres.²

The significance of this legislation is realized when the obligations of the *curiales* are examined. In addition to taxes on property and the responsibilities of local administration, they were burdened by obligations to the central government. These were the *munera*, or liability for services on the roads and public works, *etc.*; the duty of apportioning and collecting the taxes levied by the imperial fiscus, and the responsibility for all deficiencies in the revenue which they were required to collect. Therefore, the duties of the *curiales* were made hereditary, from which escape was only possible after an individual had gone through the routine of all official duties to which his membership in the curial class might make him liable. Then he might enter the new senatorial order created by the

¹ There is an excellent summary of these conditions by Wm. A. Brown in *The Political Science Quarterly*, vol. ii, no. 3, under the title, "State Control of Industry in the Fourth Century."

² Marquardt, *Römische Staatsverwaltung*, vol. i, p. 190. *C. Th.*, xiii, 1, 33.

emperors, in which he was exempt from municipal burdens, from torture and from service on the public works, but he was still subject to the land-tax, gifts on certain anniversaries, and, if appointed to offices, to expenses for public games.

In this society where the individual was oppressed with ever-increasing obligations to the state, there were privileged classes. Teachers, rhetoricians, priests and physicians were granted immunity from personal burdens (*munera*) by various emperors because their services were regarded as contributions to the public welfare.¹ To these privileged classes Constantine added the Christian clergy. In a letter to Anulinus, Proconsul of Africa, he directed that those who give their services to the worship of the divine religion, and who are commonly called clergymen, be entirely exempt from all public duties (*omnibus omnino publicis functionibus*) in order that they may not by any error or sacrilegious negligence be drawn away from the service of the Deity, but may devote themselves without any hindrance to their own law.² These privileges were extended to the entire clergy in 319, but heretics were excluded from enjoying them in 326. In 330 readers and subdeacons who had suffered at the hands of the heretics were included in the exempted class.³

¹ Kuhn, *Die städtische und bürgerliche Verfassung des röm. Reiches*, pp. 183, 106.

² Euseb., *H. E.*, x, 7.

³ *C. Th.*, xvi, 2, 2. Qui divino cultui ministeria religionis impendunt, id est hi, qui clerici appellantur, ab omnibus omnino muneribus excusentur, ne sacrilegio livore quorundam a divinis obsequiis avocentur (319). *Ibid.*, 5, 1. Privilegia, quae contemplatione religionis indulta sunt, catholicae tantum legis observatoribus prodesse oportet. Haereticos autem atque schismaticos non solum ab his privilegiis alienos esse volumus sed etiam diversis muneribus constringi et subiici (326). *Ibid.*, 7.

This immunity from the economic obligations of citizenship was extended to the property of clerks by Constantius, who excused it from liability to new collations, extraordinary superindictions, the imposts on trade and industry, contributions for the support of the army, public works, and all the responsibilities of curial property.¹ Indeed, not only clerks, but their wives and children were likewise relieved from curial obligations, showing that the tendency in the new fortunes of the church was to make the privileges of the clergy, like those of other professions, hereditary.²

The Arian party, always in a minority in the west, naturally had no sympathy for the immunities from which its opponents derived all the benefit. This perhaps explains Constantius's revival of Constantine's legislation in 354, providing that only those clerks who had no possessions should be exempt from curial obligations.³ A little later the acceptance of an Arian creed was forced on the synod of Milan, while the Arians of Rome expelled Pope Liberius from the city and elected an anti-pope. But the people were not in sympathy with the movement and in 357 Liberius was recalled. The abrogated ecclesiastical privileges were then restored to the church of Rome and three years later, in reply to a petition of the council of Ariminum, they were renewed in the interest of the entire church.⁴ The legislation authorizing them, like the other ecclesiastical laws of Constantine and Constantius, was rescinded by Julian, but it was revived by Valentinian, and its exemptions were extended to the lower orders by Gratian.⁵

¹ *C. Th.*, xvi, 8, 9, 10. There is no mention of the exemption from the capitation tax levied on property as well as persons.

² *C. Th.*, xvi, 2, 9. "Filiis tamen eorum, si curiis obnixii non tenentur, in ecclesia perseverare. Cf. 10. Quod et conjugibus et liberis eorum et ministeriis, maribus pariter ac feminis, indulgemus, quos a censibus etiam iubemus perseverare immunes."

³ *C. Th.*, xvi, 2, 11.

⁴ *Ibid.*, 2, 13, 14, 15.

⁵ *Ibid.*, 15, 18, 24.

As soon as these privileges were granted, two problems arose which necessitated restrictive measures. First, the expansion of church membership increased the number of the clergy, over whose choice the emperor exercised no control. Accordingly the state was deprived of the services of a large and increasing class of citizens whose immunities tended to become hereditary. On the other hand, many *curiales* sought refuge from their economic burdens by entering the ecclesiastical orders.

Therefore, Constantine, in 320, forbade *curiales* or those able to perform the duties of *curiales* to enter the service of the church, the context of the edict implying that there had been similar legislation previously;¹ and another law of the same character was enacted six years later.² In explanation of these restrictions of clerical privileges Constantine stated the relation which the church should sustain to secular society in the following sentences: "Those should be chosen to the places of deceased clerks who are poor in fortune and may not be held subject to civil obligations." "The rich ought to bear the burdens of the world, the poor ought to be supported by the riches of the church."

These restrictions were not observed nor was Constantine's idea of the social service of the church realized. The church was more than a benevolent institution, and its offices were something more than a livelihood for those poor in worldly goods. *Curiales* continued to find their way into clerical orders, and so escaped their economic responsibilities. Constantius therefore subjected clerical property to

¹ *C. Th.*, xvi, 2, 3. Note the opening words: "Cum constituto emissa præcipiat."

² *C. Th.*, xvi, 2, 6.

the regular taxes, restored the property of *curiales* who had become clerks to curial obligations and required the owners entered ecclesiastical service with the consent of their fellow *curiales*.¹ Valentinian I also required *curiales* who had taken orders during his reign to resume their public obligations and forbade "rich plebeians to be received by the church."² Violations of the expressed policy of the state continued, but through the influence of Ambrose Theodosius pardoned those guilty prior to 388, while the property of later offenders was confiscated to the *fiscus*.³ In 399 Arcadius required all *curiales* who had risen to the rank of bishop, presbyter, or deacon since 388 to furnish a substitute to their curia or to relinquish their property; and those in the minor orders were to be immediately subject to their obligation to the state.⁴ A similar edict was issued by Theodosius the Younger, while Valentinian III forbade *curiales* to take orders on any conditions, and also established the rule that no one whose property exceeded 300 *solidi* should enter ecclesiastical service. The archdeacon was charged by Majorian to correct all violations of this law.⁵

The relation of the clergy to the mercantile profession was also a subject of legislation. Because "it is evident that the profits they make in their shops and places of business will be given to the poor," Constantius exempted

¹ *C. Th.*, xvi, 2, 15; viii, 4, 7; xii, 1, 49.

² *Ibid.*, xvi, 2, 17, 19, 21, 22.

³ *Ibid.*, xii, 1, 121.

⁴ *C. Th.*, xii, 1, 163. Deposed clerks were also forced to assume curial obligations, but they were not permitted to serve in any civil or military office. xvi, 2, 39.

⁵ *Ibid.*, xii, 1, 172; *Nov. Val.*, iii, 3.

clerks from taxes on trade.¹ But his idea of the altruistic character of the clergy changed in his later years, and he limited the exemption to occupations whose only object was to supply the necessities of life.² In the readjustment of ecclesiastical affairs after the death of Julian, this exemption was not revived by Valens in the east, but Gratian granted it in the west in case of transactions not exceeding 10 solidi.³ Under Honorius the privilege was revived, but finally Valentinian III revoked all immunity from taxation in the case of clerks engaging in trade.⁴

In conferring on the clergy immunity from civic obligations Constantine and Constantius evidently produced conditions which legislation could not control. But this was not the result of any direct opposition by the church to the policy of the state. Indeed, the relation of the clergy to the social orders presented an ecclesiastical as well as a political problem. The immunities of the profession led many to enter its service for worldly and unconsecrated purposes. Consequently Pope Leo I saw in Valentinian III's prohibition of *curiales* entering the priesthood a protection to the church. He consequently advised that *curiales* who had taken orders to avoid their civil obligations should be deposed, and that those engaging in military service after bap-

¹ *Ibid.*, xvi, 2, 14. "Et cum negotiatores ad aliquem praestationem competentem vacantur, ab his universis istius modi strepitus conquiescat; si quid enim vel parcimonia vel provisione vel mercatura, honestati tamen conscia, congesserint, in usum pauperum atque egentium ministrari oportet, aut id, quod ex eorundum ergasteriis vel tabernis conquiri potuerit et colligi, collectum id religionis aestiment lucrum."

² *C. Th.*, xvi, 2, 15.

³ *Ibid.*, xiii, 1, 5, 6, 11. Valens had a similar conception of the service of the church to that of Constantine and Constantius. "Christianos quibus si verus est cultus adiuvaré pauperes et positos in necessitatibus volunt." (5)

⁴ *Ibid.*, xvi, 2, 36; *Nov. Val.*, xxxiv, 4.

tism should not be admitted to orders.¹ The fourth council of Toledo excluded from the episcopacy those "bound to the obligations of a curia," who have not risen from the lower orders or are under thirty years of age. These rules of the fifth century were in the twelfth century incorporated in the *Decretum* by Gratian as precedents for later ages.

The attitude of the church toward clerical industries also coincided with that of the state. In the first and second centuries, while the church was an obscure and unpopular institution, its officials depended on their individual labor or some secular profession for a livelihood, but with the increase of membership and wealth in the third century, a feeling arose against the combination of spiritual and worldly professions. It was not prompted by a belief in the unworthiness of secular pursuits, but by a conviction that the spiritual duties of the priesthood were sufficient to demand all the time of the clergy.² In the fourth century the synod of Elvira forbade bishops, priests and deacons to leave their province for purposes of trade; a Donatist council at Carthage forbade clerks to engage in any secular occupation, while Jerome and Augustine complained that the spiritual duties of the clergy suffered on account of secular pursuits.³ The exemption of clerks from taxes on

¹ *Decretum*, pars i, dist. 51; cf. Ivo Chart, *Decret.*, iv, 349. A similar comparison might be made of the attitude of church and state toward the entrance of slaves into clerical service. The apostolical canons require that no one not his own master should become a clerk (c. 82). Leo I forbade the ordination of slaves without their masters' consent (*D. dist.*, 54, c. 1). Valentinian III forbade the ordination of tenants, slaves and *coloni*. But if a member of these classes should become a clerk and remain in orders thirty years or rise to the episcopacy, his master could not seize him, but he might claim his *peculium*. *Nov. Val.*, iii; xxiv, 3. Cf. *D. dist.*, 54, cc. 6-9.

² The sources of this sentiment were Cyprian and Tertullian.

³ Elvira (306), c. 19; Carthage (348); Jerome, *Ep.*, 52, c. 5; Aug., *Sermo*, 85.

trade was therefore made in consideration of the custom and conditions of the early centuries of the church, and its removal was in accord with the better sentiment of the age.

While the exemption of clerks from personal burdens and liability to certain forms of taxation and the withdrawal of similar privileges from the pagan priesthood by Gratian made the clergy a privileged class in a society notable for the number and variety of its economic obligations, the institution they served received a similarly distinctive character by the recognition of its right as a corporation to receive donations and testamentary bequests.

The recognition of the corporate rights of the church antedates the reign of Constantine, a fact often neglected in forming an opinion of the material fortunes of the church in the age of its persecution. The litigation of the Christians of Rome with the corporation of inn-keepers, the decision in their favor by Aurelian, and his award of property claimed by Paul of Samosata "to those who are in communion with the bishops of Italy and the Bishop of Rome," as well as Valerian's confiscation of ecclesiastical property and its restoration by Galerius, clearly show that the property rights of individual churches were recognized in the third century.¹ After the persecution of Diocletian Maxentius authorized Pope Miltiades to reclaim the property of the church confiscated since 304 and Licinius granted the same privilege "to the corporation of Christians" in the east. These facts are evidences of the legal recognition of corporate privileges in the fourth century previous to the legislation in the Theodosian code.²

The character of these corporate rights is not definitely

¹ Lampridius, *Alex. Sev.*, 49; Euseb., *H. E.*, vii, 30, 19. *Ibid.*, vii, 13.

² August, *Brev. Coll. cum Donat.*, iii, 34; Lactantius, *De Mortibus Persecutorum*, 48.

known, but some appreciation of them may be formed by considering the nature of Roman corporations and making a comparison with ecclesiastical conditions.

The right of organizing societies and corporations was unrestricted under the Republic. On account of the activity of political clubs in the civil wars, Augustus, by the Lex Julia, dissolved all *collegia* except the ancient industrial guilds which tradition associated with Numa Pompilius, and prohibited new corporations to be formed without the consent of the emperor. These privileged *collegia* were of two classes, *collegia tenuiorum*, societies formed for purposes of charity and mutual aid, principally by the workingmen, and *collegia sodalitatum*, which combined with benevolent aims social pleasures. The enforcement of the Lex Julia varied according to the policy of each emperor. Thus Trajan was active in the suppression of illegal corporations, Hadrian made an exception in favor of charitable societies at Rome, and Septimius Severus extended this privilege to the provinces. Marcus Aurelius granted licensed *collegia* the rights of juristic persons and Alexander Severus gave them the right of representation by a *defensor*. They were thus brought under the control of the Roman administrative system and the greater toleration so gained is indicated by the fact that, with the reign of Alexander the words *coire licet* are no longer found in the inscription of the *Collegia*.

Since there is no account of the confiscation of ecclesiastical property previous to the persecution of 257, it is probable that the churches preserved their corporate possessions and legal interests as *collegia*, either as *collegia tenuiorum* or as simple religious societies, which societies were generally tolerated.² The inscription that records the gift of

¹ Cf. Liebenam, *Zur Geschichte und Organisation des röm. Vereinswesens*.

² *Dig.*, xlvii, 22, 1.

a cemetery to the church of Cæsarea is similar to the form by which burial land or places of assembly were given to *collegia*; and there are reasons to believe that Christian congregations were publicly and legally known under such vague terms as *cultores verbi*, or *ecclesia fratrum*, quite in keeping with the names of many *collegia tenuiorum*.¹ Tertullian wrote his apology during the reign of Septimius who was friendly to the *collegia* and this explains the language with which he describes the Christian communities and pleads for their toleration. The Christians make contributions (*stipem*) to their treasury (*arcem*) each month (*menstrua die*), and they should receive a "place among the legally tolerated societies" for, when "the virtuous meet together, when the pious, the pure-minded assemble in congregation, they should be called not a faction but a *curia*."² Some years after Tertullian wrote, the jurist Ulpian made membership in an illicit *collegium* equivalent to *crimen majestatis*; and a similar popular conception of Christianity may explain the charge of sacrilege and treason from which Tertullian defended the Christians.³ Moreover, that the names of the bishops of Rome were inscribed on the registers of the city prefect, and that the names of provincial bishops were also probably preserved on the registers of

¹ *Corpus Inscriptionum Latinarum*, viii, 9585; De Rossi, *Roma Sotteranea*, vol. i, p. 107. Pagan *collegia* were known as *cultores Jovis, Herculis, etc.*

² The words *stipem, arcem, menstrua*, are also found in the inscriptions of the *collegia*. Orelli-Henzen, *Collectio Inscriptionum Latinarum*, 6086. *Curia* in the African dialect corresponds to *collegium* in that of Rome.

³ *Dig.*, xlvii, 22, 2. Cf. xlviii, 4, 1. The charge of sacrilege was a popular one. Legally it was injury to sacral property, but the Christians were never found guilty of such an offense. This popular conception of sacrilege found its way into the code as injury to property of the Christian church. *C. Th.*, xvi, 2, 25, 31.

provincial governors, as well as the fact that the property rights of the church were recognized by various emperors, are best explained by the existence of Christian churches as licensed corporations.¹ This does not signify a legal recognition of Christianity, for the name Christian would not be taken by the *collegia*, nor does it mean that the character of Christian institutions was in any way modified by pagan foundations; but under some such fictitious title as those mentioned above, the churches might secure the right of assemblage and of holding property and thus ecclesiastical organization might survive the severe persecution of the second and third centuries.²

Under Constantine the privileges enjoyed by the churches as private *collegia* or, temporarily, as public foundations under Diocletian and Licinius were succeeded by similar privileges as legalized religious corporations. To Roman citizens the right was given to leave at death to "any of the most sacred and venerable Catholic churches" whatever they desired.³ By this edict the church received a far more extensive privilege than any of the religious founda-

¹ Vigneaux, *Essai sur l'histoire de la préfecture urbis*, p. 140. De Rossi, *Roma Sotteranea*, vol. ii, pp. vi, ix.

² De Rossi holds that the churches adopted the organization of the *collegia tenuiorum* exclusively. He has been criticised by Duchesne, *Les Origines chrétiennes*. Waltzung holds that the churches were religious corporations which were not licensed but were allowed to exist. (*Les Corporations de l'ancienne Rome et la charita.*) Cf. the work of Liebenam already mentioned.

³ *C. Th.*, xvi, 2, 4. *Habeat unusquisque licentiam, sanctissimo catholicae venerabilique concilio decadens bonorum quod optavit, relinquere. Non sint causa indicia, etc.* *Concilio* refers to an individual place, not an institution. Thus, Symmachus speaks of the *concilium patrum* for the senate and Tertullian uses the word for a temple. That Constantine did not recognize one universal church is evident from the interchangeable uses of the words *ecclesia* and *ecclesiae*. Cf. xvi, 2, 34, 38. His desire to exclude the heretical churches from the privilege of the law is probably responsible for its wording.

tions of paganism. These could only receive gifts or alienate property by consent of the people and with special ceremonies; and, with a few exceptions, never acquired the right to accept testamentary benefactions. As a justification of this extraordinary privilege it was stated that "nothing should be dearer to men than that the writing of their last wish, after which they will not be able to write again, should be unrestricted and their will, which may not return again, should have free play."¹

This privilege, like the immunities of the clergy, was subject to abuse and corruption. The age was one of religious enthusiasm and generosity, which were encouraged by the teaching of the churchmen. Augustine urged Christians to remember Christ as well as their sons in their last bequests. Parents often gave all their property to the church, leaving their children in want and hunger, and Jerome presents a sad picture of the clergy of Rome visiting the houses of rich matrons to solicit gifts.² Valentinian, therefore, ordered the confiscation of gifts and legacies of widows and minors that had been solicited by priests and monks.³ Twenty years later Theodosius forbade the appropriation of the property of a widow or deaconess to religious purposes or the execution of their legacies to that effect, reserving

¹ The church was also given the right of being represented in the courts by an advocate, or civil representative, instead of an ecclesiastic, for which privilege the similar right of pagan foundations was the precedent. *Cf. C. Th.*, xvi, 2, 38 (of Honorius), and Godefroy's comment.

² Aug., *Sermo*, 355, c. 4; *Ep.*, 262; Jerome, *Ep.*, 52. The law of the Falcidian Fourth protected the legal heirs from complete disinheritance. But the Sentences of Paul allow this rule to be applied only after gifts to the gods have been deducted. It is probable that a similar custom was observed in the case of testaments of the church. *Cf. Lex Romana Visigothorum* (ch. vi of this monograph).

³ *C. Th.*, xvi, 2, 20.

their property to the heirs, relatives and creditors.¹ But ecclesiastical influences were strong enough to secure the repeal of the law two months after its enactment and Theodosius the Younger allowed the church to inherit the property of clerks who died without testament or heirs.² Finally, Martian permitted widows, deaconesses and nuns to leave by testament, *fidei commissa*, or codicil, whatever they pleased to churches, bishops, clerks or deaconesses.³

The recognition of the corporate rights of the church suggests the problem of the taxation of its property. While no legislation by Constantine on this subject remains, his association of the churches with the imperial patrimony suggests that church property in some instances enjoyed similar privileges.⁴ The synod of Rimini petitioned Constantine for the exemption of church property from taxation but the request was not granted.⁵ Still, church property enjoyed some economic privilege, doubtless through its association with clerical property, for Gratian declared it to be subject to extraordinary taxes but exempt "by ancient custom" from obligations to furnish food and means of transporta-

¹ *C. Th.*, 2, 27. This edict also fixes the age of deaconesses at sixty years and prohibits women to tonsure their heads.

² *Ibid.*, xvi, 2, 28; v, 3, 1.

³ Nov. Mart., v.

⁴ *C. Th.*, 1, 1. This edict states that, with the exception of private properties, the Catholic churches and the families of the ex-consul and Master of Horse Eusebius and Assacus, king of Armenia, no one shall be aided by emoluments of houses and sustenance. Interpretations of the edict differ. Godefroy saw in it exemption of church property from taxation. But as neither Eusebius nor any of the ecclesiastical historians mentions such a privilege, this cannot be its meaning. Löning suggests that it probably refers to gifts of grain and provisions. Cf. Theodoret, *H. E.*, i, 10; Euseb., x, 6. Taxes on church property might have been occasionally remitted in case of need, but there is no legal exemption by Constantine.

⁵ *C. Th.*, xvi, 2, 15.

tion for the palace and army, grain for distribution in the cities, service on public buildings, wood and fuel for the imperial factories and other *munera*.¹ Honorius extended the exemption to service on roads, the repair of bridges, and extraordinary superindictions.² This exemption of a vast and increasing property from so many obligations resulted in a serious decline of public revenues; hence Theodosius the Younger imposed on the church the care of bridges, roads and streets, while Valentinian III removed all exemptions from public burdens.³

When the privileges conferred on the church and clergy are considered in relation to the social problems of the age, they leave the impression that they increased the disintegrating forces in Roman society. The one hundred and ninety edicts of the code which treat of the *curiales* give a vivid picture of the decline of the middle class. On the other hand, the senatorial order was increasing in wealth, and the cumbersome administrative machinery was too corrupt for any legislation to purify. Salvian, the garrulous priest of Marseilles, the only writer of the fifth century interested in the economic and social problems of his time, describes the feeling aroused by legislation. According to him the poor pay tribute to the rich, the weak bear the burden of the strong. Two or three determine what may bring injury to all, a few mighty ones make decisions which bring misery to the multitude. The people, united by tradition and the associations of a common fatherland, are alienated in sympathies. One can not be happy without bringing unhappiness to his neighbor, the individual's interests absorb all consideration for his fellowman. Yet his solution for the evils he saw was not a renewed patriotism,

¹ *C. Th.*, xi, 16, 15.

² *Ibid.*, xvi, 2, 40.

³ *Ibid.*, xv, 3, 3; *Nov. Val.*, x.

but a greater love and generosity for the institution he served.¹ The church, therefore, by laying stress on the distinction between clergy and laity, by securing privileges which exempted its officials and property from the common fortune of the people it professed to serve, must have increased the confusion of interests which already existed. This conjecture is confirmed by an examination of the participation of the episcopacy in the administration of justice and the attitude of the clergy toward the jurisdiction of the civil courts.

¹ Cf. Salvianus, *De Gubernatione Dei*, Liber iii, for his criticisms of social conditions. For his solution, cf. *Adversum Avaritiam*. There he finds the root of all evil in that spirit of avarice which withholds from God and the church the wealth that should be devoted to religious and charitable purposes.

CHAPTER V

THE EPISCOPAL COURTS

THE imperial administration rendered a distinct and abiding service to Roman civilization by its influence on the evolution of law. It unified the custom of city and province, eliminated the antithesis between the rules of civil and official law, and infused a new spirit of humanity into the legal life of the empire by subjecting it to the guidance of one supreme authority.

But these beneficent results of the centralization of justice were not attained without incurring certain evils and abuses. Chief of these were technicalities of procedure and delay in justice incidental to the centralizing process and the formation of a system of appeals. Salvian regards the failure to obtain justice in the courts as one of the causes leading the unfortunate to leave their country and to seek homes among the barbarians.¹ Ammianus Marcellinus describes the lawyers as people

who promote every variety of strife and contention in thousands of actions, wear the door-posts of widows and the thresholds of orphans, create bitter hatred among friends, relatives or connections who have a disagreement, mystify the

¹ *De Gubernatione Dei*, v, 5. Priscus, a Greek historian of the fifth century, found a Greek captive among the Scythians "who considered his new life . . . better than his old life among the Romans." One reason for this was the corrupt condition of the courts; another the inequality in taxation among the Romans. Cited by Bury, *Later Roman Empire*, vol. i, p. 28.

truth, prepare seven costly methods of introducing some well known law,

and conclude their argument by declaring that "the chief advocates have as yet had only three years since the commencement of the suit to prepare themselves to conduct it," and so obtain an adjournment.¹ Although this statement is evidently colored by the soldier's antipathy for civil life, it represents, to some extent, the conditions that prevailed. Indeed, the court system and the question of appeals were subjects of frequent legislation by Constantine and, in order that "unfortunate men, involved in the evils of long and almost perpetual actions at law might soon escape from evil appeals and exacting cupidity," he sanctioned and introduced into the legal system of the empire the episcopal court, an institution characteristic of the life of the early church.²

The ideals of Christianity demanded that all problems of human life should be decided according to its standards. To this end the teachings of Jesus recommend a procedure in disputes among his followers different from that of the law courts, and St. Paul declared that the saints were more worthy to act as judges than the unjust.³ The *Didake* or Teaching of the Twelve Apostles, which represents the Christian life of the second century, forbids "one who has a dispute with his fellow" to commune with his congregation, nor should any one speak to him until his repentance.⁴ The result was the development of a jurisdiction of the congregation over other than the moral actions of its members.

¹ *Historia Annorum*, xxx, 4.

² *Constitutiones Sirmondi*, i (331). Cf. *seq.*, p. 90, foot-note. For legislation on appeals, *C. Th.*, ix, i and xi, 30.

³ *Matt.*, 18, 15-17; *1 Cor.*, 6, 1-3.

⁴ *Didake*, 14, 2; 15, 3.

The so-called apostolic constitutions, an epitome of Christian tradition and practice of the third and fourth centuries, reveal a well-developed administration of justice. Minor suits and difficulties were heard by the deacons, more serious ones by the bishop, who, each Monday, surrounded by deacons and presbyters, heard pleas and rendered decisions.¹ The rules which guided the bishop and the officers assisting him were not those of the common law, but were suggested by the spiritual conceptions of Christianity. These required that the rulers of this world should not pass sentence on the Christian; if possible the contending parties should be reconciled without the judgment of the bishop; but his sentence, once rendered, must be accepted as final, on pain of excommunication, for whom he punishes and separates "is rejected from eternal life and glory, . . . dishonorable among holy men, and one condemned by God."²

The freedom from the limitations of the common law and the voluntary character of the litigations in the episcopal courts suggest an institution of Roman public life.

In early Indo-European law there was a custom by which two parties submitted their dispute to the decision of a third. This was accompanied by the deposit of a pledge which fell to the party in whose favor the decision was made, later to the arbitrator. If the unsuccessful litigant were dissatisfied, he might appeal to the people; but contemporaneously with the rise of a system of courts, the arbitrator found means to have his sentence enforced by the state; in fact, this custom was one of the essential factors in the transition from justice administered by self-help to orderly adjudication by the state. A survival of it is found in the Roman institution of *recepti arbitri*, by which the litigants voluntarily make two contracts, one between themselves, another with the

¹ *Const. Apost.*, ii, 44-51.

² *Ibid.*, ii, 47.



arbitrator. This settlement of cases outside the courts, according to principles independent of (though not in conflict with) the formal law of Rome, was recognized in the administration of justice by the prætor. If one party failed to observe the contract, the other by a civil action (*actio de stipulatio*) invoked prætorian interference. On the other hand the prætor, as guardian of the law, limited the cases which might be submitted to this extra-judicial arbitration and made certain rules for its procedure. While the episcopal court was extrajudicial in character and was not recognized as a source of justice, it is evident that if the litigants entered into a contract before submitting to the bishop's arbitration, the successful party in the suit might call upon the civil authorities to enforce the decision.¹

These two institutions, the *recepti arbitri* and the episcopal court, form the basis of two edicts by which Constantine gave the episcopal courts a place in the judicial system of the empire.² While ten years separate them, the

¹ The institution of *recepti arbitri* has been well treated by Matthias, *Die Entwicklung des römischen Schiedsgerichtes*, in the *Festschrift zum fünfzigjährigen Doctorjubiläum von Bernard Windscheid*. Rostock, 1888.

² These are the seventeenth and the first of the *Constitutions* of Sirmond, a collection of imperial edicts made in the seventeenth century by Sirmond, the French ecclesiastic and jurist. The source in which he found them was the conciliar records of the sixth century, where they were cited in demand for favors and privileges from the Germanic kings. Some of them are found in the Theodosian code, some are not. Among the latter, by far the most important are those under discussion. (The constitution of 331, however, had been published previously by Cujas in his edition of the Theodosian code.) Godefroy, the editor and commentator of the Theodosian code, questioned the authenticity of these two edicts of Constantine. He believed them to be ecclesiastical forgeries; but Haenel has successfully defended them in his edition. (*Corpus Juris Ante-Justiniani*, vol. iii, p. 140.) He believes the constitutions were originally a part of the first book of the Theodosian code, but on account of their subject-matter late manuscripts placed

later edict is an interpretation of earlier legislation which probably included an edict that has been lost.¹ They should therefore be regarded as defining an existing institution, not as successive steps in its formation.

By this legislation the episcopal arbitration was transformed into a legal mode of procedure. "Unfortunate men involved in long and almost perpetual actions at law" were given the privilege of removing their litigation at any stage of a civil process to the bishop, even against the will of their opponents.² Since the execution of the bishop's decision was through the regular courts and his opinion was given the sanction of the emperor as an interpretation of law, the place given him in the system of justice was similar to that of the judges of the public law courts.³ Moreover, the conception of his office as arbitrator was that of an authority transcending the regular civil courts, for the justice he administered arose from his individual conception

them as an appendix to the sixteenth book, and on account of the transcription they were for a time lost. According to the edition of the Theodosian code by Mommesen and his students they form a collection older than the Theodosian code, perhaps were one of the sources used by its compilers.

¹ Religionis est, clementiam nostram sciscitare voluisse, quid de sententiis episcoporum vel ante moderatio nostra censuerit vel nunc servari cupiamus. *Sirmondi*, I (*anno* 331).

² Quicumque itaque litem habens, sive possessor sive petitor erit, inter initia litis vel decursis temporum curriculis, sive cum negotium peroratur, sive cum iam coeperit promi sententia, iudicium eligerit sacrosanctae legis antistitis, illius sine aliqua dubitatione, etiamsi alia pars refragatur, ad episcopum cum sermone litigantiam dirigatur. *Cons. Sir.*, I.

³ Itaque quia a nobis instrui voluisti, olim prorogatae legis ordinem salubri rursus imperio propagamus. . . . Sive itaque . . . ab episcopis fuerit iudicatum, apud vos, qui iudiciorum summam tenetis, et apud ceteros omnes iudices ad executionem volumus pervenire. (*Sirm.*, I. *Cf. Soz.*, ii, 9.) Testimonium etiam, ab uno licet episcopo perhibitum, omnes iudices indubitanter accipiant, nec alius audiatur, cum testimonium episcopi a qualibet parte fuerit repromissum. (*Cons. Sir.*, I.)

of right and wrong; and as not even minors could appeal from his decision, he enjoyed a wider range of action than the civil judge; indeed, in this respect his jurisdiction was equal to that of the pretorian prefect.¹

This recognition of the episcopal court as a source of secular justice is unique in the history of Roman jurisprudence. No civil court was ever given such unlimited authority. Since the first legislation upon the subject is lost, no definite and satisfactory interpretation of the bishop's position is possible. In view of the fact, however, that tradition prevented Christians applying to secular courts, it is not improbable that the bishops regarded the privilege given them by Constantine as a step toward securing exemption of the clergy from the civil courts.

After forcing the members of the synod of Milan in 354 to excommunicate Athanasius and to subscribe to the Arian creed, which he also required all bishops of the realm to accept, Constantius guaranteed an end of persecution by prohibiting the accusation of bishops in the public courts. But the purpose of his edict was not clearly stated, and a literal interpretation conferred exemption on bishops from the jurisdiction of the criminal courts. In it we find the origin and precedent for that examination of criminal charges against bishops by the ecclesiastical authorities prior to any action in the secular court, a privilege which was

¹ "Illud est enim veritatis auctoritate firmatum, illud incorruptum, quod a sacrosancto homine conscientia mentis illibatae protulerit. Omnes itaque causae, quae vel praetorio iure vel civili tractantur, perpetuo stabilitatis iure firmentur, nec liceat ulterius retractari negotium, quod episcoporum sententia deciderit." (*Cons. Sir.*, I.) Minors were denied the right of appeal from the episcopal court by the same edict, while the arbitral contract of a minor might ordinarily be quashed by asking for an *integrum restitutio*. The same year that this edict was issued Constantine made the decision of the pretorian prefect final. *C. Th.*, xi, 30, 16.

extended to the entire clergy in the Frankish monarchy and was always one of the most difficult problems in mediæval politics.¹

The introduction of the episcopal court with final jurisdiction in civil cases, the decision of controversies in this court according to the bishop's conception of right and wrong, and the episcopal exemption from the regular criminal procedure naturally caused confusion and abuse in a system of jurisprudence so long and symmetrically developed as the Roman law. Episcopal jurisdiction was therefore limited and redefined by the legislation of succeeding emperors.

The first step in this direction was taken by Gratian in an edict which recognized the right of the church courts to hear ecclesiastical cases but required criminal cases to be decided by the secular courts.² This legislation was ineffective and was repeated twenty years later by Honorius, who confirmed the jurisdiction of bishops over religious cases, ordering their deposition of priests to be enforced by police authorities if necessary, and required all other cases to be heard according to the law.³ But the prerogative granted by Constantius had been readily assimilated with ecclesiastical tradition and custom. All efforts to revoke it failed. The commentaries on the execution of Priscilian by

¹ *C. Th.*, xvi, 2, 12. "Mansuetudinis nostrae lege prohibemus, in iudiciis episcopos accusari, ne, dum adfutura ipsorum beneficio impunitas aestimatur, libera sit ad arguendos eos animis furialibus copia. Si quid est igitur querelarum, quod quispiam defert, apud alios potissimum episcopos convenit explorari, ut opportuna atque commoda cunctorum quaestionibus audientia commodetur" (355). For the interpretation of this edict I am indebted to Godefroy, the seventeenth century editor and commentator of the Theodosian code.

² *C. Th.*, xvi, 2, 23.

³ *Ibid.*, xvi, 11, 1; ii, 35, 41; *Const. Sir.*, 7.

the decision of a secular court, the condemnation of John Chrysostom by an ecclesiastical council, the opinion of Pope Gelasius that, according to Roman law bishops must be heard and condemned by an episcopal court before punishment by the civil authorities, and the reprimand of the exarch of Italy by Gregory the Great for imprisoning Bishop Blancus—all illustrate the impotence of imperial legislation when opposed to ecclesiastical privilege and custom.¹

The revision of the episcopal court as a source of justice was begun by Arcadius and Honorius. Two edicts which are not found in the Theodosian code, limit its jurisdiction to cases in which both parties agree to submit to the bishop's arbitration.² Litigation in the episcopal court was thus reduced to the same basis as that of the *recepti arbitri*; but

¹ Priscilian: Sulpicius Severus, *Chronicon*, ii, 49. "Priscillianus vero, ne ab episcopis audiretur, ad principem provocavit, permissumque id nostrorum inconstantia, qui aut sententiam vel in refragantem ferre debuerant aut, si ipsi suspecti habebantur, aliis episcopis audientiam reservare, non causam imperatori de tam manifestis criminibus permittere." A twin-judgment of heresy and *maleficium* was brought against Priscilian; and Martin of Tours, in criticism of the trial, said: "Saevum etse et inauditum nefas, ut causam ecclesiae iudex saeculi iudicaret." *Ibid.*, ii, 50. Chrysostom, *Mansi*, iii, 1151. "Quoniam quorundam criminum accusatus Johannes noluit adesse, leges talem deponant. quo et ipse subiit." Gelasius (Migne, vol. lvi, p. 641), "nunquam de pontificibus nisi ecclesiam iudicasse; non esse humanarum legum de talibus ferre sententiam absque ecclesiae principaliter constitutis pontificibus," etc. Greg. Great, *Ep.*, 33.

² *Cod. Just.*, i, 4, 7; *ibid.*, 8. The latter is also the eighteenth of the constitutions of Sirmond. It is interesting to note that Augustus had given the Jews the privilege of deciding their religious cases according to their own law and custom, and this was confirmed by Theodosius the Great. As the Jewish patriarchs extended the exercise of this authority to secular matters, Arcadius required Jews living under the protection of the Roman government to submit their litigation to the common law courts. But if the patriarchal arbitration was agreed upon, the decision was final even if not in accord with the principles of Roman law. *C. Th.*, ii, 1, 10.

the court did not lose its privileged position in the judicial system of the empire. The bishop's decision, once rendered, was final, and was enforced through the public courts, indeed the pretorian prefect was directed to prevent any movement to quash it. Its validity therefore rested upon the standing of the bishop as a judge, not on an agreement to submit to the episcopal arbitration.¹ The essential element of Constantine's legislation, the introduction into the Roman judicial system of a court whose law and procedure were as untrammled as that of the *recepti arbitri*, and whose authority was as binding as that of the public judges, remained unaltered. ✓

This restriction imposed by Arcadius and Honorius was openly disregarded by the church in so far as it applied to cases in which clerks only were concerned; indeed, the councils of the later fourth and the fifth centuries forbade the clergy to carry their litigation into the civil courts.² Valentinian III was therefore constrained to declare the jurisdiction of the bishop over the clergy as well as the laity to be invalid unless both parties agreed to accept his decision; further, that clerks could not force laymen to appear in the episcopal court; and that bishops had no privileged position before the law.³

¹ *Cod. Just.*, i, 4, 8. *Impp. Honorius et Theodosius, A. A. Theodoro, P. P.* "Episcopale iudicium ratum sit omnibus, qui se audiri a sacerdotibus eligerint, eamque illorum iudicationi adhibendam esse reverentiam iubemus, quam vestris deferre necesse est potestatibus a quibus non licet provocare. Per iudicium quoque officia ne sit cassa episcopalis cognitio, definitione executio tribuatur."

² Carthage (397), c. 9; Arles (443 or 452), c. 31; Chalcedon (451), c. 9.

³ *Nov. Val. III*, tit. 34. There are two other laws of Valentinian III which were quoted in the Middle Ages as granting exemption from the secular courts. *Cons. Sirmon.*, iii and vi. (*Cf.* Florus of Lyons, *Capitula*, 2.) But their purpose was to rescind the legislation of John the

In this legislation and the attitude of the church toward it we have the prelude to the problem of ecclesiastical courts in the Middle Ages. The existence and legality of the episcopal court were never questioned, but the nature and extent of its jurisdiction were serious matters. The state insisted that all criminal cases and those civil cases not submitted to the bishop by agreement should be heard by the secular courts; but the church councils of the fifth century continued to forbid clerks to resort to secular sources of justice.¹ Indeed, this prohibition seems to have been recognized by the civil authorities, for a gloss of the *Breviary of Alaric*, a sixth century compilation of Roman law, states that the requirement of mutual consent in cases heard by the bishop was repealed by Majorian so far as cases among clerks were concerned.² The privilege of applying to the episcopal court for justice became one of the traditions of the church. Benedict the Levite included in his collection of capitularies the constitution of 331 as a Roman law re-

Tyrant, which had subjected religious as well as civil cases of the clergy to the jurisdiction of the secular courts, and to guarantee the right of ecclesiastical courts to hear ecclesiastical cases.

¹ Angers (453), can. 19; Vannes (465), c. 9. Only with the permission of the bishop can clerks resort to the secular court. Carthage (401), c. 1, forbids a clerical witness in a clerical case decided by an ecclesiastical court to appear again as witness if the dissatisfied clerk appeals to the civil courts.

² *Lex Romana Visigothorum, Nov. Val. III*, c. 12. This statement has frequently been regarded as a forgery or a pious tradition. But not all of Majorian's legislation is extant; moreover, Marcian in 451 confirmed all the privileges which the orthodox emperors had conferred on the church and canceled all pragmatic sanctions that were contrary to ecclesiastical canons. *Cod. Just.*, i, ii, 12. These facts and the prevalent opinion that the glosses of the *Breviary* are derived from the existing commentaries on the law, suggest that there was good precedent for the statement of a repeal of Valentinian's legislation. See chap. vi.

enacted by Charlemagne.¹ Other canonists conscientiously perpetuated the tradition. Gratian accepted it, and Innocent III thought to correct his predecessors by ascribing the authorship of the law to Theodosius the Great.²

The prominence which the clergy acquired in Roman life and politics during the later empire enabled the bishops to exercise an influence on the administration of justice which was independent of their activity as ecclesiastical judges.

The custom of intercession with state authorities by rhetoricians, men of learning or wealth in behalf of the unfortunate, or of a patron for his client, was one of long standing in Roman public life; and the dependency of the weak upon the strong was emphasized by the economic conditions in the later empire. Something very similar to this intervention became one of the duties of the episcopacy. Ambrose of Milan wrote to Studius, a public official, urging him to adopt the conduct of Jesus toward the woman taken in adultery in preference to the legal punishment by the sword, while the intercessions of Basil of Cæsarea with the Emperor Valens in behalf of the province of Cappadocia and of Flavianus for the city of Antioch are trite illustrations of the influence which the bishops often exercised in the imperial administration.³ The right of the judge to revise a penal sentence opened the way for episcopal intercession in the administration of criminal law. One of the duties of the priesthood, says Ambrose, is "to snatch the condemned from death, when it can be done without disturbance."⁴ Abuses of this ecclesiastical interference in behalf

¹ *Capitula*, vi, 366.

² *Decretum*, C. XI, qu. 1, cc. 35-37; *Decretal. Gregor.* IX, II, 1, de *judiciis*, c. 13.

³ *Amb., Ep.*, vii, 58; Neander, *General Church History*, vol. iii, p. 190.

⁴ *Amb., De Officiis*, ii, 29.

of the criminal classes led Theodosius and Arcadius to forbid an appeal through the clergy after condemnation, except in those cases where the appeal was prompted by a sense of humanity or a failure of justice.¹ Honorius directed the judges to produce the prisoners from their cells on the Sabbath and to ask them if they had received humane treatment. The conclusion of the edict encouraged the bishops to exhort the judges to fulfil this humane duty. Indeed, St. Augustine intimates that prisoners were often released from confinement on condition that they be subjected to ecclesiastical penance.² 16

Closely associated with clerical intercessions was the refuge which church edifices offered the unfortunate. The protection of sacred buildings, altars, or statues of the emperor was a custom of classical law inherited from that primitive age when religious institutions afforded the only protection from a system of justice administered by self-help or popular vengeance. When the church was recognized as a legal corporation, and the clergy began to have an influence in public life, nothing was more natural than

¹ *C. Th.*, ix, 40, 15, 16. The interference of monks in judicial procedure was responsible for an edict of Theodosius which required those following the monastic life "to inhabit desert places and vast solitudes." *Ibid.*, xvi, 3, 1. The law was repealed two years after its enactment (392). *Ibid.*, xvi, 3, 2.

² *Ibid.*, ix, 3, 7. This interest of the bishop in criminal justice was extended in the legislation of Justinian by requiring the bishops to visit the prisoners every Friday and Sunday, examine the crimes which each prisoner had committed, inquire into the treatment of the jailor, and report to the state authorities whatever was done contrary to good order. *Cf. Cod. Just.*, i, iv, 22. *Aug., Ep.* 153, c. 3: "Nam quosdam quorum crimina manifesta sunt, a vestra severitate liberatos, a societate tamen removemus altaris, ut poenitendo placare possint quem peccando contempserant, seque ipsos puniendo." This letter is a defense and justification of episcopal intercession which had been criticized by Macedonius in a letter to Augustine, which precedes the letter of Augustine in the edition of Migne's *Patrologia*.

that this privilege of asylum should be transferred to Christian places of worship. Indeed, the ecclesiastical asylum was recognized by custom long before it became a subject of legislation; its purpose was to protect the one seeking it until the bishop or priest might make intercession in his behalf.¹ Principally two classes of people, debtors and slaves, seem to have taken advantage of this protection and aid offered by the church. The same year that Theodosius sought to restrict episcopal intercessions he required the bishop to surrender debtors of the fiscus who sought refuge in the churches and forbade clerks to defend them or to pay their debts.² Arcadius sought to prevent curials from accepting ecclesiastical aid by requiring those clerks who offered them pecuniary assistance to pay the full amount of the debts. He also ordered that slaves should not receive the benefit of asylum for more than one day; their masters should be notified by the church officials and they, out of regard for those to whom the slave had fled, should refrain from inflicting punishment.³ Another edict designated the

¹ Baronius, *Annales*, anno 324, gives a law of Constantine granting asylum rights to the church. This is a forgery. The earliest mention of the institution in ecclesiastical sources seems to be the council of Sardica, 343 (c. 7), where the members agree to the resolutions of Hosius that aid shall not be denied those who flee to the church. Numerous instances of the exercise of the protection of the church are given by Godefroy. *C. Th.*, ix, 45, 1. Purpose, *cf.* C. Orange (441), c. 5. *Eos qui ad ecclesiam confugerint tradi non oportere, sed loci reverentia et intercessioni defendi.*

² *C. Th.*, ix, 45, 1.

³ *Ibid.*, 45, 3 and 5. The first of these edicts was enacted through the influence of Eutropius. Chrysostom of Constantinople had defended a number of individuals from the violence of Eutropius, who, in vengeance, had the customary asylum privileges of the church limited (398). The following year, however, Eutropius sought refuge from the anger of the Goths at the altar of the church, and Chrysostom interceded with the barbarians for him. The law was then repealed. *Soz.*, viii, 7. The latter edict is dated 432.

altar and all parts of the church buildings as places of refuge; no one seeking asylum there should be removed on pain of death; but force could be used if the refugees were armed and refused to deliver their weapons at the command of the clerks; while Honorius recognized the space of fifty paces from the doors of the church as holy ground and made its violation a sacrilege.¹

The recognition of the sanctity of the priesthood caused the state, in the reign of Theodosius and Gratian, to invest the clergy with certain privileges in the secular courts. It was forbidden to force bishops to bear witness in criminal cases, a privilege which was extended in the Justinian law to an exemption from presenting any kind of evidence in person.² Priests were also freed from all liability to torture,³ and when a criminal charge was made against a clerk of any order the prosecutor was required to stake a pledge. If the prosecution failed, the pledge was taken by the fiscus, or if no pledge had been offered, the property of the prosecutor was confiscated.⁴ Bishops who were the defendants in actions of assault and battery were given the right of representation by a *procurator* in a law of Valentinian III.⁵ Endowed with these privileges, the clergy were able to extend their influence in the Justinian law and to maintain a

¹ *C. Th.*, ix, 45, 4 of 431. *Const. Sir.*, xiv. The latter edict also sanctions intercessions. The influence of this law is seen in the *Lex Romana Burgundionum*, ii, art. 5, and *Lex Visigothorum*, vi, tit. 5, c. 16.

² This exemption from bearing witness was perhaps the result of the movement in the church to prohibit appeals of ecclesiastical cases to the emperor. See Council of Constantinople, can. 5. *C. Th.*, xi, 39, 8 (381). *Novel. Justin.*, 123, 7.

³ *C. Th.*, xi, 39, 10 (385).

⁴ This law, an edict of Theodosius the Younger, is not in the Theodosian code. It was, therefore, probably repealed shortly after it was issued. It is given by Haenel, *Corpus Legum*, p. 241.

⁵ *Nov. Val. III.*, xxxiv.

recognition of their peculiar character in the new kingdoms that soon arose in the west.

The interpretation of the ideals and customs of a nation or society by means of its legislation is one of the most difficult of problems. If the historian sixteen centuries in the future should attempt to form an estimate of modern morality from our voluminous penal statutes, would he conclude that the world in our time was full of thieves, cutthroats and confidence men, or would he see in that legislation evidence of a refined sense of right and wrong, an attempt to add proportion and dignity to the temple of justice? When we read the ecclesiastical legislation of the Roman emperors we find a somewhat similar problem before us. Shall we interpret the privileges and immunities received by the church as a protection against certain phases of Roman life not in harmony with Christian ideals, and beneficent in that they prepared the church for the place it was to take in the civilization of the future? Or shall we interpret the career of the church by the legislation on heresy, and conclude that its policy was selfish, intolerant and antagonistic to the interests of the empire? These questions lead us into the field of hypothesis; each student will settle them for himself according to his temperament. But there are some conclusions in regard to the participation of the episcopacy in the legal life of the empire on which all may agree.

The most extensive privilege was granted by Constantine, the genuineness of whose religious conviction has been most questioned. Its limitation and reform were made by those whose piety and devotion to the church have never been doubted. One reason for this must have been that the business of the secular courts suffered by the competition of the ecclesiastical courts. Indeed the civil adjudication in which the episcopacy was involved as a result of Constantine's legislation was a burden against which the

spiritually minded clergy protested. Chrysostom believes that the difficulties of clerical arbitration are greater than those of the public judge, for it is hard for him to find the law, and having found it, also difficult not to violate it.¹ Augustine finds an opportunity in his *Commentary on the Psalms* to complain of those people who voluntarily seek the bishop's arbitration, yet when sentence has been given are dissatisfied because they can not appeal. And when an African council had charged him with certain affairs, he made a contract with his congregation that he should be released for four days of the week from the secular duties of his office.²

In addition to their work as civil judges, the bishops were active in the administration of secular property. Augustine says that the dying left the interests of their widows, children and property to the care of the church. Ambrose defended the possessions of the widow and orphan against the prosecution of the imperial fiscus.³ Gregory Nazianzus declares that the people no longer seek in the priesthood physicians of the soul, but administrators of moneys, advocates and rhetoricians.⁴ This activity of the bishop in the administration of civil law must have done much toward the development of a vulgar law and custom, differing in many details from classical jurisprudence. Truly, in the language of the worthy Otto of Freising, "as the empire decreased, the church adapted itself to the intermission, and began to appear in great authority."⁵

¹ *De Sacer.*, iii, 18.

² *Ps.* 25, 13; *Ep.*, 213. Cf. Possidius, *Vita Augustini*, 19.

³ *De Officiis*, ii, 29.

⁴ *Orat.*, 32.

⁵ *Chronicon*, vii, prologus.

CHAPTER VI

THE INFLUENCE OF THE LEGISLATION OF THE THEODOSIAN CODE UPON EARLY MEDIAEVAL JURISPRUDENCE

ANY consideration of that legislation by which the church began its career as a privileged institution whose members were exempt from the economic obligations of citizenship, whose courts were recognized as sources of secular justice, and the corruptors of whose faith were punished with the loss of the distinctive rights of Roman citizenship, suggests the relation of these conditions to mediæval jurisprudence. By what process did the ecclesiastical law of the Theodosian code become known to the civilization in the west which succeeded the Roman Empire, and to what extent was that law influential in securing the privileges which the clergy enjoyed in mediæval society?

There was in the first place a direct transmission of the Roman imperial law, as it existed at the close of the fifth century, to the Teutonic kingdoms established in western Europe through the *Lex Romana Visigothorum*, or *Breviary of Alaric*.

In the second place there was a direct, although not extensive influence exercised by the *code* and *Novels* of Justinian upon Italian legal development in the sixth and seventh centuries and upon the later development in those centuries of the Visigothic law in Spain.

It will be advisable, first of all, to examine the Justinian code and its relation to the earlier imperial law as well as its immediate influence upon legal development in Italy.

One of the first problems that confronted Justinian was to bring order out of the confused ecclesiastical conditions in the empire, and there is no better evidence of the despotic strength, if not the wisdom, of his administration, than the policy by which this end was secured. Believing "faith in God" and "good order in the church" the only guarantees for the existence of monarchy, he revised and extended the privileges of the clergy and established an even more intimate union of church and state than had previously existed. The civil as well as the ecclesiastical litigation of the clergy was relegated to the jurisdiction of the bishops, and the participation of ecclesiastical courts in criminal processes against the clergy was recognized.¹ On the bishops were conferred the rights of supervising public works and municipal expenditures; the prerogative of nominating candidates for the administrative service of the empire; the privilege of assisting in the installation of governors; the duties of publishing new imperial legislation, of visiting prisons, and of hearing the complaints of the oppressed and unfortunate.² The privilege of appealing to the bishop in civil and criminal processes, and from him directly to the emperor was recognized, and at the request of the litigants, the bishop might sit with the secular judge in the civil court.³ That the unity and supremacy of the civil authority were maintained while such machinery of government existed is sufficient witness of Justinian's ability to realize his conception of government.

The legislation above summarized was closely related to the rise of ecclesiastical influence in Italy which was coin-

¹ *Nov.*, lxxix; cxxviii, 21.

² *Nov.*, cxxviii, 16; *Cod. Just.*, I, iv, 26; *Nov.*, cxlix, I; viii, 14; vi, epilogue I; *Cod. Just.*, I, iv, 22, 26.

³ *Nov.*, lxxvi, I, 4, 9; *ibid.*, 2; *Cod. Just.*, I, iv, 7.

cident with the collapse of the civil administration during the later sixth and early seventh centuries. Justinian's law books were published in Italy after the reconquest of the peninsula in 552, and a pragmatic sanction extended the jurisdiction of the *Novels* to the west.¹ That the clergy was familiar with them is shown by the papal correspondence of the time. Pelagius, a contemporary of Justinian, repeats the rules of the *Novels* which restrict civil prosecutions against clerks to the jurisdiction of the bishop and prohibit the alienation of church property. Frequent references to the rights and privileges given the clergy by Justinian were made by Gregory the Great. As soon as he was elected Pope, he opened a correspondence with the Emperor Maurice, the Exarch of Ravenna and various officials of Africa, Sardinia and Naples. He received copies of new laws enacted by the emperor, which he doubtless published at Rome, and reported to Constantinople the oppression of the poor by the imperial officials. He petitioned the exarch for the repair of aqueducts and other public works at Rome, while his rights as bishop to supervise municipal finance and to interfere in behalf of justice are illustrated by an eloquent letter to Leontius.

That official, a representative of the central government, examined Libertinus, an ex-prefect of Rome, found him guilty of squandering public money, and had him scourged. Gregory, incensed at the infliction of such a penalty upon a Roman citizen, reproved Leontius and declared, "Had I found the accused guilty, it would have behoved me to warn you by letter and had I failed to obtain your attention, I should then have turned to the emperor."² Other letters

¹ Kruger, *Geschichte der Quellen und Literatur des römischen Rechts*, p. 354.

² Greg., *Ep.*, x, 51. This letter is interesting for the fact that it in-

show the Bishop of Rome interceding in behalf of the unfortunate, encouraging his fellow bishops to bring influence to bear on the secular judges in behalf of justice, and to send complaints against public officials to Rome, on the plea that "to coerce the violent laity is not to act against the law but to bring a support to it."¹

The letters of Gregory also suggest that he was familiar with Justinian's legislation regarding the clergy and church property. He claimed for clerks the right to have civil cases in which they were defendants heard by the bishop, and interceded with the civil officials to prevent the forced service of ecclesiastics on public works.²

The law of Arcadius which recognized injury to church property as sacrilege had found its way into the Justinian code. To this Justinian added the prohibition of the alienation of church property except for the release of captives or other pious cause; provisions that what the abbot or bishop acquires in office is the property of the foundation; and that the property of clerks dying intestate and without heirs reverts to the church.³ These rules made by Justinian are also reflected in the letters of Gregory, and his decisions on

timates that conflicts between ecclesiastical and civil jurisdiction might frequently occur. *Nov.*, cxxviii, 16, gives the bishop and a committee of five citizens the authority to examine public accounts and to remove guilty officials. This and similar legislation illustrates how the church stepped in and took the responsibilities of the decaying municipal organization. Cf. *Cod. Just.*, i, 55, 8, which gave the bishop power to participate in the election of *defensores*. Justinian, in the Pragmatic Sanction of 554, gave the bishops of Italy authority to nominate judges. *Aliae aliquot constitutiones*, i, in Kriegel, *Corpus Juris Civilis*, vol. iii.

¹ *Ep.*, iii, 1, 5, 9; ix, 27, 47; xi, 3; xiv, 15. For the legislation of the code which gave the right to interfere in behalf of justice, see preceding page.

² *Ep.*, xi, 27; xi, 73, 99; xi, 5; *C. J.*, i, iii, 2.

³ *Nov.*, cxxxi, 13; cxx, 10; *C. J.*, i, ii, 2; *Nov.*, cxxiii, 38.

the alienation of church property found their way into the canon law.¹

Equally important for mediæval conditions was Gregory's activity in the administration of testamentary law. Justinian made the bishops the general guardians in the execution of charitable bequests and ordered that, if the executors failed to fulfil the provisions of such bequests, the bishop should intercede for a legal execution, that the reservation of the Falcidian Fourth for the benefit of the heirs should be denied, and that the whole property should be appropriated by the bishop for pious purposes.² By virtue of this authority Gregory informed the Duke of Sardinia that benevolent donations must be carefully executed, instructed the deacon Castorius to see that the terms of a testament in which the church was a beneficiary "should be fulfilled without impediment," decided that a bishop's estate and the property accumulated before his service in the episcopacy should revert to his son, and interfered for the just execution of a legacy in favor of the children of two freedmen.³

In the light of this extensive activity of the episcopacy in the administration of justice, why should not ecclesiastical decisions be recognized as a source of law? This was the conclusion of the clergy, and it is well illustrated by the development of testamentary law. While Justinian gave especial protection to benevolent bequests, he did not contemplate any alteration in the customary forms of testament; in fact, he clearly stated that he desired to avoid such a change.⁴ But there was a feeling on the part of the

¹ *Ep.*, i, 68; vi, 126; vii, 13, 38; viii, 34; x, 1; xi, 10. *Cf. D.*, xii, qu. 2, cc. 13-14.

² *Nov.*, cxxxix, 11, 12.

³ *Ep.*, i, 48; v, 28; iv, 37; x, 5. Interference in the latter case was the result of an appeal to Gregory.

⁴ *Cod. Just.*, i, 2, 19.

clergy that testaments in favor of the church, especially clerical testaments, should not be limited by the customary forms of the civil law.¹ Gregory the Great shared this opinion, and in a letter to the subdeacon of Sicily ordered that the death-bed wish of a certain woman in the interest of the church, although verbally expressed, should be fulfilled.² This and a passage in the Gospel of St. Matthew were the sole precedents for the decree of Alexander III which made the last will expressed in the presence of the priest and two or three witnesses rescind any previous testament.³

The first decided influence of the ecclesiastical law of the Roman codes on the secular jurisprudence of the middle ages is found in the legislation of the Visigoths. Before the migration of this nation into southern Europe its laws and customs had come under the influence of Roman institutions, and with the formation of a monarchy in southern Gaul and Spain that influence increased. Visigothic institutions of private property in land, of loans and interest, of matrimony and of testament have their origin or received some modification in the contact with the more civilized Romans. While other conditions favored the union of the two peoples into one nation, they were separated by a religious problem. The Goths were Arians, their Roman subjects were Catholics. Very little is known of the ecclesiastical policy of the early Visigothic kings; they conferred gifts and favors upon the Arian church, but their legislation does not reveal any clerical influence such as that exercised after their conversion to Catholicism, while their

¹ Con. Lyons (567), c. 2.

² *Ep.* ii, 22.

³ C. 13, x, 3, 26.

attitude toward the Catholics was one of toleration, except when political conditions made persecution necessary.¹

Such were the conditions when the codification of Visigothic law began. Written laws were issued before the reign of Euric, but to him is attributed the first national code whose jurisdiction included cases between Goth and Roman as well as purely Gothic litigation.² There was no statement that cases in which Gothic interests were not involved should be heard according to Roman law, but the course of later legislation indicates that this was the custom. The sources of Roman law, however, which included the Hermogenian, Gregorian and Theodosian codes, the Theodosian *Novels* and the writings of the jurists, and interpretations of law now unknown were too voluminous, their language was not sufficiently clear for popular use, and custom had also made changes in their interpretation. These facts and the opportunity to conciliate his Catholic subjects, who had suffered persecution under Euric, and who, it was feared, might support the Franks in the conflict with that nation which seemed imminent, led Alaric II to undertake a compilation of Roman law for use in purely Roman litigation. This was the *Lex Romana Visigo-*

¹ Dahn, *Könige der Germanen*, vol. vi, p. 377. Alaric I recognized the ecclesiastical asylum of the Roman law; Gregory the Great gives evidence that the property rights of the Catholic church in Arles were respected; Athaulf, third king, married a Catholic, and there is conflicting evidence regarding the policy of Theoderic I, while the tolerance of Theoderic II was praised by Sidonius. The Catholic historian of the Spanish church, Gams, emphasizes the religious conflict (*Kirchengeschichte von Spanien*), while secular historians, notably Dahn, regard the conflict as occasional and intermittent and as the result of political complications.

² For the legislation of Euric and his predecessors, see Zeumer, *Geschichte des west-gothischen Gesetzgebung*, *Neues Archiv.*, Bd. xxiii, pp. 423, 468.

thorum, generally known as the *Breviary of Alaric*.¹ It is the work of a commission of provincial Roman lawyers and bishops. It was approved by a council of bishops and nobles and was then published in 506 with the command that in the future no other source of law should be used by Roman subjects. In its legislation and interpretations of law, which were derived from existing glosses, we have the Roman law of the fifth and early sixth centuries as it was applied in the courts.² A review of its provisions relating to the church and clergy will illustrate their position in an age when the civilizations of German and Roman were blending and ecclesiastical aims were coming to dominate both.

The political conditions under which the *Breviary* was compiled prevented any extensive reproduction of the imperial edicts against heresy. Only two of those in the Theodosian code were included, one in which Honorius ordered the "one and true Catholic faith" to be observed in

¹ The last edition of this code was published by Haenel (*Lex Romana Visigothorum*, Leipsic, 1848). Conrat has recently published a systematic arrangement of its material in German translation, with references and quotations from the text, after the fashion of the German handbooks of public and private law. (*Breviarium Alaricianum; Römisches Recht im fränkischen Reich in systematischer Darstellung*, Leipzig, 1903.)

² The glosses of the *Breviary* were formerly regarded as unimportant. But legal historians now recognize that they represent the custom of the later fifth and sixth centuries; indeed, that they are derived from older glosses now lost, and therefore are to be taken as a direct survival of later classical law. Cf. Haenel, *Lex Romana Visigothorum*, p. x; Blume, in *Bekker's und Muther's Jahrbuch des deutschen Rechts*, Bd. ii, 203; Fitting, *Zeitschrift für Rechtsgeschichte*, Bd. xi, 228. On the other hand, one writer has rejected the view that the glosses are derived from previous commentaries (Degenkalb in *Kritische Vierteljahrsschrift für Gesetzgebung und Rechtswissenschaft*, Bd. xiv, 505). For a summary of the discussion, see Karlowa, *Römische Rechtsgeschichte*, Bd. i, p. 977.

Africa, the other his confirmation of the legislation of Theodosius, while the *Novels* of Theodosius II and Valentinian III, enacted when heresy was no longer a political problem, were allowed to remain unaltered.¹ There is also only one law against apostasy, that of Valentinian II, which punished the apostate with loss of testamentary rights; but converts to Judaism were threatened with confiscation of property, and traffic in Christian slaves by Jews was prohibited.²

A more decided evidence of the influence of the clergy in the work of codification is the conception of church property. Paraphrasing passages in the *Institutes* of Gaius and the *Sentences* of Paul are statements that "things of divine law are churches, that is temples of God, and such patrimonies and properties as are among the rights of churches;" that an agreement to alienate religious property is invalid, and sacrilege is punishable by casting the offender to the wild beasts; and that only after debts and legacies to the churches "in honor of God" have been deducted from an estate, could the rule of the Falcidian Fourth be applied in the interest of the heirs.³

The laws treating of episcopal jurisdiction and the rela-

¹ *C. Th.*, xvi, 5 (*Lex Romana*); *Nov. Theod.*, I, 8, 9; *Nov. Val.*, I, I.

² *Lex Romana* (*C. Th.*, xvi, 2, I; 3, 2; 4, I, 2).

³ Gaius, ii, I (Haenel, p. 322; Conrat, p. 791). "Omnes (itaque) res aut nostri iuris sunt, aut divini, aut publici. . . Divini sunt ecclesiae, id est, templa Dei, vel ea patrimonialia ac substantiae, quae ad ecclesiastica iura pertinent." *Ibid.*, ii, 9, 5 (Haenel, p. 334; Conrat, p. 791).

Paul, iv, 3 (Haenel, p. 400; Conrat, p. 891). "Lex Falcidia similiter et Pegasianum Senatus consultum, factum hereditarii debiti ratione et separatis his, quae in honorum Dei ecclesiis relinquuntur, quartam hereditatis ex omnibus ad scriptum heredem consuit pertinere." The right of the church to receive bequests and to receive the property of clerks dying intestate and without heirs was also recognized. *C. Th.*, v, 3, I. The *Novels* of Majorian (i, I, 7) and Valentinian III (xii, I, 5) were also included. Sacrilege, Paul, v, 21, I.

tion of the clergy to the secular courts are also important. The edict of Constantius which allowed criminal charges against bishops to be examined by a synod of bishops and that of Gratian which required criminal accusations against clerks to be heard in the secular courts, were re-enacted.¹ The *Novel* of Valentinian limiting the civil jurisdiction of bishops over clerks and laymen to cases in which both parties submitted to his arbitration was also included, but the gloss states that Majorian repealed the restriction so far as it applied to clerks.² Ecclesiastical tribunals were granted exclusive jurisdiction over religious cases and church edifices were accorded the privilege of asylum, while the exemption of the clergy from the economic obligations of citizenship and the legislation of Valentinian and Majorian defining the relation of the *curiales* to the clerical profession were reproduced.³

Thus all the essential elements of that legislation by which the clergy secured its privileged position in the later empire, passed into the *Breviary*. It was by far the most widely known source of Roman law prior to the twelfth century, and was applied in the courts of southern Europe. The church, moreover, claimed the Roman as its personal law. We have therefore in the *Breviary* a statement of the position of ecclesiastical institutions in the custom of the early mediæval courts.

The purpose of the *Breviary* was to furnish a summary of Roman law for use in disputes between Romans when Goths and Romans were living as neighbors under the same royal authority, but preserving their respective

¹ *C. Th.*, xvi, 1, 2, 3 (*Lex Romana*). Bishops were also exempted from torture. *C. Th.*, xi, 14, 5.

² See preceding chapter, p. 96, n. 2.

³ *C. Th.*, xvi, 1, 3, 4, 5 (*Lex Romana*); *C. Th.*, ix, 34, 1 (*Lex Romana*); *Nov. Val.*, III, xii (L. R.); *Nov. Maior.*, 1 (L. R.).

laws and customs. An important step toward the union of the two races was made by Leovigild, who revised the code of Euric, repealed the ancient prohibition of the marriage of Goth and Roman and adopted the Roman system of blood relationship and the theory of the equality of sons and daughters in rights of succession.¹ The conversion of his son Recaredo to Catholicism, and the recognition of that faith as the national religion, removed the last influence which separated Goth and Roman. It was now possible to formulate a national code of law applicable to all subjects of the kingdom. This was begun by Reccesvinth. His *Liber Iudiciorum*, published in the middle of the seventh century, was a compilation of the legislation of his predecessors and his own. It was intended to displace all other sources of law and to it all persons and people of the kingdom were subject.² Revised by Ervig and enlarged by Egica, it is known as the *Lex Visigothorum* and it was in theory at least the basis of Spanish jurisprudence until the thirteenth century.³

An examination of this code with reference to the sources of its legislation leads to the conclusion that, in addition to Visigothic law and custom and the *Breviary*, the Justinian jurisprudence was well known in Spain. The language of the *Lex Visigothorum* has never the dignity nor grace of

¹ The restriction upon intermarriage of Goth and Roman was perhaps caused by the policy of the Catholics, who hoped to convert the Goths from Arianism through mixed marriages. The marriage of Roman and barbarian was also prohibited in the *Breviary*. *C. Th.*, xii, tit. 14 (*L. R.*).

² Date, between the years 652 and 654. Zeumer, *Geschichte der westgothischen Gesetzgebung* (*Neues Archiv.*, Bd. xxiii, p. 486). Jurisdiction, *Lex Visigothorum*, ii, 1, 9. The words *Liber Iudiciorum* appear in the oldest manuscripts. Zeumer uses the name *Lex Quoniam* from the first words of the Edict of Reccesvindh, by which it was promulgated. It is also known as the *Lex Visigothorum Reccesvindhiana*.

³ Time of revision and enlargement, 681 and 693. *Cf.* Zeumer, *N. A.*, Bd. xxiii, pp. 483, 488.

the Latin of the second and third centuries, which was so largely reproduced in the eastern law books, but the division of Reccessvinth's work into twelve books, the number of the Justinian code, the apparent correspondence of many Visigothic formulas with the law of the *Digest*, the precedent which the Justinian law offers for the Visigothic edicts on testament, representation, procedure and evidence, indicate an influence of the later Roman law on Visigothic jurisprudence in the period of its maturity. This probability is strengthened by the fact that from 554 to 624 there was a Byzantine province on the Levantine coast of Spain whose capital was Catalonia. Also, as late as the ninth, probably the tenth, century, a collection of Spanish laws included along with some of the legislation of Euric and the *Liber Iudiciorum*, imperial constitutions, portions of the *Institutes* and *Novels* of Justinian, and an epitome of the *Breviary*; while the purpose of the collection is to make known the "Roman laws" as "promulgated by our Lord Justinian." In the light of these facts, it is probable that Reccessvinth's prohibition of the future use of Roman and foreign laws refers to the law books of Justinian as well as to the *Breviary*.¹

Other evidence of the survival of the Justinian law in Spain, pertinent to the theme of this chapter, is found by a comparison of its legislation on the episcopal courts with that of the *Lex Visigothorum*.

¹ De Ureña (*Literatura Juristica Española*, vol. i, p. 294) thinks that the prohibition refers to the Justinian law books alone and not to the *Breviary*. The collection referred to is in the Holkham Library, Norfolk, England. It has been published by Prof. A. Gaudenzi, of Bologna, under the title, *Un' antica compilazione di diritto Romano e Visigoto con alcuni frammenti delle leggi di Eurico* (Bologna, 1886). A portion of it has been reprinted in the *Neues Archiv.*, Bd. xxiii, p. 389. A collection of Roman law was also made by Petrus de Grañon in the tenth century, which suggests a knowledge of Justinian legislation. Cf. Nicholas Antonio, *Bibliotheca Hispana Vetus*, vol. i, p. 518.

Three edicts, one of Chindasvinth, one of Reccessvinth, and one of Ervig, determined the place of the episcopal court in the legal system of the Visigothic kingdom after the conversion of the Visigoths to Catholicism.¹ The first of these provides that, if any one engaged in civil litigation believes that the decision of the judge has been influenced by prejudice, that official, with the aid of the bishop, shall review the case and issue a new decision. If there is still dissatisfaction, appeal may be made to the royal court, after the joint sentence of bishop and judge has been executed, on the plea of unjust judgment. If the appeal is then justified, the judge and bishop shall suffer the penalty of unjust judgment; if it is rejected, the appellant must suffer in the same manner. The second edict recognizes the bishop as the protector of the common people (*pauperes*) and establishes a procedure in case the judge shall refuse to re-hear the case with the bishop.² The bishop may then make an independent decision which the count must execute; and if the bishop refuses to hear the appeal or the count hesitates to enforce the episcopal decision, each shall forfeit one-fifth of the value of the suit. The third law reverts to the course of action outlined in the first. Bishop and judge shall hear the appeal together; if they can not agree, each shall commit his opinion to writing and send it to the king, whose decision shall be final.

¹ *Lex Vis.*, ii, 1, 24 (Chindasvinth), 30A (Reccessvinth), 30B (Ervig). In the interpretation of these laws I have followed Zeumer, *Neues Archiv.*, Bd. xxiv, pp. 79-88. References to the text are to his recent edition of the *Lex Visigothorum* in the *Monumenta Germania*, *Leges*, sec. 2, tom. 1 (1903).

² Different definitions have been given the word *pauperes*. Dahn and the older writers assign it a literal meaning, the poor or unfortunate. Zeumer thinks it refers to the people as opposed to the nobles and civil authorities. In such a sense it was used by the councils of Toledo (iv, c. 32) and Tours (ii, c. 23). *Neues Archiv.*, Bd. xxiv, pp. 80-81.

The only precedent for this legislation is the eighty-sixth *Novel* of Justinian, and a comparison leaves the impression that the one was the source of the other.¹ Justinian required the bishop to hear the case along with the civil judge suspected of prejudice, gave him the power to revise the sentence of the civil court, provided for a final appeal to the emperor, and inflicted the Roman penalty for unjust judgment on the bishop who gives an illegal decision, or on the appellant, if unsuccessful in his appeal. In one essential, however, the Justinian law differs from the Visigothic, in regard to the stage of the procedure when appeal may be made. In the former, appeal from a suspected judge is in order only before the formal joining of issue (*litis contestatio*); in the latter, the appeal may be made to the bishop at any stage of the process. This deviation is explained by a *Novel* of Valentinian, incorporated in the *Breviary*, which permits appeal without any limitation by the regular procedure.²

This reception and influence of the ecclesiastical law of Justinian in Spain is one of the most notable manifestations of that confusion of the civil and ecclesiastical authorities which was so notable in the centuries of transition from classical to mediæval civilization. It aided in that confusion of law and morality, of civil and ecclesiastical powers that followed the conversion of the Goths to Catholicism and continued to be one of the characteristics of Spanish life as late as the thirteenth century, when the earliest of the constitutional monarchies of Europe knew no conflict between church and state, for the two institutions were inextricably blended in the law and custom of the realm.

¹ *Nov.*, lxxxvi, was probably known in Spain through the *Epitome* of Julian (*Jul.*, lxix).

² *Nov. Just.*, liii, 3; *Jul.*, xlvi; *Nov. Val.*, xxxiv, 16, xii (*Lex Romana*).

The evidence for the influence of the Justinian jurisprudence on the ecclesiastical law of the Frankish empire is not so conclusive as that just reviewed. The Franks were not so susceptible to Roman influence as the Goths, and their kingdom was far more Germanic in population and institutions than that of their neighbors beyond the Pyrenees. While no manuscript of Justinian's law books which antedates the ninth century has been discovered in France, there were conditions in the Frankish empire which suggest an acquaintance with the ecclesiastical provisions of his code.

The election of a count by the bishop and the people, the nomination of another by St. Eligius of Tours, suggest the edicts of Honorius and Justinian which allowed the bishop to participate in the election of *defensores* and to nominate civil officers.¹ The capitulary of Chlothair II which states that in the absence of the king the bishop may force a judge to revise his unjust sentence, is similar in spirit to the appeal to the bishop provided for in the *Novels*.² A similar comparison might be made in the exemptions of the clergy from the secular courts. Chlothair's edict of 614 extended to the entire clergy the right of bishops to have criminal charges against them heard by a council of bishops, while personal actions against clerks were also conceded to the episcopal courts by the same edict—a privilege more explicitly guaranteed in the Mantuan capitulary of 787.³

The only precedent for such a policy is that of Justinian's *Novels*.⁴ Moreover, that other procedures suggestive of

¹ Greg. Turon, *Hist. Francorum*, v, 47; *Vita St. Eligii*, i, 32. Cf. C. J., I, 55, 8; *Nov.*, cxlix, I.

² Cloth., *Praeceptio*, 6 (Boretius, p. 19); *Nov.*, lxxxvi.

³ Boretius, i, p. 21, 4; *ibid.*, p. 196.

⁴ *Nov.*, cxxiii, 31, makes the episcopal court a court of first instance for all personal actions against clerks, monks and deaconesses. For criminal actions, cf. *ibid.*, viii, p. 21.

Justinian's legislation were sometimes used, that the demands for exemption of clerks from the jurisdiction of the civil courts were more frequent and explicit in the middle and latter part of the sixth century, the time when the law books and *Novels* were published in the west, and that Justinian's legislation was known to some extent in the kingdom of Burgundy, which passed under Frankish control before the code was completed or the *Novels* were published in the west—these facts seem to increase the probability of the knowledge and use of Justinian's law prior to the ninth century.¹ And in that century the *Epitome* of Julian was well known, for from it was taken, word for word, the prohibition in the capitularies of Lewis the Pious of the alienation of church property, except in exchange for royal favors.²

If the precedents found in the Justinian law were effective in fixing the position of the church in the legislation of the Frankish kings, the *Breviary* of Alaric, as already stated, established its place in local custom and usage. Its forty manuscripts, nearly all found in Frankish territory, the frequent occurrence of portions of it in the manuscripts of other collections of laws, the seven epitomes or minor codes for which it is the source, are evidence of the popularity of the *Breviary* in mediæval jurisprudence.³ Something more

¹ A council of 794 directs that bishops and counts together decide cases involving clerks and laymen. (Boretius, i, 77). Hincmar, in his letter to Charles the Bald, mentions a method by which the king appoints judges who, with the bishops, decide mixed cases. *Ep.*, 40, Conc. Aur. (538), c. 32; *ibid.* (541), c. 20, Conc. Matiscon (585), c. 9 *et seq.* Cf. Nissel, *Der Gerichtstand des Clerus im frankischen Reich*, pp. 112, 116; Conrat, *Gesch. der Quellen und Lit. des röm. Rechts*, vol. i, p. 37.

² Savigny, vol. ii, p. 100.

³ Cf. Introduction and text of Haenel's edition and the Prolegomena to Mommsen's edition of the Theodosian code.

than tradition indicates that Charlemagne recognized and approved it as a source of justice, for the statement that "it was received and placed among the laws by Charles and his son Pippin" coincides with their recognition and confirmation of folk law, by which each nation was given the privilege of amending its own "wherever that was necessary and committing it to writing, in order that the judge might make decisions by written law . . . and all men, poor and rich, have justice in the kingdom."¹

The ecclesiastical legislation of the *Breviary* was often the precedent for laws made by the councils and consequently found its way into the works of the canonists. The restriction on Jewish traffic in Christian slaves was more than once re-enacted.² The edict of Constantius which placed criminal accusations against bishops under the jurisdiction of the synod of bishops was cited in the demand for the immunity of clerks from procedure in the secular courts, as was also the law granting clerks exemption from taxation and public burdens.³ The right of representation in criminal procedure given the bishops by Valentinian was extended to all grades of the clergy by an eighth century epitome of the *Breviary*.⁴ The rule of Honorius on celibacy seems to have been the

¹ A manuscript of the *Epitome* of Aegidius, one of the compilations made from the *Breviary*, is the source of the first quotation (Conrat, *Ges. d. Q. u. L.*, p. 44); the second is from the *Annales Laurentiennes*, anno 802. A clause of a lost capitulary also says: *Constitutata ex lege Salica, Romana, atque Gombata* (Boretius, i, 170). Stobbe regards the passage in the *Annales* as a confirmation of folk-law. (*Geschichte der deutschen Rechtsquellen*, Bd. i, p. 20.) Likewise Conrat, p. 44, n. 4.

² Conc. Aurel. (538), 13; (541) 30, 31; Matiscon (581), 16; *Ben. Diacon.*, iii, 286; Burch. Worm., *Decret.*, iii, 90; Ivo Chart, i, 284; cf. *C. Th.*, xvi, 1, 4 (*Lex Romana*).

³ Aurel (541), 20; Matiscon (585), 9; Paris (614), 4; *Ben. Diac.*, iii, 284; Ps. Isid, *Ep.*, Gaius. Cf. *C. Th.*, xvi, 1, 2 (*Lex Romana*); *Ben. Diac.*, iii, 185. Cf. *C. Th.*, xvi, 1, 1 (*Lex Romana*).

⁴ *Nov. Val. III*, 12; *Epit. Monach.*

source for similar legislation of numerous councils, while the laws regarding heresy and apostasy were also known, but were not so frequently cited.¹

It was from the *Breviary* also that the ecclesiastical authorities derived many of those legal principles which gave the canon law its distinctive character as a system of justice. The rules that the accuser in a criminal action who fails to prove his charge must suffer the penalty involved, that those accused of crime and not proved innocent can not give testimony in a criminal process, that the judge can not examine until a formal accusation has been made, and the extension of the conception of crime from physical injury to libel—these principles of the canon law have their source in the *Breviary* of Alaric.² They illustrate how direct was the transition from the later Roman to the ecclesiastical justice of the middle ages, and, when compared with the contemporary legal ideals of the Germanic nations, they explain the popularity of the court Christian. Indeed the references to the sixteenth book of the Theodosian code by the canonists are far less frequent than to those titles of the ninth book and the portions of the *Sentences* of Paul which treat of evidence, procedure and appeal—a fact that indicates that the chief concern of the church in the early middle ages was not the maintenance of ecclesiastical privileges, but the work of directing the varied social activities of mankind.

¹ Löning, Bd. ii, p. 323; *Ben. Diac.*, iii, 188, 287; Ps. Isid., *Ep.*, *Analect*, ii; *Ep.*, Gaius; *Lex Bav.*, i, 13, art. 2.

² *Ben. Diac.*, iii, 164; Burchard, vol. i, p. 164; Ivo Pann., iv, 111; Ivo Chart., xvi, 248. It is interesting to notice that Gratian was not acquainted with the *Breviary*, but he was familiar with its legislation through the acts of the councils. There is also no evidence of use of the *Breviary* by the Popes.

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**THE INTERNATIONAL POSITION OF
JAPAN AS A GREAT POWER**

STUDIES IN HISTORY, ECONOMICS AND PUBLIC LAW

EDITED BY THE FACULTY OF POLITICAL SCIENCE OF
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THE INTERNATIONAL POSITION
OF
JAPAN AS A GREAT POWER

BY
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to

MY PARENTS

AND TO THE

MEMORY OF MY ANCESTORS

THIS ESSAY IS REVERENTLY

DEDICATED

PREFACE

JAPAN, an Asiatic nation, which, until forty years ago, maintained for more than two centuries a policy of strict seclusion, is to-day not only admitted into the comity of civilized nations, but has, in matters concerning the Far East, come to play a part as important as that of any of the great powers of the West. The Island Empire, which ten years ago achieved an unbroken victory in a struggle with an eastern nation of four hundred million people, lately drifted into war with one of the strongest powers of Europe and has again won an "unbroken victory on land and sea." Does the "marvelous and swift progress" of modern Japan tend to become a "peril" to western civilization? Or does it contribute to the great work of the world's civilization? Will Japan use her power in obtaining exclusive privileges, or in leading toward the light her sister nations of Asia? Is she *persona grata* or *persona non grata* to the nations engaged in world-intercourse? Strongly believing that what has been accomplished by Japan in the interest of civilization is an earnest of what will be done hereafter, I have endeavored by careful research to trace Japan's historic policy in dealing with foreign nations. Incidentally frequent references have been made to the diplomatic and commercial history of Europe and America, to the principles of international and other public law, as well as to phases of private law, and to economics and sociology, in order to elucidate with scientific precision the relations between the East and the West.

I gratefully acknowledge my indebtedness to the members of the Faculty of Political Science in Columbia University, and especially to Professor John Bassett Moore, under whose supervision this work was undertaken.

SEIJI G. HISHIDA.

NEW YORK CITY, September, 1905.

ERRATA

- Page 10, second line, read for "1863," "1868."
- Page 22, footnote, read for "*The Prince*," "*Il Principe*."
- Page 50, ninth line, read for "Tong," "Tang."
- Page 57, eleventh line, read for "Heiau," "Heian."
- Page 83, twenty-sixth line, read for "Koyoshima," "Kagoshima."
- Page 90, fourth line in footnote, read for "562," "502."
- Page 91, twelfth line, read for "1554," "1564."
- Page 128, fourth line in footnote, for "S. Hozumi, *op. cit.*" substitute "N. Hozumi, *Ancestor Worship*."
- Page 148, first and third lines, read for "five," "eight."
- Page 152, tenth line in footnotes, read for "1889," "1886."
- Pages 165 and 188, read for "Tai-won-Kun," "Tai-Om-Kun."
- Page 167, footnote 2 refers to the words "*coup d' état*" in the twenty-first line.
- Page 168, twenty-second line, read for "in April," "on April 18."
- Page 169, sixth line in footnotes, read for "rice," "grain."
- Page 210, sixth line, read for "Chili," "Pechili."
- Page 224, sixteenth line, add the words "and Korea" after the word "Manchuria."
- Page 230, fourth line, read for "Ta-tung-kou," "Antung."
- Page 285, seventh line, read for "Beneditti," "Benedetti."
- Page 285, twenty-first line, read for "New York, 1902," "2 vols. London, 1883."
- Page 285, thirty-fourth line, read for "Forster," "Foster."
- Page 286, fifteenth and sixteenth lines, read for "Hall, W. A.," "Hall, W. E."
- Page 286, nineteenth line, for "Harris" read "Harrisse."
- Page 287, ninth and tenth lines, add "J." after "T."
- Page 289, sixth line, read for "*Treaties*," "*Treaty*."

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CHAPTER I

INTRODUCTION

International Society and its Characteristics.—Although nations are, from the ethnographical, geographical and political viewpoints, divergently distributed over the earth, they yet have intercourse and compacts with one another. The intercourse of nations may be manifested in the establishment of diplomatic relations; in the pursuit of commerce, industry and navigation; in the cultivation of science, art and religion; in immigration, travel, intermarriage and social pleasures; in brief, in all the forms of activity which are necessary to satisfy the wants of mankind. In the conduct of intercourse a group of different nations exhibits “purposes of common concern,” or, “consciousness of kind,” and, therefore, forms a society,¹ just as individuals create a private society, or citizens and ruler organize a municipal community or a national state. The society composed of different nations, or states, has been called international society, the society of states, or the “family of nations,” in which the associating members are bound together. The binding power of international society, even though it has a “common civilization,” is necessarily weaker and looser than that of the municipal society, in so far as the former consists of members having conflicting traditions and histories differing in their details. The “consciousness of kind” in international society is im-

¹ As to the conception of a society, see Giddings, *The Principles of Sociology*, pp. 3-5 and 17-18.

perfect. The perfection of international life still belongs to the future of civilization. Compared with the individual society, like the club or the union, international society, however, is more exclusive and indispensable. No nation is permitted to remain in isolation,¹ while a disgruntled member may voluntarily withdraw from his club or a recalcitrant member may be compulsorily expelled. The western nations, by the exercise and the display of force, established diplomatic and commercial relations with China and Japan in the middle of the last century. In 1876 Japan took the initiative in opening the "Hermit Kingdom" of Korea, not by the exercise of direct force, but by a show of naval power.

Ubi societas ibi jus est. As the national state administers its justice and peace by municipal law, so international society regulates its intercourse according to international law. Society, whether national or international, must have power to enforce the law, for without it social order would be replaced by anarchy on land and by piracy on the high seas. The power to compel obedience and punish disobedience is, or originates in, sovereignty. The object of sovereignty is identical both in the national and in international society. Its application is, however, somewhat different. Sovereignty, from the standpoint of constitutional law, is original, unlimited, universal power over the subject members of the state.² In the sense of international law, sovereignty is the independent power of each state in the management of its foreign intercourse, as opposed to the will of all other states, *i. e.* it consists in the independence of one

¹ Westlake, *International Law*, pp. 6-7.

² Burgess, *Political Science and Comparative Constitutional Law*, vol. i, p. 52. Hozumi, *Ken-po-Tai (Outline of the Japanese Constitution)*, pp. 3, 11. Laband, *Das Staatsrecht des deutschen Reichs* (edition of 1902), p. 13.

member in relation to the other members.¹ The modern international society, consisting of independent nations, does not recognize any universal and absolute power, like the universal rule of Rome. Modern international law is not a universal law under a common superior, like the *jus gentium*² of Rome, but is a system of rules for the guidance of independent states in their mutual intercourse. It declares that every independent state has the right to do whatever is necessary for its existence and welfare by all legitimate means, "such as the pacific acquisition of new territory, the discovery and settlement of new countries, the extension of its navigation and fisheries, the improvement of its revenues, arts, agriculture and commerce, the increase of its military and naval force."³ On the other hand, an independent state is bound to respect these rights in other states.⁴ All sovereign states are, in the eye of international law, equally entitled to claim such rights and equally bound to perform such duties.

Speaking historically, the principle of the equality of sovereign states has not been fully enforced in cases where an aggressive state infringed the sovereign rights of a feeble state. International society, composed of independent sovereign states, could not establish a "common superior" or universal sovereign which might theoretically administer international justice. On the contrary, it has been left to independent states to interpret and execute in-

¹ As to the distinction between internal and external sovereignty, see Wheaton, *Elements of International Law*, part i, chap. ii, par. 5. Heffter, *Völkerrecht* (6th edition), p. 40. Meyer, *Deutsches Staatsrecht* (edition of 1878), p. 10. Holland, *Jurisprudence* (9th edition), p. 47.

² The "*jus gentium* was not law international, but law universal." Walker, *The Science of International Law*, p. 62.

³ Wheaton, *Elements of International Law*, part ii, chap. i, par. 4.

⁴ Hall, *International Law* (4th edition), p. 45.

ternational law by themselves, separately or corporately. Under such circumstances, an aggressive state would assert its selfishness at the expense of a weaker state. The members of the international society, however, have not been so indulgent as to give a free hand to the aggressor. When the occasion arises, certain states, called the "great powers,"¹ exercise their influence in international politics for the general interests of international society without violating the legal equality of the weaker states. They have not hesitated even to undertake intervention in affairs belonging purely to a third state. The exercise of influence by a single power is the system that now prevails on the American continents under the name of the "Monroe doctrine;" but combined interference has been the system of Europe, and it is to-day the characteristic of the conduct of the powers interested in the Far East, its predominating feature being the maintenance of the "balance of power."

International Politics in Europe—The "Balance of Power."
—To understand concretely modern international life, it is not without profit to recur to the political relations of ancient Greece. Each commonwealth (πῶλις) of ancient Greece, though it may have occupied but a little island, valley, town or peninsula, possessed an independent power (αὐτονομία), with the right of making war and peace, as does the modern independent state. In their international life

¹ For the influence of the great powers, see Lawrence, *Essays on Some Disputed Questions in Modern International Law*, essay v, "Primacy of the Great Powers." Westlake, *International Law*, p. 92 et seq. "The Political Inequality of States and the Great Powers of Europe." Rivier, *Principes du droit des gens*, vol. i, pp. 125-126. See also "The Primacy of the United States in America," Lawrence, *International Law*, par. 136. The German authorities, Liszt and Zorn, say Japan entered the ranks of the great powers in 1894. See *Völkerrecht*, p. 54; *Grundzüge des Völkerrechts*, p. 21.

these petty Hellenic city-states had a very simple and imperfect body of rules developed from their philosophy, religion and custom.¹ Athens, Sparta, Thebes and Macedon assumed leadership (*ἡγεμονία*) in the political struggle—in commercial, territorial and colonial development—as do the modern great powers. The principle of the balance of power against an aggressive member or foreign foe was intelligently applied for their self-preservation.² Nevertheless, the Greeks, as the result of their strong but narrow communal spirit,³ in time became weak against external attack, and the possibility of their higher development in international life was destroyed in 338 B. C., when they were overwhelmed by the universal empire of Alexander the Great.

The primitive conception of the Roman state—kingdom or republic—was, like the Greek, that of a city-state (*civitas*). Though the Roman city-states each maintained an independent existence, there was less trace of true international law.⁴ This was, doubtless, owing to the political genius of the Romans, which was not based upon the principle of mutual respect among different nations, but sought to organize all mankind as the unit of state.⁵ Rome, under the Caesars, struggled for universal empire over her fellow states and foreign nations. The national code (*jus civile*) was supplemented by the *jus gentium*—universal code; and the Roman *imperium* became *imperium*

¹ For the law of peace and war of ancient Greece, see Walker's *History of the Law of Nations*, pp. 37-43.

² See "Theory of the Balance of Power among the Ancient Nations," Wheaton, *History of the Law of Nations*, p. 16 *et seq.*

³ Burgess, *Comparative Constitutional Law*, vol. i, p. 31.

⁴ An account of the early international usages of the Romans may be found in Walker, *History of the Law of Nations*, pp. 44 *et seq.*

⁵ Burgess, *op. cit.*, vol. i, p. 35. The political genius of the Roman.

mundi.¹ Under the Roman régime, the so-called international law, which regulated intercourse among different nations, was positive law in the strict Austinian sense, for it was based upon the command of a common superior. The universal sovereignty of a world dominion would have solved, at least temporarily, the question of world politics—the conflict between nations.

But European nations had not as yet sufficiently developed to be ready for government by Roman universalism. Nations must have universal customs, a world language, *i. e.* universal consciousness of right and wrong, before the establishment of universal empire can take place; otherwise universalism checks the freedom of the individual, suppresses local autonomy, national traditions and patriotism; and the reaction against it destroys the stability of the universal empire.² It is no wonder, then, that the Roman empire was at last destroyed, in 476 A. D., by those Teutonic tribes whose political psychology involved national freedom,³ and that the latter constructed their states out of Roman provinces.

In the course of time, however, Teutonic rulers, combining with Roman bishops, founded a universal dominion, after the Roman fashion, and called it the "Holy Roman Empire." It was first established by the Frankish monarch, Charlemagne, in 800, and, after the coronation of Otto I, at Rome, in 962, Romano-German emperors claimed the powers of the Empire.⁴ The universalism of the Middle Ages was based upon the politico-religious principle. All nations were regarded as "one religious and political

¹ Bluntschli, *The Theory of the State*, p. 38.

² As to the vices of universalism, see Burgess, *op. cit.*, vol. i, p. 36.

³ For the political genius of the Teutonic race, *cf. ibid.*, pp. 37-39.

⁴ Bryce, *Holy Roman Empire*, chaps. iv, v, viii.

brotherhood, of which the Roman bishop was the spiritual head, and of which the Emperor was the secular chief." Emperor and Pope again made a mistake in their conception of universal peace. They saw only superficially the human race as a unit, but did not seriously consider that, in spite of this general unity, nations are individually different at heart.

While Emperor and Pope claimed world-wide dominion, the Teutonic race, which already had scattered all over Europe, was restlessly pursuing its political mission—to establish "states upon the principle of national union and independence." Though the kings of England, Denmark and Spain formally acknowledged the supreme power of the Holy Roman Empire of Charlemagne, theirs were in fact independent states. Since the treaty of Verdun (834), the Frankish Empire had broken into a number of kingdoms. France also broke away from the Empire in 888. The Holy Roman Empire was restored by Otto the Great in 962, but it covered only the German-Italian nations. In the great struggle between the Emperor and the Pope in the eleventh century, the former was gradually stripped of his power. The feudal barons and free cities, taking advantage of the struggle, became more and more independent. After the proclamation of the constitution by the electoral diet at Frankfort in 1338, the imperial office existed only at the pleasure of the feudal barons.

The power of the Pope, on the other hand, increased in proportion to the decline of the imperial power. The Pope came to claim the right "to give and take away empires, kingdoms, pryncedoms, marquisates, duchies, countships, and the possessions of all men."¹ The mighty effort of the

¹ Cf. Gregory VII's letter to Emperor Henry IV in Bryce's *Holy Roman Empire*, chap. x, p. 161.

church to unite all Christendom against the Saracens in the Crusades, increased the papal power and influence. In the latter part of the Middle Ages his influence was universally recognized, and the Pope often acted as arbitrator between Catholic nations.¹ A Papal Bull fixed the boundary line in the Portuguese-Spanish dispute in the fifteenth century.

As the universalism of the Emperor and the Pope declined, and nationalism, or the territorial sovereignty of independent states, increased in proportion, a marked change took place in the affairs of Europe. The Houses of Hapsburg of Austria, and of Valois of France, grew up gradually to be powerful dynasties. German and Italian principalities lying between them were exposed to the dynastic ambition of two great powers. Charles VIII of France, in 1495, invaded Naples and set up the power of France in Italy: His conquest created general alarm in Europe. Spain, the Emperor of Germany, the Pope, Milan and Venice, on March 31, formed a league² to compel Charles to abandon Naples. The league was renewed in the following year with the fundamental aim of the mutual preservation of the several states against the aggressive designs of any state. The modern European concert, or balance of power, may be traced back to this league, so far as combined interference against an aggressive state is concerned.³

The House of Hapsburg had, however, since the beginning of the sixteenth century, begun to threaten the rest of Europe. Charles I of Spain, the grandson of Maximilian of Austria, was elected to the German imperial throne in 1519, as Charles V. This accession united the Austrian

¹ Moore, *International Arbitrations*, vol. v, pp. 4825 *et seq.*

² For the account of the invasion and the league, see Dyer, *History of Modern Europe*, pp. 212-219.

³ Wheaton, *History of the Law of Nations*, p. 80.

dominions, the German Empire and all the Spanish possessions, including the vast colonial empire in America, so that Charles was the most powerful ruler in Christendom. Francis I of France, the rival of the Hapsburgs for supremacy in European politics, professed, of course, an open opposition to Charles. England entered into the vortex of continental politics under Henry VIII, who was intelligently guided by the famous Wolsey. Both Charles and Francis sought the alliance of England. When Francis threatened the Italian states, a defensive league¹ was concluded against him by Charles V, England, the Pope and the Italian lords; but, when Francis had been restrained and Charles became aggressive, England, the Pope, Francis and the Italian principalities formed the Holy League of Cognac against Charles.² The dynastic struggles between the two great powers during the sixteenth century were much complicated by the Reformation. France, in spite of her cruel persecution of Protestants in her own dominions, endeavored to form an alliance with the Protestant states of Germany, with Sweden and Denmark, and even with heathen Turkey, against Charles V. After the death of Charles his dominions were divided between Philip II of Spain and Ferdinand of Austria. Both these successors of Charles were constantly engaged in religious and political activities. Philip soon dismembered Portugal, made the Netherlands his battle-ground for tyrannical oppression, and threatened the reduction of England to a Spanish province. But the Armada was destroyed, while the Hapsburg power in the Spanish dominions was broken by the resistance of the Dutch, assisted by Henry IV of France. In the beginning

¹ For the league against Francis, see Johnson, *Europe in the Sixteenth Century*, p. 164.

² For the league against Charles, see *ibid.*, p. 184.

of the seventeenth century the religious aggressions of the Austrian Hapsburg kindled a general alarm in the Protestant states. Then it was that the king of France, guided by the celebrated Richelieu, and Gustavus Adolphus of Sweden, combined with the Protestant states of Germany and entered into the prolonged struggle against Ferdinand of Austria.

The old notion of universalism, or of a common superior—Pope and Emperor—gradually disappeared and finally received its death-blow through the Reformation and through the development of the idea of territorial sovereignty, which was derived from the feudal régime. The theory of nationalism was inculcated in Europe by Machiavelli.¹ The bloody struggle of the Thirty Years' War was nothing but the effort of the individual state to maintain its sovereign rights against the religious and political interference of the Catholic rulers. From that time on the national state in Europe became predominant. The beginning of the era of independent states marks the beginning of that international society, the members of which are bound by ties of mutual respect. Had the individual states been left to themselves without the restraint of law—positive or customary—the world would have been controlled by military anarchy. Shocked by the brutal struggles of the sixteenth and seventeenth centuries, and especially by the horrible excesses of the Thirty Years' War, Grotius,² the great Dutch jurist, propounded the theory that the intercourse of independent states should be regulated on the basis of absolute legal equality without the intervention of any common superior. Weary of the anarchical struggle of the Thirty

¹ *The Prince*, published in 1522.

² His celebrated book *De Jure Belli ac Pacis* was published in 1625. For his influence upon the evolution of international law, see Lawrence, *Essay on Modern International Law*, essay iv.

Years' War, European nations eagerly accepted the doctrine of Grotius. The Peace of Westphalia, signed in 1648 at Münster and Osnabruck, was the immediate fruit of the work of this great jurist. It recognized the independence of each separate state, even within the boundaries of the Holy Roman Empire.¹ The principle of territorial sovereignty and the right of intercourse with any and every nation were generally and formally asserted by every independent state, both Catholic and Protestant, both great and small. The custom of maintaining permanent embassies, which had prevailed among the Italian states since the thirteenth century,² now became the general practice of independent states. Thus the "family of nations" and international law came into existence in their more definite forms.

The doctrine of Grotius—the principle of the legal equality of sovereign states—was enlarged and emphasized by his followers. International transactions, however, in some cases, could not be settled on the basis of the legal equality of the parties concerned, since a strong state, having more power and influence than a weak one, naturally would be disposed to claim more than its due. Under the régime of that international law which recognizes no common superior, there was no remedy in such cases other than the "league," "alliance" "coalition" or "co-operation" of a number of states against the aggressive power. The system of the "balance of power," which had been initiated in the dark ages, was still useful, and indeed necessary, even in the enlightened era of international society.

¹ Professor Westlake treats the effects of the Peace of Westphalia in the most accurate manner, in his *International Law*, chap. iv.

² For the historical development of permanent embassies, see Nys, *Les Origines du droit international*, chap. xiv, pp. 297 *et seq.* Cf. Westlake, *International Law*, p. 59.

By the remarkable success of her diplomacy at the Peace of Westphalia and the Peace of the Pyrenees, France put an end to the Spanish supremacy and secured for herself the highest position in Europe. Louis XIV, during the half century preceding 1713, was the object of general fear throughout Europe. Against the undue claims of Louis upon the Low Countries, claims which threatened the existence of the United Provinces of the Netherlands, the "Triple League"¹ of the United Provinces, England and Sweden was formed in 1668. The crafty Louis cleverly broke down the Triple Alliance and secured the secret assistance of England, which was then carrying on hostilities against the Dutch in a struggle for commercial supremacy. The Dutch, being now at enmity with two great maritime powers, formed a new league² with Spain and Austria in 1673 against Louis, and barely escaped dismemberment. As the result of the marriage of William of Orange and Princess Mary of York, in 1677, England and the United Provinces formed a personal alliance against France. Louis, notwithstanding the persecution of his Protestant subjects at home, provoked the Protestants of Hungary against the emperor of Austria, and, as Francis I had done, allied himself even with heathen Turkey to gratify his political ambition. In consequence, in 1686 the "great League of Augsburg"³ was directed against him. Louis once more attempted the dismemberment of the Netherlands, but was thwarted by the "Grand Alliance"⁴ and compelled to agree to the Peace

¹ *General Collection of Treaties* (2d edition, London, 1712), vol. i, pp. 136-145.

² Dyer, *History of Modern Europe*, vol. iii, p. 369.

³ *Ibid.*, vol. iii, p. 419.

⁴ Originally an offensive and defensive alliance between Holland and Austria, into which England entered in December, 1689. *General Collection of Treaties*, vol. i, pp. 275-280.

of Ryswick in 1697. When Charles II of Spain died without issue, Louis claimed the Spanish succession for his grandson, Philip, by virtue of the will left by the king. To unite the Spanish dominions, which were still extensive, with France, would have destroyed the balance of the European system. Therefore, the second "Grand Alliance"¹ between England, Austria and the Netherlands, was formed in 1701 against Louis. The so-called war of the Spanish succession went on until the Peace of Utrecht was concluded in 1713-14. In spite of the aggressive efforts of Louis XIV, France made little change in the system founded by the Peace of Westphalia, other than slight territorial adjustments of the frontiers. Her recompense was, on the other hand, "the disturbance of her finances, the exhaustion of her population and loss of her colonies abroad."

In the eighteenth century Sweden, which had since the time of Gustavus Adolphus signally exerted its influence upon the balance of power of Europe, and the Spanish monarchy, which had been a terrifying object for centuries, were reduced to the position of second-rate powers. Two new powers came to play an active part in European politics. Russia, gradually becoming a great power, began to expand at the expense of her neighbors. The second power was Prussia. The artificial expansion of its boundary towards Austria and Poland formed the main parts of its history in the eighteenth century. Having destroyed the maritime supremacy of Spain and France, England had become the dominating power in matters of colonial and commercial policy. But, although neither Russia nor Prussia nor England could rival the predominance held by Spain in the sixteenth century and by France in the seventeenth, the check-mate of the "league" was often invoked for the pre-

¹ *General Collection of Treaties*, vol. i, pp. 415-421.

servation of the *status quo* of the European system. The Triple Alliance between England, France and the Netherlands was formed in 1717, partly against the aggressive activity of Russia, under Peter the Great, toward the Baltic Sea.¹ This alliance, joined in the following year by Austria, was applied to the south of Europe when Philip V of Spain conquered Sardinia and was about to invade Sicily.²

The Peace of Utrecht by confirming England's possession of Gibraltar as well as by the advantages which she had wrested from France and Spain in the New World, greatly strengthened her position as a commercial and colonizing power. Her maritime supremacy, however, called forth the bitter opposition of France and Spain. The coalition of these Latin powers against England was the natural result. This Anglo-Latin struggle became entangled with the affairs of Austria and Prussia in the wars which then raged in continental Europe. When Frederick the Great made an undue claim upon Silesia and war broke out in 1745 between Austria and Prussia, England together with the Netherlands and Sardinia helped Maria Theresa while France and Spain supported her enemy.³ Although peace was nominally concluded at Aix-la-Chapelle in 1748, another war broke out again between Prussia and Austria in 1756, involving most of the European powers. Now things turned about. France took the side of Austria, with Russia; and even "Sweden, Denmark and Saxony were to be induced to join the alliance."⁴ These continental powers were so jealous of the ascendancy of Frederick that they suggested the dismemberment of Prussia. England under Pitt, however, joined Prussia, by paying a

¹ Hassall, *The Balance of Power* (1715-1789), pp. 42, 46.

² *Ibid.*, p. 54.

³ Freeman, *General Sketch of History*, p. 307.

⁴ Hassall, *The Balance of Power*, pp. 243-245.

subsidy of £670,000 a year to the king of the isolated power.¹ Spain at first maintained neutrality, but in 1761 entered into hostilities against the Anglo-Prussian alliance by the *pacte de famille*,² an alliance with France. Hostilities were carried on on both sides of the Atlantic until peace was concluded at Paris and Hubertsburg in 1763. But the Anglo-Latin colonial struggle did not cease with the Seven Years' War, for France and Spain had lost extensive possessions in the New World by the Treaty of Paris. When the war broke out between Great Britain and her American colonies, France entered into a coalition³ with the latter, and still later Spain took part in the war against Great Britain. The British colonies secured their independence, but France and Spain, although they were to a certain extent victorious, were unable to recover their ancient prestige.

Russia under Catherine II revived her expansionist movement, in the course of which Poland, Turkey and Sweden were the natural sufferers. As to Poland, Catherine stepped in as early as 1764 to interfere in its political affairs, taking advantage of the existing political corruption. Russian activity in Poland produced fear and jealousy in Prussia and Austria. Frederick the Great, a military diplomat, seeing the danger of the absorption of Poland by a single power, persuaded Austria to secure a part of the spoils and suggested the partition to Russia in order to maintain the balance among them. By the partitions of 1772 and 1793, Poland was finally dismembered. Hitherto the system of the balance of power had been applied for the preservation of states. This was the first example of the misapplication

¹ Hassall, *The Balance of Power*, pp. 252-253. ² *Ibid.*, p. 272.

³ Moore, *A Hundred Years of American Diplomacy* (American Bar Association Report of 1900), p. 331. See foot-note for the treaty of alliance of the United States with France.

of the system by the continental powers, to the destruction of an independent state.¹

Catherine II perceived the difficulties arising out of the Russian eruption into the Baltic Sea, as shown by the prompt coalition of northern Europe under the lead of Great Britain, and inaugurated strenuous efforts to obtain an outlet on the Mediterranean through the Balkan peninsula. Russia had already established her influence on the northern coast of the Black Sea by the famous treaty of Kainardji with Turkey in 1774, and Catherine was projecting a further expansion when she made her celebrated journey into the Crimea. Joseph II of Austria foresaw that Catherine's activity in the peninsula would take the form of an attempt to absorb the Ottoman Empire, and suggested the partition of that empire. In 1787 Turkey entered into war with Russia and Austria. As soon as the existence of the empire was threatened, Pitt of England formed a triple alliance of England, Prussia and Holland against the aggressive designs of Russia and Austria.² In the following year this alliance was also applied to northern Europe, when Russia attempted to annihilate Sweden with the assistance of Denmark.³

During the eighteenth century the sovereign rights of independent states were so little respected by aggressive powers that the dismemberment of weak states was attempted from time to time. But the latter were wisely relieved by the alliance headed by England. There was no significant change in the political system of Europe which had been arranged by the Peace of Westphalia, except the partition

¹ Wheaton condemns this misapplication of the system of the balance of power which resulted in the dismemberment of an independent state. Cf. *History of the Law of Nations*, p. 280.

² Hassall, *The Balance of Power*, pp. 385-6.

³ *Ibid.*, p. 384.

of Poland. However, the selfish colonial policy of George III caused England to lose the vast dominion which was embraced in the United States.

At the end of the eighteenth century the French revolution broke out. Almost all the European states were involved in it; and the balance of power in Europe was again upset. Against the revolutionary and military aggressions of the revolutionary government of France, England formed a coalition¹ with Austria, Russia, Prussia, Sardinia, Spain, Portugal and various minor states in 1793. When Napoleon became the subject of universal alarm in Europe, Pitt again formed in 1805 a coalition² composed of England, Russia, Austria and Sweden. Cleverly breaking into the English league, Napoleon established the "continental system,"³ by which all continental states were to be brought under his influence and by which England was to be excluded commercially from the continent. But the exclusions and restrictions of continentalism eventually intensified the feeling against Napoleon on the continent. Russia first abandoned the policy, and other powers assumed one by one an attitude of hostility to the universalism of Napoleon. Finally, a coalition of the continental states, headed by Great Britain, overthrew Napoleon at Waterloo. The state system of Europe which was disturbed by revolutionary France and Napoleon, was restored by the Congresses of Paris and Vienna.⁴

European nations, warned by the world-wide wars of the

¹ Burrows, *The History of the Foreign Policy of Great Britain*, p. 187.

² *Ibid.*, p. 236.

³ *Ibid.*, pp. 260 *et seq.* For a comprehensive treatment of the continental system, see Moore, *International Arbitrations*, pp. 447 *et seq.*

⁴ For the Treaties of Paris and Vienna (1814-1815) which restored the European system, see Hertslet, *The Map of Europe by Treaty*, vol. i, pp. 1 *et seq.* and 60-295.

seventeenth and eighteenth centuries and of the Napoleonic era, now sought universal peace. The so-called "concert of Europe"¹ was established. Its principal object is to place certain questions of international concern under the superintendence of the great powers. It was the general interest of Europe to avoid the recurrence of universal war. The concert of Europe differed, however, from the so-called "Holy Alliance," which contemplated interference with the internal constitutions of independent states. As a matter of fact, the continental powers tried to attach the system of internal intervention to the concert of Europe, but in this they were thwarted by Great Britain.² The members of the concert were Great Britain, France, Prussia, Austria and Russia, and later Italy, which was invited to join it in 1867. The establishment of the independent states of Greece and Belgium; the erection of Egypt into a semi-sovereign state under the sovereignty of the Porte; the maintenance of the integrity of Turkey; the permanent neutralization of Switzerland, Belgium and Luxemburg, and the Suez Canal, have been the principal achievements of the great powers forming the concert of Europe.

The concert of Europe, however, is not applied to international affairs between the great powers themselves. None of the other great powers ventured to interfere in the Austro-Prussian War of 1866 or in the Franco-Prussian War of 1870; matters were left entirely to the parties themselves.³ Under such a régime, there is no guarantee for the avoidance of international conflicts among the great powers. But Prince Bismarck inaugurated the new plan for peace among the great powers in his doo-

¹ Lawrence, *Essay on Modern International Law*, pp. 210-216.

² *Ibid.*, pp. 217-223.

³ *Ibid.*, p. 229.

trine of "armed peace" with defensive alliance and progressive armament. Russia, in return for her benevolent neutrality during the Franco-Prussian War, expected Germany to support her views on the Eastern question. Russia had in fact taken advantage of the war to send a circular note to the great powers declaring herself to be no longer bound by the Black Sea clause of the Treaty of Paris of 1856, which limited her armaments on the Black Sea. The Russian claim, though it was seriously condemned by England, was recognized in the London conference of 1871 through the valuable assistance of Bismarck.¹ Seven years later, however, Bismarck refused to countenance the aggressive intent of the Treaty of San Stefano, and by the Berlin Congress in 1878 Russia was deprived of the fruits of her victory over Turkey.² Russia then began to look for a new alliance. As Bismarck was much concerned over the possible alliance of Russia and France, who were both longing for an opportunity to revenge themselves upon Germany, he formed a defensive alliance with Austria in 1879 in order to provide for the emergency.³ In 1882 the alliance was joined by Italy, as the latter nation was threatened by the colonial activity of France in Northern Africa.⁴ In 1883 the Triple Alliance was formally constituted, its fundamental object being to insure the maintenance of the peace

¹ Beneditti, *Studies in Diplomacy*, p. 96. See also Duggan, *The Eastern Question*, p. 129.

² For the attitude of Bismarck toward Russia, see his *Memoirs*, chap. xxviii.

³ The text of the treaty is found in *British and Foreign State Papers*, vol. 73, p. 270. See also Beneditti, *Studies in Diplomacy*, pp. 120-121, and Debidour, *Histoire diplomatique de l'Europe*, vol. ii, conclusion i.

⁴ Beneditti, *ibid.*, p. 135. Debidour says the Italian king Humbert had interviews with the German emperor and the Austro-Hungarian sovereign in 1882, and in the following year the Italian government formally entered into the Austro-German alliance. See vol. ii, p. 543.

of Europe. It must not be forgotten that Bismarck, after the formation of the Triple Alliance, made a secret treaty with Russia in order to keep "open the way to an *entente cordiale*" with that country, and to keep France isolated as far as possible. It remained nominally in force until Bismarck went out of office in 1890.¹

Though Bismarck so successfully tried to prevent Russia from joining with France, these countries came gradually to regard their alliance as a necessity to their interests in European politics.² In July, 1890, a visit of the French fleet to Cronstadt gave to the world the first proof of the Dual Alliance. In October, 1893, the appearance of the Russian fleet at Toulon demonstrated the existence of the alliance; the exchange of visits of president and czar during 1896 furnished a cordial sign of its continuance.

With the retirement of Beaconsfield from the British cabinet in 1880, the foreign policy of Great Britain was somewhat changed by the peaceful Gladstone, who paid much attention to the Irish question and who endeavored to establish a good understanding with Russia and France.³ Ever since, the avoidance of continental entanglements has been the policy of England, although the Anglo-Russian friction on the Indian frontier, Anglo-French differences in Egypt and the Anglo-Italian understanding in the Mediterranean, have at one time and another caused or indicated a favorable disposition on the part of Great Britain toward the Triple Alliance.⁴ Thus two alliances are now maintaining the balance of power among the great powers. The "concert of Europe" and the "armed peace" of the great powers are to-day insuring the

¹ Phillips, *Modern Europe*, p. 533.

² Debidour, *Histoire diplomatique de l'Europe*, vol. ii, conclusion vii.

³ *Ibid.*, vol. ii, conclusion ii.

⁴ *Ibid.*, vol. ii, p. 559.

peace of Europe. Except in minor matters, European questions are not at the moment occupying diplomatists. At the end of the nineteenth century, as the result of commercial and colonial expansion, the centre of the world-politics of Europe has shifted to the Far East.

International Politics in America—The Monroe Doctrine.—The character of American international politics is different from that of Europe. The balance of power, the concert of Europe, and the counterpoise of Triple and Dual alliances, represent principles almost unknown in the affairs of the western hemisphere. The thirteen American colonies secured their independence a century and a quarter ago by the aid of an alliance with France, and entered into the "family of nations." But their statesmen soon adopted the policy of "non-intervention" and "neutrality," in order to keep the New World out of Europe's "real or imaginary balances of power," and to prevent it from becoming implicated "by artificial ties in the ordinary vicissitudes of her politics."¹ The United States was, therefore, wisely conducted through the critical period of the general wars of Europe, growing out of the French Revolution, without being directly involved in them. After the Peace of Vienna of 1815, the United States was for a while exempt from European menaces, but in the course of time new questions arose, which threatened to draw the American government into complications with Europe.

The czar of Russia, by a ukase issued in 1821, claimed

¹ For the policies of non-intervention and neutrality, see Professor J. B. Moore, *A Hundred Years of American Diplomacy* (Reports of American Bar Association, 1900), pp. 329, 334. Washington's neutrality proclamation of April 22, 1793, is found in Moore, *International Arbitrations*, vol. iv, p. 3968. See also the Farewell Address of Washington and statements of John Adams and Jefferson in Wharton's *International Law Digest*, vol. i, pp. 172-173.

exclusive sovereignty over the northwest coast of America from Bering's Straits down to the fifty-first degree of north latitude, and assumed to prohibit foreigners from carrying on commerce, navigation and fishery within a hundred Italian miles of the shore.¹ While the United States was negotiating relative to the Russian claim, the "Holy Alliance" was contemplating the taking of steps to overthrow the republican governments of the Spanish-American states, whose independence had been duly recognized by the United States, and to restore them to their former position of Spanish dependencies.² In order to defeat this aggressive design of the European powers, President Monroe declared in his message to Congress in 1823, that any attempt on their part "to extend their system to any portion of this hemisphere" would be "dangerous to our peace and safety." Referring to the Russian claim, he said: "The American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European powers." These declarations constitute what has since been described as the "Monroe doctrine," which has become "a cardinal principle of American diplomacy." In its origin it was a defensive measure. Its principal objects were, first, to prevent the threatened intervention of the combined powers of Europe "for the purpose of reducing independent American states to subjugation to a European power" or destroying their republican institutions; second, to prevent European powers from founding colonies in the territory of

¹ Snow, *Treaties and Topics in American Diplomacy*, p. 271. See also Moore, "The Monroe Doctrine," *Political Science Quarterly*, vol. xi, pp. 3-4.

² Moore, *ibid.*, p. 11. George Canning, the British foreign secretary communicated the intention of the "Holy Alliance" to Mr. Rush, the American minister in London.

those states.¹ The upholding of these principles by the United States, on behalf of other American nations, is not a legal obligation, either in the sense of municipal law or in that of international law. The principle, as it was announced, did not call for legislative sanction, nor was the United States bound to maintain it by alliances, or to become the protector of any other nation by treaty stipulations. On the contrary, the people of the United States were "left free to act, in any crisis, in such a manner as their feelings of friendship toward these republics and as their own honor and policy may at the time dictate." The Monroe doctrine is but a national policy of the United States—a conscious aspiration of her people.

The Monroe doctrine has been applied in various ways, and has been somewhat enlarged in its scope in later years. President Polk, during his administration, invoked the doctrine with reference to the possible intervention of European powers in consequence of the annexation of Texas, the Oregon boundary question, and the proposed military occupation of Yucatan by the United States.² He also expanded the doctrine, maintaining that a European power should not be permitted to acquire any new possession in the western hemisphere either by "purchase or conquest," which went beyond the original idea of Monroe.³ By the Clayton-Bulwer treaty of 1850, the United States secured from and gave to Great Britain a pledge not to "occupy, or fortify, or colonize, or assume or exercise any dominion over Nicaragua, Costa Rica, the Mosquito Coast, or any part of

¹ Moore, "The Monroe Doctrine," *Political Science Quarterly*, vol. xi, p. 22.

² See the messages of President Polk to Congress, 1845 and 1848.

³ Moore, *ibid.*, p. 17. Professor Moore calls it the Polk doctrine instead of the Monroe doctrine.

Central America.”¹ The most striking application of the doctrine is to be found in the attitude of the United States towards the French occupation of Mexico with the design of replacing the native republican government with the monarchy of the European Maximilian. In this case Mr. Seward, who was then secretary of state, did not mention the Monroe doctrine by name, but it was in consequence of his representations, which were within the letter as well as the spirit of that doctrine, that France withdrew her troops from Mexico.² When Venezuela was involved with Great Britain in the dispute as to the boundary of British Guiana, President Cleveland and Secretary Olney opposed the British territorial claim with the Monroe doctrine, and insisted upon Great Britain’s recognizing it as a rule of American policy. Undoubtedly, the disputed boundary of an American nation with an adjacent European colony was not *prima facie* within the scope of the principle announced by Monroe, nor was his doctrine claimed by him to be a part of international law.³ The question as to the boundary of British Guiana was, however, subject to certain restrictions, eventually submitted to arbitration. When Venezuela was again menaced on account of debts and claims by certain European powers in 1901, President Roosevelt availed himself of the opportunity to set forth his views with regard to the Monroe doctrine. He clearly distinguished territorial from commercial questions. As to the former, he declared that “there must be no territorial aggrandizement by any non-American power at the expense of any American power on American soil.” He added:

¹ Article i of the Clayton-Bulwer treaty.

² Henderson, *American Diplomatic Questions*, p. 405.

³ Professor Burgess points out the dangerous extension given to the Monroe doctrine by President Cleveland and Secretary Olney, in his article, “The Recent Pseudo-Monroeism,” *Political Science Quarterly*, vol. xi.

This doctrine has nothing to do with the commercial relations of any American power, save that it in truth allows each of them to form such as it desires. . . . We do not guarantee any state against punishment if it misconducts itself, provided that punishment does not take the form of the acquisition of territory by any non-American power.¹

In announcing his doctrine, President Monroe disclaimed any disposition on the part of the United States to interfere with the "existing colonies or dependencies of any European power;" his doctrine therefore was not designed to be inimical to the retention by European powers of their existing possessions in America.² Nor was there any manifestation of a purpose to deny to the Latin-American states the right to settle questions among themselves.³ It seemed at one time as if the United States might intervene in the war between Chili and Peru, but those powers were eventually permitted to make peace without interference, as they did by the treaty of 1883. The boundary quarrel between Chili and the Argentine Republic was finally settled by arbitration, and the two powers agreed to reduce their naval forces.⁴

The question of the Isthmian canal, which was in controversy between the United States and Great Britain for a half-century, has been definitely settled by the Hay-Pauncefote treaty concluded in 1901. By this treaty the permanent neutralization of the route is secured to all nations, as in the case of the Suez canal, while the United States possesses the right to construct the canal and to police it.⁵ The Cuban

¹ President's Message, Dec., 1901.

² Hart, *Foundations of American Foreign Policy*, p. 215. ³ *Ibid.*

⁴ See agreement between Chili and the Argentine Republic, concluded May 28, 1902. *Foreign Relations of the United States, 1902*, pp. 18 *et seq.*

⁵ The text of the Hay-Pauncefote treaty may be found *ibid.*, pp. 518 *et seq.* See also Professor Moore's article upon the canal question, *New York Times*, March 4, 1900.

question, which, by reason of unsettled conditions in the island, disturbed the United States for many years, was finally settled by the Spanish-American war of 1898.

Whatever the divergences of opinion as to particular applications of the Monroe doctrine may have been, the United States has, during the past century, exercised, in the general interest of the New World, a powerful influence against European interference in the politics of the American continents; and the United States will continue to fulfill this mission with self-confidence and with the assent of the civilized world.¹ President Roosevelt declared in his message to the Congress of 1901, that the Monroe doctrine is "simply a step, and a long step, toward assuring the universal peace of the world by securing the possibility of permanent peace on this hemisphere."

The peace of the western hemisphere is promoted by the leadership of the United States, and practically no important international question is raised by such leadership. But through her possession of the Philippine Islands and the enormous growth of her Asiatic commerce, the United States has been confronted, since the Spanish war, with the Far Eastern question.

Issue of International Politics in the Far East.—Asiatic nations, though they had, for many centuries, formed "a family of nations" with their own civilization, did not enter into treaty and diplomatic relations with Christian nations until the middle of the nineteenth century and did not become involved in the turmoil of world-politics with western powers until the Chino-Japanese War of 1894-95 was over.

¹ The Hague Conference unanimously assented to the reservation by the delegates of the United States of "its traditional policy." Germany and Great Britain have ever since explicitly recognized the principle. See Moore, "Non-Intervention and the Monroe Doctrine," *Harper's Monthly Magazine*, Nov., 1904, pp. 867-868 and 869. See also Holls, *The Peace Conference at the Hague*, pp. 269 *et seq.*

This war demonstrated to the world that China was corrupt and, left to herself, utterly defenceless. The great nations of the world, which had hitherto looked upon the immense population and the inexhaustible resources of China with something of awe, now became interested in the Celestial Empire, because of the apparent opportunity in that quarter for political and commercial expansion. The balance of power, the concert of the great powers, the "armed peace," and the Monroe doctrine secure the peace of Europe and America. Even in Africa and in Australasia the territorial and commercial situation has been practically settled. Asia is the only place in the world which is still at stake in international politics. The Far East becomes to-day the center of world-politics, in which Germany, Great Britain, France, Japan, Russia and the United States are concerned. The destinies of China and Korea, the peace of the Far East, and through that the peace of the world, depend upon decisions reached in Berlin, London, Paris, St. Petersburg, Tokio and Washington. As Japan is the only representative of the Asiatic races among these great powers, and as she has assimilated more of the western civilization than any other Asiatic race, her position in the future politics of the Far East will be of considerable importance and she cannot rid herself of the responsibility which this entails. What Japan has done in her dealings with other nations, is suggestive and instructive in judging whether she can effectively fulfill her responsibilities and whether she will be able to act conscientiously and harmoniously with the great powers of the West for the perfection of that international society which is as yet composed of conflicting members—for the advancement of the world's civilization, not by monopolistic measures primarily designed for the aggrandizement of a single empire, but by active co-operation with all nations fitted for the civilizing mission.

CHAPTER II

INTERNATIONAL SOCIETY OF ANCIENT ASIA, 660 B. C.—
930 A. D.

✓ *The Early Intercourse of Japan with the Korean Kingdoms and China.*—In primitive times there was no international society or association of the different races as such. In the Orient as well as in the Occident the society of nations is the product of historic development. The original society of human beings was the family, or horde, from which an international society was ultimately developed through tribe, folk and national state.¹ Passing over the development of Asiatic nations from the ethnological or sociological viewpoint, we find that the historians of China maintain that Chinese national life began with Fou Hi, their first great emperor, who established his dynasty in 2953 B. C.² The Korean mythology holds that the existence of that nation dates from the time when Tan-gun, or Wang-gun, was, in the latter part of the reign of the Emperor Yao of China (B. C. 2357-2255), crowned by his father, Whan-ung, said to be a son of God (Whàn-in).³ The Chinese and Koreans claim, like the Jews and the ancient Egyptians, to be able to trace their national existence back to a period centuries before Solomon erected his Temple at Jerusalem. Without entering into the myths and legends of Japan, it may be said that her national history commenced

¹ Giddings, *Principles of Sociology*, pp. 157-169.

² Mailla, *Histoire générale de la Chine*, vol. i, p. 5.

³ *Korean Review, History of Korea*, vol. for 1901, pp. 33 *et seq.*

when the Emperor Jinmu, the first Mikado, after the subjugation of the tribes on the mainland, established a capital at Kashiwabara in Yamato, 660 B. C.¹

Intercourse among these Asiatic nations must have existed from an immemorial time, for China and Korea are situated in the same continent, and a Japanese junk can easily in one day's sail reach the Korean coast. Although Japan is much farther away from the Chinese coast, the *Kuro-shio*, or black current, which flows from the Indian Ocean along the Chinese coast and washes all the southern coast of Japan, has often brought the wrecks of Chinese ships to the island empire. Moreover, these fertile and tempting islands would have been attractive to Chinese and Korean emigrants.² With such a physical environment, the islanders could not be a hermit nation. As to the primitive intercourse between Japan and Korea, its beginning, according to the Japanese chronicle,³ was the presence in Korea of the Japanese prince, Susono-o-no-mikoto, in the legendary age. It was also said that Ina-hi-no-mikoto, a brother of the Emperor Jinmu, went to Unabara (Korea), before the emperor came to Yamato.⁴

¹ *Kojiki*, the oldest chronicles of Japan, Chamberlain's English translation in *Transactions of the Asiatic Society of Japan*, vol. x, supplement issue, sec. 1, p. 145. See also *Nihongi*, the second oldest chronicles of Japan, Aston's English translation, vol. i, p. 132.

The authenticity of the greater part of ancient Japanese history down to about 400 A. D. is not acknowledged by occidental authorities, but it is affirmed by native historians and has been officially recognized by the government.

² Giddings, *Inductive Sociology*, p. 45. Agricultural fertility, fisheries, mineral wealth, commercial opportunities, etc., of the New World attract immigration.

³ *Nihongi*, vol. i, p. 57. See also Dr. Takahashi's paper, *Revue de droit int.*, 1901, vol. iii, no. 2.

⁴ *Kojiki*, sec. xliii, p. 129. See also Takekoshi, *History of 2,500 Years*, p. 9.

Referring to the coming of the Koreans to Japan, we find in the imperial proclamation of the eleventh year of the Emperor Su-jin (97—30 B. C.) the first mention of the word naturalization,¹ which possibly shows the existence then of Korean immigration. Because the naturalization of Koreans in Japan was not officially recognized until the third year of the Emperor Suinin (30 B. C.—70 A. D.), the privilege of settling in the Tajima province was specially granted to the Korean prince, Ameno-Hihoko.²

The first Japanese contact with Chinese, it is said, took place when seven Chinese survivors of a shipwreck landed on the Kumano coast of the Ki-i province in the reign of the Emperor Kosho, the fifth Mikado (475-393 B. C.).³ A Chinese chronicle mentions the departure of this party, in which Sin-fu was commissioned by his celestial monarch, Chewang-te, a tyrant of the Draconian type, to search for a medicine giving immortality. Sin-fu, in reply, intimated that such an elixir of life could be procured only on the Fuji Mountain in Japan, and left China for that country.⁴

But whatever the early intercourse of Japan with foreign countries may have been in other ways, her first diplomatic intercourse with the Koreans began in the sixty-fifth year of the Emperor Sujin (33 B. C.) when the king of Okara, one of the Korean kingdoms, sent Prince Sonaka-Cheulchi and his suite to Japan as an envoy with a present to the Mikado.⁵ The envoy unfortunately did not secure an imperial audience, as the emperor was then ill. Several years

¹ *Gaiko-Shiko (The Digest of Foreign Intercourse)*, compiled by the Bureau of Records, Department of Foreign Affairs, p. 457.

² *Ibid.*

³ *Gaiko-Shiko*, p. 469.

⁴ Mr. Nitobe gives an interesting account of Sin-fu in his *Intercourse between the United States and Japan*, p. 5.

⁵ For a full account of the mission of the Korean envoy, see *Nihongi*, vol. i, pp. 164-167.

later, however, he was received by the succeeding emperor, the Suinin. The new emperor expressed deep regret that "the honorable visitor had not been presented to his august father" and desired to call the state from which he was sent, *Imna*, that being the personal name of the Emperor Suinin, in order to commemorate his coming.¹ Upon his departure the emperor made liberal gifts to the suite of the envoy, and entrusted him with 100 pieces of red silk as a present for his sovereign.

The official intercourse of Japan with China is said to have been inaugurated by the lord of Ito (Southern Kiushu), whose envoy was often at the court of the Han dynasty in China, in the latter part of the reign of the Emperor Suinin. It was this intercourse of China with a local lord of Japan, that often led the old Chinese historians to pretend that Japan was tributary to China. But the Yamato government of Japan had no knowledge of the intercourse with China conducted by the local lord.² In Japanese history it is often stated that Japan maintained relations with the Chinese courts of the "Three Kingdoms," which followed the fall of the Han dynasty; but the maintenance of such relations by the central government of Japan was infrequent until the beginning of the seventh century. The Emperor Suiko despatched Ono-no-Imoko to the court of the Soui dynasty in 607 A. D. with national products and an imperial letter, which was addressed as follows: "A letter from the sovereign of the Sun-rise country to the sovereign of the Sun-set country."³ The Japanese ambassador was cordially received at the Chinese court, where he was honored

¹ In consequence the Japanese historians called Okara, *Imna*.

² *Gaiko-Shiko*, p. 67.

³ *Ibid.*, p. 69. The name Nippon (Land of the Rising Sun) is said to have had its origin in this incident.

with the Chinese name "So-Inko." In the following year, 608 A. D., Ono-no-Imoko returned through the Korean peninsula, accompanied by a Chinese ambassador, Pei-Shih-Ching, who, with a suite of twelve persons, was sent in reciprocal acknowledgment of Japan's proffer of friendship. The Chinese embassy was received in July at the Bay of Naniwa with the most elaborate festivities by the people and the officials;¹ and on October 12 the ambassador was received in imperial audience, at which time he read his credentials² and presented to the Mikado splendid gifts from his sovereign.

Japan, it will thus be seen, originally entered into diplomatic relations with China and Korea in a peaceful and cordial manner, in marked contrast with the bloody struggles by which, in European history, such relations too often have been established. Among the ancient Asiatic nations, there was, of course, no permanent embassy; the envoy stayed in the foreign capital only a short time, on his special mission. The exchange of presents, consisting of national products, was a significant feature of diplomatic usage, and was regarded as a token of friendly and peaceful relations.

Political Relations of Japan with the Korean Kingdoms and China.—The warlike islanders, becoming more cosmopolitan by the intermingling of the Chinese and Korean immigrants, and gaining in knowledge of the outer world and of the means of communication by sea,³ could not con-

¹ *Nihongi*, vol. ii, p. 136.

² The text of the credentials may be found in *Nihongi*, vol. ii, pp. 137 *et seq.*

³ *Nihongi*, vol. i, p. 161. Emperor Suijin issued a ship-building edict in 81 B. C.: "Ships are of cardinal importance to the Empire. At present the people of the coast, not having ships, suffer grievously by the necessity of land transportation. Therefore let every province cause ships to be built." As the result of this auspicious encouragement sea-going ships were later developed.

fine their activities within the limits of their island home. Formerly Korea was composed of several independent kingdoms—Koryö in the extreme north, Shinra in the southeast, Pekche in the southwest and Imna in the extreme south, just as Great Britain was once composed of the separate nations—England, Scotland and Wales. Shinra and Imna were often at enmity over the sovereignty of Sampamon, a territory of three hundred square leagues contiguous to their frontier, the possession of which the latter kingdom regarded as vital to its existence.¹ Ever since the first Imna envoy visited Japan in the reign of the Emperor Suijin, and reported the remarkable growth and activity of the country, the Imna government had been anxious to obtain Japan's assistance against Shinra encroachments; and eventually an envoy, Ushiki-ari-shichi-Kanki, was despatched to Japan to ask the emperor to send a skilled general to Korea.² The emperor, after consulting with his ministers, in 27 B. C., commissioned General Shihotaritsu-hiko to restore the peace of the Korean kingdom. This was the first expedition ever sent out by Japan to maintain the integrity of a foreign state, and it is also the first example of the maintenance of the "balance of power" in Korea by means of an alliance with Japan.

Japan had been at peace with the Korean kingdoms for more than two centuries, when the Empress Regent Zhingo (201-269 A. D.) undertook to invade them. The Kumaso, one of the leading tribes, frequently revolted in Tsukushi,³ had greatly embarrassed former emperors; and these constant disturbances were due to the encouragement given

¹ *Gaiko-Shiko*, p. 356.

² *Ibid.* See also Takekoshi, *History of 2,500 Years*, p. 27.

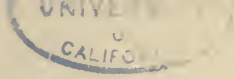
³ The present island of Kiushu, in which many Chinese and Korean immigrants then settled.

by the Shinra kingdom. Especially prominent was the Kumaso rebellion during the reign of the emperor Chu-a-i (192-200 A. D.), when the sovereign himself, commanding the navy, proceeded to Nagato (now Shimonoseki), to which place the Empress Zhingō was subsequently summoned. The imperial troops were mobilized in the revolted district, but the Kumaso were not to be conquered; and at length the emperor held a council, in which the empress declared that "the Kumaso were not worth destroying, but that, if Shinra were conquered, Tsukushi would be easily subdued."¹ The emperor hesitated to adopt this advice but in the midst of the campaign, in February, 200 A. D., he became ill and died, whereupon the empress withdrew the imperial troops from Tsukushi and undertook preparations for the invasion of Korea. In April the empress summoned her minister and made a declaration of war upon Shinra,² in which she swore that she would command the imperial forces in the "appearance of a man," enthusiastically encouraged her minister and general and promised them to take "possession of the land of treasure." She did not, however, define the object of the war. Her minister answered, as "the object of the measure which the empress has devised for the Empire is to tranquillize the ancestral shrines, and the Gods of the Earth and Grain, and also to protect her servants from blame, with head bowed to the ground we receive the command."³ An imperial order was issued in September to collect ships from the sea-coast provinces, and on October 3 sail was set from the harbor of Wani. When the formidable fleet, raising a thundering sound from drums, fifes and gongs, approached the Shinra

¹ *Gaiko-Shiko*, p. 171.

² *Nihongi*, vol. i, p. 228, contains the text of the declaration of war.

³ *Ibid.*



coast, the king of Shinra was so greatly terrified that he thought the country would be crushed by a single stroke. Therefore, taking a white flag, he went in person to the fleet of the empress to negotiate for peace, and solemnly promised that Shinra should "every spring and every autumn" pay a tribute and should bring "annual dues of male and female slaves."¹ On this occasion one of the Japanese generals said: "Let us put to death the king of Silla." But the empress solemnly forbade him, saying, "slay not the submissive."² Even in these early days the "peace commissioner," the non-combatant, and the white flag were fairly respected. The empress accepted the proffered terms of peace and took eighty ship-loads of gold, silver and silk as indemnity. One of the higher officials of Shinra, named Mi-cheul-kwi-chi-kanki, was carried away as a hostage,³ it being the custom in ancient times to give hostages as a guaranty for the performance of treaties. Learning of the signal success of the Japanese invaders, the kings of Koryö and Pekche also came of their own motion without escort, and said: "Henceforth forever, [we] will not cease to pay tribute."

In consequence of these events, most Japanese historians have regarded the Korean kingdoms as states subject to or under the suzerainty of Japan; but the annual contributions to China and Japan appear really to have been in the nature of formal presents, given in token of amity and goodwill, with a view to avoiding aggressive demands. This is the more likely, since it was in spite of their long existent and admitted tributary relation to China that the Korean

¹ *Nihongi*, vol. i, p. 231. The word "slaves" referred to Korean artisans, blacksmiths, carpenters, *etc.*, whom the Japanese were anxious to obtain.

² *Ibid.*

³ *Ibid.*, p. 231.

kingdoms now assumed a similar relation to Japan. On the whole, the invasion of Korea by the Empress Zhingō, whatever its results may have been, was nothing but a measure of self-preservation against Koreans who encouraged insurrection in Japanese territory.

After this invasion, the Pekche kingdom, regarding the Japanese influence in the peninsula as essential to its preservation against the attacks of its bitter rival, Shinra, made constant efforts to cultivate friendship with Japan. In the pursuit of this object Pekche not only promptly paid tribute, in the form of annual presents, but also introduced the fine arts, literature and Buddhism into Japan.¹ Shinra, on the other hand, looking upon the Japanese as barbarians, depended upon Chinese influence for political supremacy. During the period of 362 years after the empress's expedition, Shinra in more than twenty instances failed to send its contribution and insulted the Japanese envoys or attacked the *Miyake*,² in Imna. Japan, in each instance, sent an envoy or a force to demand an explanation and redress. Discontented Shinra, under the pressure of Japan and Pekche, made extraordinary efforts to introduce military arts and munitions from China, and entered upon an aggressive policy. She had indeed already seized most of the provinces of Imna, and in 552 A. D. was preparing to invade Pekche. The king of Pekche, who was then at enmity with Koryō, the northern kingdom, which was friendly to Shinra,

¹ During the reign of the Emperor Ojin (270-310), the Pekche king sent to Japan a celebrated scholar named Achiki, who was appointed tutor to the crown prince. By introduction of Achiki, another learned man, named Wani, came to Japan with Chinese books on literature and ethics; and he also brought with him blacksmiths, weavers and brewers.

² The *Miyake* was a Japanese granary, established in Imna immediately after the Korean invasion of the Empress Zhingō, and ever afterwards superintended by a Japanese general. *Nihongi*, vol. ii, pp. 8, 13. *Gaiko-Shiko*, p. 174.

forseeing the danger of a possible combination of his enemies, sent an envoy, who was accompanied by an envoy from Imna, on May 8, 552, to Japan, and requested the Emperor Kinmei (540-571) for an alliance.¹ The next year several hundred Japanese soldiers were despatched to Korea and the peace of the peninsula was temporarily restored.

Shinra, however, increasing her forces on a gigantic scale, again undertook, in combination with Koryö, to overthrow Pekche and Imna. In January, 562, Imna had almost surrendered, and the *Miyake* was destroyed, when Pekche acquainted Japan with the situation and asked for the immediate despatch of a number of troops. In June the Emperor Kinmei declared war against Shinra,² and he was engaged in fitting out an expedition, when, on July 1, Shinra, cunningly seeking to allay his indignation, sent an envoy to Japan to offer the tribute which had been so often neglected.³ The emperor scornfully repulsed the Shinra envoy. In the middle of July the Japanese general-in-chief, Kino-wo-marō-no-sukune, was despatched to Shinra and General Sadehiko to Koryö, and, in alliance with the forces of Pekche and Imna, they entered into hostilities against Shinra and Koryö. After many battles the Japanese generals were defeated and withdrew from the peninsula without effecting a settlement. The result was that Pekche and Imna, the kingdoms most friendly to Japan, fell under the influence of Shinra and Koryö.

Pekche wished to restore the balance of power amongst the rival kingdoms; but, in order to do this, it was necessary to secure the assistance of China to check Koryö, which had been hostile to China ever since 230 A. D., because of

¹ The full text of the communication is found in *Nihongi*, vol. ii, p. 65.

² *Ibid.*, pp. 81-82.

³ *Ibid.*, p. 83.

Chinese encroachments on the frontier. Japan's assistance, too, was required in order to check Shinra, her traditional enemy. For these reasons Pekche sent an envoy to the Soui emperor of China, and obtained from him the promise to attack Koryö; but the plan miscarried.¹ The Chinese troops on the Korean frontier were defeated and driven out by the Koryö soldiers. Meanwhile the Soui dynasty had fallen. But, as soon as Taitsong the Great had established the Tong dynasty, he sent, in 613 A. D., heavy forces, to take revenge on Koryö. Though Koryö and Pekche were bitter enemies, they now regarded the Chinese as their common foe, and for mutual defence united against the Chinese invasion, which was utterly defeated.²

The military success of the two kingdoms aroused the jealousy of Shinra, the pro-Chinese state. Shinra, therefore, made an offensive alliance with the Tang emperor, who offered to send 100,000 men and several hundred vessels to the Pekchean coast.³ The allied force was so formidable that Pekche was about to surrender, leaving Koryö at the mercy of the invader, when, in October, 660 A. D., Kwisil Pok-sin, a Pekchean envoy and his suite, with a hundred prisoners of the Tang army, went to Japan and asked the Empress Saimei (655-661) to relieve his country from the danger.⁴ The empress granted his request, considering that "to render help in an emergency" to the Pekche kingdom was the "unshakable" policy of Japan. An order for the expedition was issued.⁵ The imperial

¹ Takekoshi, *The History of 2,500 Years*, p. 124.

² *Ibid.*

³ Griffis, *Hermit Nation*, p. 36.

⁴ *Nihongi*, vol. ii, p. 268.

⁵ See *Nihongi*, vol. ii, p. 269, for the full text of the order, in which the empress expressed her policy. The order is in the nature of a declaration of war.

staff was, in July, 661, advanced to Tsukushi. The crown prince, Naka-no-oye, superintended the fitting out of the imperial navy. Towards the end of the year, additional forces of the great Tang emperor invaded the Koryö frontier, and this was followed up in the spring of 662 by an attack from Shinra. Koryö was now in desperate straits. Her envoy came to Japan in March, and asked the empress immediately to despatch a large force.¹ The Japanese court regarded the combined invasion of Koryö by China and Shinra as dangerous, not only to the integrity of the Korean kingdoms but also to the peace of the Mikado's dominions. It was feared that the Chinese, if victorious, might invade Japan. Therefore, the crown prince Naka-no-oye, with his general-in-chief, Adzuminno-Hirafu-no-Muraji, commanding ten thousand men and one hundred and seventeen vessels, on August 5, 662, landed on the Pekchean coast. The Japanese forces, combined with those of Pekche and Koryö, immediately attacked the two allied aggressors,² but they were not successful. They were utterly defeated in the last naval battle near the mouth of Naktong River, on August 27, 663.³

The triple alliance headed by Japan could not counterbalance the overwhelming weight of the dual alliance of the most progressive kingdom of Korea with the great Chinese Empire. The conflict resulted in the dismemberment of two kingdoms. Pekche was absorbed by Shinra, and Koryö in 668 was partitioned between Shinra and China.⁴ Thus the life of the several Korean kingdoms was terminated. After the defeat at the Naktong River, the crown prince Naka-no-oye (the Emperor Tench) changed the foreign

¹ *Nihongi*, vol. ii, p. 277.

² *Ibid.*, pp. 277-278.

³ *Ibid.*, p. 280. See also Boulger, *History of China*, vol. i, p. 292.

⁴ The present Liao Tung peninsula originally belonged to Korea, but it became a Chinese possession in 668 A. D.

policy of Japan. He established the principle of non-interference in the affairs of the Korean peninsula, and forbore to seek revenge upon China. This most prudent sovereign made indeed every possible effort to restore amicable relations among the Asiatic nations. When, therefore, the Tang emperor sent an envoy, named Liu-te-Kao, to Japan in 665, he was received with high honors and a Japanese envoy was soon sent to China in return.¹ The war had not, however, annulled the tributary relation of Korea to Japan, for Shinra, in 668, sent an envoy to Japan with handsome tribute.² The abandonment of political interference in Korea by the Emperor Tenchi did not escape criticism by the historians of succeeding generations. But his policy is justified by the maintenance of the Japanese national dignity, and by the preservation of the peace of the Orient which resulted from it.

Internal Affairs of Ancient Japan.—The Emperor Tenchi not only conducted wisely the foreign affairs of the country, but also showed great ability in the reform and improvement of the internal administration.

The national state of Japan was originally based upon the principle of theocracy³ as was that of all nations of the early ages. The Emperor Jinmu, the first Mikado, is said to be the divine descendant of *Amaterasu-Omikami*, the Celestial Deity, who descended from heaven and created the land of Oyashi-ma (the original name of Japan). The sovereignty in Shintoism⁴ (the Japanese theocracy) ex-

¹ *Nihongi*, vol. ii, p. 284.

² *Ibid.*, vol. ii, p. 289.

³ Burgess, *Political Science and Comparative Constitutional Law*, vol. i, p. 60. The earliest form of the state is theocracy, which was the contribution of Asia.

⁴ Shinto is the original religion of Japan. For a general account of Shintoism, see Chamberlain, *Things Japanese*, pp. 358 *et seq.* As to the conception of sovereignty in Shintoism, see Siebold, *Japan and the Comity of Nations*, p. 7.

isted not only by the "grace of God," but further in virtue of descent from the ancestral creator of the lands of Japan. All Japanese rendered their loyal "deference and obedience" to the virtue and power of the Mikado. While the sovereignty of other nations was often altered through conquest, the Japanese maintained an "unbroken line of illustrious imperial sovereigns" and never recognized any ruler from any other source.

The administrative function and organization was, in the reign of the Emperor Jinmu (660-585 B. C.), very simple. The princes Ama-no-Taneko and Amatori superintended civil and religious matters, and the princes Umashi-machi and Okume attended to military affairs.¹ These princes had the official titles of *Omi* and *Muraji*, the former referring to the civil office, and the latter to the military. In the reign of the Emperor Suinin the office of *Ohmuraji*, commander-in-chief (a head of *Muraji*), was initiated. In the reign of the Emperor Seimu (131-190 A. D.) that of *Oh-omi*, prime minister (a head of *Omi*) was established. Since the reign of the Emperor Yuraku (457-479) both offices have existed side by side.² As to local administration, the general or soldiers who had shown merit in subduing hostile tribes or in suppressing insurrections, were appointed to *Kuni-no-Miyatsuko* (governorships of provinces), *Agata-Nushi* (headships of districts) and *Inaki* (squires of villages).³ In the course of time the Mononobe, Imbe, Nakatomi and Kume families sprang from the princes already mentioned. The Soga family was de-

¹ *History of the Empire of Japan*, compiled under the direction of the department of education, at the request of the Imperial Japanese Commission to the World's Columbian Exposition in Chicago, translated by Captain Brinkley, p. 27.

² *Nihongi*, vol. i, p. 337. See note.

³ Ariga, *Kokuho-gaku (Public Law of Japan)*, vol. i, pp. 26 *et seq.*

scended from Takenouchi-Sukune, who was the commander-in-chief in the Korean expedition of the Empress Zhingō. Government offices, civil or military, central or local, became hereditary in these families. The common people, in these ancient days, were nothing more than serfs, the property of the governing classes, as in every primitive country. The early form of government of Japan was thus that of a tribal feudal system under the Mikado.

The Mononobe and Soga families, gradually growing in power, acquired the *Oh-muraji* and *Oh-omi* as their hereditary offices. The administration of the country thus remained largely in the hands of these two families. For some time previously the Mononobe and Soga had been wrestling for the supremacy. The introduction of Buddhism in the sixth century had served to accentuate their hostility. The former was conservative, adhered to the national religion—celestial Shintoism—and opposed the spread of Buddhism. The Soga family was an enthusiastic adherent of the foreign religion, to which the imperial house was at first opposed, but which it was later inclined to adopt. With the assistance of Prince Shotoku, the most enthusiastic leader of the new religion, Soga-no-umako killed the Mononobe-no-moriya in 587. After this event, the Mononobe family was ruined and the Soga house became predominant. In order to obtain the supreme power, the Soga family essayed to interfere in the succession to the throne. Immemorial custom was the basis of the public law of Japan. Soga-no-umako endeavored to place Princess Kashiya, the consort of the Emperor Bidatsu, who was favored by the Soga family, on the throne under the title of the Empress Suiko (595-628), despite the presence of direct successors in the male line.¹ The autocratic power of Imishi, of the Soga family, was still more pronounced;

¹ Ariga, *Kokuho-gaku*, vol. i, p. 35.

but it was surpassed by that of his son Iruka who attempted to destroy the lineal succession to the imperial throne by causing Prince Yamashiro, the legitimate successor, to be killed, and by putting in his place Prince Furuhiro-no-oe, a relative of the Soga family, hoping thereby in the end to usurp the supreme power for himself. But his treacherous design was discovered in time, and "father and son of the Soga" were killed in 645 by Prince Naka-no-oye, with the assistance of the Nakatomi-no-kamatari, one of the most loyal families. Prince Karu then ascended the throne; Prince Naka-no-oye became the crown prince and, presiding over the administration of the country, took up with Nakatomi the work of sweeping reforms.

On November 19, 645, the new Emperor Kotoku, accompanied by the empress dowager and the crown prince, made a solemn declaration before all the ministers and generals:

Heaven covers us; Earth upbears us; the imperial way is but one. But in this last degenerate age, the order of lord and vassal was destroyed, until supreme Heaven by our hands put to death the traitors. Now, from this time forward, both parties shedding their hearts' blood, the lord will eschew the double method of government, and the vassal will avoid duplicity in his service of the sovereign. On him who breaks this oath, Heaven will send a curse and earth a plague, demons will slay him, and men will smite him. This is as manifest as the sun and moon.¹

This oath clearly defines the comprehensiveness, exclusiveness and permanency of the imperial sovereignty and the duty of the vassal. In the succeeding years, various edicts were promulgated regarding the administrative functions, census, taxation, etc.² *Omuraji* and *Ohmi* were replaced

¹ *Nihongi*, vol. ii, p. 197.

² *Ibid.*, vol. ii, pp. 206-209 and 226-230. See also *History of the Empire of Japan*, pp. 68-77, as to the Taika reformation.

by three new offices, *viz.*: Minister of the Left, of the Right, and of the Middle. The territorial unit of the administration and the estates of the privileged families were abolished. The test of ability was introduced in the appointment of officers. The system of *Densho*, or the private ownership of serf and land by the official class, was done away with by the nationalization of the land and the establishment of the *Shoku-ho* or wage system. The labor contribution was abolished and a system of commuted taxes was introduced. Under the new administrative measures, registers of population, books of accounts and records of censuses were ordered to be kept. Thus the old system of tribal feudalism was replaced by a central administration. These measures, inaugurated upon the suppression of the Soga treachery, constituted a conspicuous reform in the political history of Japan. They were named the Taika Reformation, because they were introduced in the Taika era. The subsequent edicts promulgating these measures are said to be the first constitutional manuscripts of Japan.¹ The Taika reformation was greatly influenced by Chinese civilization. The centralized institutions of the Soui and Tang dynasties had been studied by Japanese scholars since the first Japanese envoy, Imo-ko, went to China. After the Emperor Tench restored peace with China, the Japanese were more interested in Chinese institutions and further adopted the Chinese codification. In the era of Taiho (702 A. D.), the Emperor Monmu promulgated a systematic body of codes, embracing administrative organization and functions, the imperial household and succession, official ceremonies, and criminal law in a rudimentary form, with a little civil law.² The Taiho code is but the comple-

¹ Ariga, *Kokuho-gaku*, vol. i, p. 37.

² For the classification and table of the Taiho code, see *History of the Empire of Japan*, pp. 87-89.

tion of the codification of the fragmentary edicts since the Taika reformation.

To sum up, the imperial power was, by the Taika reform, restored, and the Mikado became the real ruler, controlling all matters of peace and war. All the people of Japan were made direct subjects of the emperor, thus cementing the national life of Japan more firmly. From the Taika reform, (645) to the end of the reign of the Emperor Daigo (898-930) was an auspicious period for the imperial sovereignty. This period is known in Japanese history as the "enlightened epochs of Nara and Heiau," epochs worthy of special reference because of the prosperity then enjoyed by the successive Mikados, and because of the development of civilization that took place with tranquillity at home and abroad.

CHAPTER III

DREAMS OF UNIVERSAL EMPIRE, 894-1595

The Activity of the Mongol Tartar.—The history of mediæval Europe is known as the “dark ages.” Reckless war, civil or international, the attempt to establish universal empire by destroying all national states, and piracy on the sea were the dominating features. So it was in Asia.

The period of imperial prosperity after the Taika reformation did not last long. Because of the invaluable services of Nakatomi, in defeating the Soga treachery and bringing about the Taika reformation, his descendants, men of the Fujiwara family, were permitted to enjoy the ministerial offices of the crown. They eagerly introduced the Chinese system of bureaucratic centralization and gradually founded a strong autocratic government. Daughters of the Fujiwara family often became the consorts of the emperors. Yoshifusa Fujiwara was appointed *Dajio Daijin* (prime minister) and *Sessko* (regent of the crown), offices which hitherto had been given only to princes of the imperial family. His adopted son, Mototsune, occupying these higher offices, interfered with the succession to the throne, and deposed the Emperor Yosei (877-884) and placed the Emperor Koko in his stead. Thus the imperial power was about to pass into the hands of the Fujiwara family. Though the Emperor Daigo (898-930) temporarily restored the imperial authority with the loyal assistance of Michizane Sugawara, the succeeding emper-

ors were under the Fujiwara influence. The decline of the imperial power, though hastened by the crafty autocracy of the Fujiwara, was, to a great extent, influenced by Buddhism.¹ Its pessimistic doctrine affected the Mikados of the following generations. They became weary of affairs of the world and renounced political activity. On the other hand, the administration of the Fujiwara ceased to be strong enough to control the lords of the remoter provinces, who, having originally been local officials, had gradually become feudal lords possessing territory and residing in castles. Under such conditions, civil war, rebellion, revolution against the central government and struggles for supremacy among the rival provincial lords themselves became common. Therefore the offices of *Kebii-shi* (military police) in each province and *Oryo-shi* (inspector-general) in the northern provinces, where rebellion chiefly occurred, were established and empowered to exercise police functions with armed force.² The Fujiwara, not possessing adequate force themselves, filled these military offices with representatives of the military families, especially the Taira and Minamoto. These two military clans gradually grew in strength and eventually displaced the Fujiwara family; but in course of time they entered into a struggle for supremacy, which was prolonged until Minamoto Yoritomo subdued the Taira family. Yoritomo, after subjugating all the feudal lords, finally established *Bakufu*, a military government, at Kamakura, in the province of Suruga, in 1186. He styled himself "Shogun" (generalissimo). Thereafter the Minamoto family ruled the political and military affairs of the country, from Kamakura. The dual system of government was thus

¹ Griffis, *The Mikado's Empire* (9th ed.), p. 114.

² *History of the Empire of Japan*, pp. 134-135.

inaugurated in Japan, the Shogun maintaining a *de-facto* sovereignty, and leaving the *de-jure* sovereignty to the Mikado, as a figure-head, at Kyoto. Identically the same thing occurred in China when the downfall of the Tang dynasty was followed by the military struggle of the five petty dynasties. Constant civil war prevailed in China as in Japan. Under such conditions, piracy in Asiatic waters was a natural outcome, and commercial intercourse could not be maintained. Japan discontinued diplomatic intercourse with China, after Michizane Sugawara in 894 advised the Emperor Daigo not to send an envoy to China, on account of the unsafe conditions on the high sea and the existence of civil war in China.¹ Japanese intercourse with Korea was frequently interrupted.² Korea had often neglected to send the annual embassy to Japan, having taken advantage of the civil war of Taira-Minamoto. In short, international intercourse among Asiatic nations almost ceased to exist, owing to piracy on the sea and civil war on land, until the Mongol Tartar overwhelmed Asia in the thirteenth century.

The Tartar tribes, at even so early a period as 238 B. C., were so feared by the Chinese that the Great Wall was constructed as a defense against the "northern barbarian." Century after century the Tartars were steadily gaining in power, absorbing the tribes of Siberia and encroaching upon northern China, until they finally formed a gigantic dynasty called the Khan Empire. The Mongol Tartar, in the beginning of the thirteenth century, was surging from the grassy plains of Manchuria over the Asiatic and even the European continents; and the wave flung its last drops of spray over Japan. While Ghingis Khan was wrestling with the Zung

¹ *Gaiko-Shiko*, p. 95.

² In 918 the name of the Shinra kingdom was changed to Korai.

dynasty in China, a division of his armies, under General Sal-ye-tap, moved into the Korean peninsula through the Liao Tung frontier and crossed the Yalu river in the spring of 1231. The general then sent from his camp to the Korean king, Ko-jang, a letter demanding his surrender.¹ The king at first took up arms, but he finally surrendered to the demand of the invaders in 1232, offering valuable tribute of gold and silver and declaring himself a vassal of the Mongol. The latter now established military governors to control the administration. These governors had little respect for the Korean court, and oppressed Korean subjects with heavy contributions. The Korean king, according to the advice of his minister, had moved his court to Kang-wha Island, rather than behold his own disgrace.² This caused the second invasion of the Mongol and hostilities did not cease until the crown prince was despatched, in 1259, to the Mongol court to pay homage. During the stay of the crown prince at Peking, Kublai, grandson of Ghingis Khan, ascended the throne in 1260. The new emperor treated the Korean with the utmost kindness, and the latter, on his return to Korea, finding that his father had died, ascended the throne, in 1261. Kublai, perceiving that a good opportunity had come to persuade the new Korean king to absolute submission, wrote him a letter,³ pointing out the dangers in his situation and the great benefit to be derived from a coalition. By this threatening but placating diplomacy, the Korean king was induced to become an obedient vassal and ally of Kublai. At this time the Emperor Sung of China was on the verge of being overthrown; and Kublai, having subjugated almost

¹ *Korean Review, History of Korea*, vol. i, p. 528.

² *Ibid.*, vol. i, pp. 563-565.

³ For the text of letter, see Mailla, *Histoire de la Chine*, vol. ix, p. 292.

all the Asiatic continent, now conceived the project of bringing Japan within the sphere of his influence.

His first step toward consummating this design, was to try to conquer Japan by diplomacy, and to this end he appointed Heuk Chuk and Fun Hong as envoys in 1266. He gave them a letter addressed to the ruler of Japan, in which he observed that it was customary for a vassal to send a congratulatory message to the emperor on his coming to the throne, and complained that no such message had been sent by Japan.¹ He further demanded of Japan that an envoy be sent to Peking at the earliest possible time in order to avoid forcible subjugation. The envoys were instructed to proceed to Japan by way of Korea and to take with them to Japan a Korean envoy who understood Japanese affairs. The envoys set sail for Japan by the way of Koje harbor (present Masampho), but were driven back by a stormy ocean. The Korean envoy, who was not willing to guide the messengers of the aggressive Mongol to Japan, exaggerated the danger and difficulty of the voyage and finally dissuaded the Mongol envoys from their undertaking. The latter, being unaccustomed to the sea, abandoned their mission and returned to Peking. Two years later, Kublai sent another ambassador to the *Dazai-fu* of Kuishu (the branch office of foreign affairs of Japan) furnished with a letter addressed to the "King of Japan."² Japan was, at this time, under the régime of the Hojo family (1215-1333), which had succeeded the military government of the Minamoto family, and Tokimune Hojo was administering the affairs of the country. The letter from Kublai was for-

¹ Mailla, *Histoire de la Chine*, vol. ix. For copy of the letter, see pp. 303-304.

² This letter contained substantially the same demands which were made by Kublai in his previous letter in 1266. The text of the letter, in the Japanese language, is in *Gaiko-Shiko*, sec. 6, p. 254.

warded by the governor of the *Dazai-fu* to Tokimune, by whom it was in turn sent to the imperial court at Kyoto. A draft of a reply, in which every demand made by Kublai was refused, was prepared and handed over to the Kamakura government. Tokimune, however, a military statesman, considered that a communication from a foreign ruler in which the dignity of Japan was insulted, should not be treated so respectfully, and he gave instructions to the *Dazai-fu* for the immediate expulsion of the Mongol ambassador, without any answer to the letter. This news caused much anxiety throughout the empire, and it was feared that the Mongol would invade Japan. The Emperor Kameyama commissioned Michimasa, to lay before the shrine of Daijingu (the Deity of the Ancestor of the Imperial Sovereign) an autographic supplication for the heavenly protection of the country. All priests were ordered to follow the same example in their temples. On the other hand, careful measures were taken to guard the southern coasts. Kublai being still at war with the Sung forces, his whole army was not available for the invasion of Japan, and he sent orders to the Korean king to furnish one thousand bags of rice and a contingent of 40,000 troops.¹ A second Korean envoy was sent to Japan in 1269 to demand an answer to the letter of 1268, but he was ruthlessly expelled by the governor of Tsushima island. This envoy, on his way home, captured two Japanese, Tanjiro and Yajiro, and sent them to Peking. Kublai was exceedingly delighted with the "valuable prisoners" and showed them his brilliant palaces and grand military parades. The two Japanese were then sent home to tell their ruler about the greatness of the Mongol emperor and to urge him to make Japan a vassal of the Mongol em-

¹ *Korean Review, History of Korea*, vol. ii, p. 38.

pire.¹ Their report, however, caused Japan to stand even more firmly against the world-aggressor. Kublai completely overthrew the Sung dynasty in China and established his own in the name of Yuen, in 1271; and being now freed from internal opposition, he took more decisive steps in dealing with Japan. In September he sent a third ambassador, Chiu Liungpat, with a suite of one hundred followers. This ambassador did not entrust his original letter to the officials of the *Dazai-fu*, but demanded that he be allowed to hand it to the emperor or shogun in person. As he was not permitted to proceed to the capital, a copy of the document was subsequently given to the governor of the *Dazai-fu* and forwarded to Kamakura, and from thence to Kyoto. In the letter Kublai complained that no answer had been given to his previous communications and demanded that an embassy be sent to the Yuen dynasty to restore amicable relations, and he hinted that any delay would cause a war. He limited the time during which he would await an answer to the end of November.² Again the imperial court and the Kamakura government decided, in December, to give no answer. Again the emperor caused the whole country to pray for the divine support of the national existence. In 1272 and during the following year Mongol envoys came to Japan from time to time; some of them were expelled and some were killed, for Japan regarded their demands as a national insult.

Incensed at the conduct of Japan, Kublai renounced diplomacy and sent an "invincible armada," consisting of 900 war vessels and 25,000 Mongol-Chinese, under Generals Hol Fon, Hong Ta-gu and Yu Pokhyong, and 15,000 Koreans under General Kim Pang-gyung.³ In November,

¹ *Gaiko-Shiko*, sec. 6, p. 256.

² *Ibid.*, p. 257.

³ *Korean Review, History of Korea*, vol. ii, p. 44.

1274, the invaders arrived at Tsushima island. In spite of the vigorous resistance of the governors and their troops on Tsushima and Iki islands, the Mongols easily occupied these places, and directed their main forces against the Chikuzen coast of Kiushu. The military lords of Kiushu, Shoni, Otomo, Matsu-ura, Kikuchi, and others, rallied to the national defence. The Mongol invaders, armed with fire engines, called *Do*,¹ and equipped with the improved weapons which had been introduced by the Venetians, caused great havoc among the Japanese forces, and the invaders were about to occupy the mainland, when, fortunately for Japan, a raging typhoon broke upon them, many of their war vessels were destroyed, and the remainder of their forces escaped under cover of darkness.

This disaster did not cause Kublai to abandon his designs upon the Island Empire. In the next year, 1275, he despatched envoys in order to bring Japan to terms; but the Japanese, rendered confident by their naval victory and their insular position, refused to yield to his threats. The repeated expulsion and persecution of the Mongol envoys caused the second invasion of Japan. During 1280 great preparations were made in all the harbors of Kiangsu, Chekiang and Fuken for the expedition against Japan. The Mongol armada, consisting of 1000 vessels, and having on board 20,070 Korean soldiers and 50,000 Mongols under the command of Hwan Bunko, appeared in Japanese waters in May, 1281.² Not only were the entire army and navy of Kiushu Island called into service, but numerous forces from the mainland under Commander Hojo Sanemasa, brother of the Shogun, Tikimune, were pressed into

¹ *Do* was a machine for throwing blazing arrows into the ranks of the enemy.

² As to the number of the Mongol force, see *Korean Review, History of Korea*, vol. ii, p. 81.

the campaign. The Mongol invader, however, enjoyed the great advantage of possessing much heavy ordnance, with which Japanese forts were bombarded and numberless soldiers slaughtered. While the islanders were desperately defending their empire, a rumor spread that the Mongol invaders, having crushed all resistance, were pushing on to the main island and were on the point of advancing to the capital. The emperor, much distressed by this national misfortune, proceeded in person to the *Hachimanku* shrine (God of War) of Iwashimisu to pray for national tranquillity, and he also sent an autographic supplication to the shrine of Daijingu as he had done before. While the contest was being fiercely continued in Kiushu, a northwest gale washed away the foreign invaders on July 30, 1281, and wrecked many of their ships, with great loss of life. Several thousand of the wrecked warriors took refuge on the island of Takashima, off the coast of the province of Hizen, where General Shoni Takasuke executed all of them except three persons,¹ who were sent to China to report the fate of the great expedition. Kublai, a man full of ambition, a type of the oriental hero, would not abandon the dream of world-empire. In the following years he again made energetic preparations towards repairing his former defeat, and in 1283 he ordered the Korean king to increase his naval equipment. But, in 1286, on the advice of General Lieousinen, his chancellor, the "Emperor of Earth" abandoned all further designs upon Japan.²

It has been said that Japan spent as much money for re-

¹ While a Japanese record describes three persons as having arrived safely at China, a foreign authority mentions eight persons. See *Gaiko-Shiko*, p. 261. See also Yule, *The Book of Sir Marco Polo*, vol. ii, note to page 243.

² The text of the advice is in Mailla, *Histoire générale de la Chine*, vol. ix, pp. 427-428.

ligious services at shrines and temples throughout the empire as was spent for military operations during these national crises.¹ Of course the people and historians of those days attributed their successful defence to the "heavenly support." As a matter of fact their naval fighting was far superior to that of the continental soldiers. Nevertheless, it must also be admitted that an island nation is better protected by nature against foreign invasion than are continental nations.

The Result of the Mongol Invasion—Period of Piracy.—The attempt at Mongol universalism had little or no direct influence upon Asiatic civilization; but, in the reaction that followed, there was produced one most evil result—a swarm of pirates in Asiatic waters. After the military activities of the Mongols were checked by the Teutons in the West and by the islanders of Japan in the extreme East, the southern Chinese, tiring of their military absolutism, soon set to work upon the destruction of their mighty empire; and, while rebellions against the Mongol governors prevailed throughout southern China, pirates swarmed on the seaboard, and Mongol fleets were captured by the celebrated pirate Frangkue Chin in the beginning of the fourteenth century.² After that, Chinese piracy was rampant on the coast of southern China and in the Indian ocean. Moreover, the Japanese, after the Mongol invasion, bitterly hated the Mongol and his ally, the Korean, and many of the soldiers and sailors who had defended their country became pirates and revenged themselves upon their old foe by raiding the Liao Tung and Shan Tung peninsulas, and the Korean coast as well.

Japan again drifted into civil war in the beginning of

¹ *The History of the Empire*, p. 189.

² Boulger, *History of China*, vol. i, p. 602.

the fourteenth century; the military government of the Hojo family at Kamakura was destroyed, and the Emperor Godaigo (1318-1339) temporarily restored the imperial authority, through the loyalty of the Nitta and Ashikaga families. But the rivalry of these two families soon caused another civil war, the so-called "War of Chrysanthemums," and the imperial power was again clouded. Takauji, of the Ashikaga family, established the Shogun government at Kyoto in 1342. Taking advantage of these civil disturbances, the Japanese pirates of the southern provinces became more and more aggressive in their descents upon the Korean and the Chinese coasts. The national guards of Korea often fought in vain at the seaports with the adventurous Japanese raiders. In order to warn the people of the approach of piratical invasions, the Korean government now adopted the "signal fire" in the national service.¹ Combining with Chinese pirates, the Japanese marauders often raided the districts of Shantung, Fokkien and Sikkong, burning towns, killing defenceless people and even fighting with regular soldiers. In those days, the Koreans and the Chinese feared the Japanese pirates more than the Europeans once dreaded the Vikings, and they were accustomed to call the Japanese pirate *Wai-Kol* (the dreadful creature of Japan). Although Takauji and the second Shogun, Yoshimori of Ashikaga, re-established the internal administration of the country, the piracy in the southern provinces was entirely beyond their control. Thus, on account of frequent civil wars and piracy, diplomatic and commercial intercourse among oriental nations hardly existed for many generations after the Mongol invasion.

Official intercourse with Japan was revived by China and

¹ Griffis, *Corea, the Hermit Nation*, p. 74.

Korea at the end of the fourteenth century—not for the purpose of exchanging courtesies and sending tribute as in ancient times, but for the purpose of making complaints against Japanese piracy. In 1367 the Korean king sent an envoy to Japan for the latter purpose.¹ In the following year order was restored in China by the establishment of the Ming dynasty; and in 1369 an envoy was sent to Japan to convey information of the change of sovereigns as well as to ask that measures for the suppression of piracy be taken.² From this time on, China and Korea repeatedly despatched envoys to Japan to demand redress for the ravages of the pirates; but the Japanese government usually claimed to be unable to control them. Yoshimitsu, the third Shogun of the Ashikaga family (1368-1393), greatly appreciated, however, the arts and luxury of China and Korea; and it was he who took the first step for the suppression of piracy, in order to foster commerce with those countries.³ He frequently sent envoys to their courts and on several occasions caused expeditions to be sent to the piratical districts. The Chinese government appreciated these measures, and, when Yoshimitsu died, honored the deceased Shogun by conferring on him the title of “*Kyoken-O*” (King of the Sages), and in 1404 issued the “*Kan-go*” to Japanese merchant ships in order to distinguish them from piratical junks.⁴ Subsequently, a member of the Ouchi family, a lord of Kiushu, was deputed by the Shogun government to watch the pirates on the southern coast, and to take charge of Chinese trade. A member of the So family, the gov-

¹ *Gaiko-Shiko*, p. 218.

² *Ibid.*, pp. 99 and 263.

³ *Ibid.*, p. 223. See also *Korean Review, Korean History*, vol. ii, p. 190.

⁴ *Gaiko-Shiko*, p. 746. *Kan-go* is the return ticket, or duplicate, issued by the Chinese government as a passport to Chinese ports.

ernor lord of Tsushima, who was accustomed to deal with the Koreans, was designated to manage the intercourse with that country. In 1443 So Sadamori negotiated a treaty¹ with Korea, by which the So family might annually send fifty Japanese vessels to Korea, in order to export 20,000 koku of Korean beans and rice to Japan. Similar trade franchises were obtained by several other feudal lords of Japan. Under such auspicious conditions the foreign intercourse of Japan — official and commercial — flourished for several generations.

The Shogun government of the Ashikaga family, however, gradually became corrupt and ceased to be strong enough to control the powerful lords who had accumulated fortunes and retainers for many generations. A great civil war, known in Japanese history as the "complication of the Onin," began in 1467, and again brought on a crisis in foreign affairs. The conflict degenerated into military anarchy and lasted a century, till Oda Nobunaga set about restoring order in 1573. During these dark days the Japanese pirate, who had been termed "*Papan-sen*" by the Chinese,² again dominated Asiatic waters and foreign intercourse with Japan almost ceased.

The Attempts of Taiko the Great to subjugate China and Korea. — Toyotomi Hideyoshi, the greatest hero that Japan ever produced, though he was of humble origin, quickly raised himself to the position of one of the most prominent generals of Nobunaga, the general-in-chief. In a conversation with Nobunaga, Hideyoshi, when about to set out on an expedition to the Kiushu provinces, remarked

¹ *Gaiko-Shiko*, p. 725.

² In those days the Japanese pirate ships used a flag on which the legend "*Hachimansen*" (the fleet of the War-God), was written; the Chinese pronounced the ideographs "*Papan-sen*."

that it would be possible to subdue Korea with one year's revenue of Kiushu, and then with a Korean army to conquer China, and thus to make China, Korea and Japan one;¹ and when, in 1582, Nobunaga, on account of the sudden attack of his treacherous general, Mitsuhide, was forced to kill himself, the work of national unification, which Nobunaga had begun, was carried to completion by Hideyoshi.

Hideyoshi's extraordinary success in subjugating all the feudal lords and establishing administrative control over the country induced him to attempt to realize his immoderate ambition, namely, the founding of a universal empire in Asia. As a preliminary step, he sent a messenger to So Yoshitomo, the governing lord of Tsushima, who had superintended the Korean trade for a long time, directing him to take measures for the restoration of the old tributary relation of Korea to Japan and to demand that Korea act as an intermediary to secure from China a tribute to Japan in order to preserve friendly relations.² In conformity with this plan, Aburatani, a retainer of the daimio So, was sent as envoy to Korea. Aburatani demanded of the Korean king that he send an envoy to Japan, in order to restore the old relations; but the king politely refused to do so, excusing himself on the ground of the dangers of navigation.³ In the spring of 1589, Hideyoshi commissioned Lord So Yanakigawa and the monk Genso to act as envoys to Korea, and they renewed the demand for the immediate despatch of an envoy to Japan. After waiting for several months, they received an answer to the effect that the king would send an envoy on condition that Japan should seize and deliver up a number of Korean pirates who were raiding the

¹ Dening, *Life of Toyotomi Hideyoshi*, p. 263.

² *Gaiko-Shiko*, p. 227.

³ *Korean Review, History of Korea*, vol. ii, p. 424.

southern seaboard in company with Japanese.¹ This condition was duly fulfilled, and the Korean king then appointed Whang-yan-gil, Kim-Sungli and Ho-sung as an embassy to Japan. Accompanied by the Japanese commissioners, they arrived at Kyoto in May of 1590; and in September, an audience having been granted them, they presented to Hideyoshi the royal letter and the tribute.² Hideyoshi, however, was not satisfied, as the letter made no reference to China; and, when the Korean envoys were about to depart, he gave them an answer, the substance of which was that the king of Korea should open his country to the Japanese forces, and that the Korean army should co-operate with them in an attack on China.³ As Korea had since the advent of the Mongol dynasty, depended more upon China than upon Japan, it is no wonder that the ambassadors declined to accept this proposal. Nevertheless, Hideyoshi dispatched to Korea an envoy, who persistently demanded a definite and favorable answer. The Korean government, on the other hand, sent a messenger to Peking, to warn the Chinese court of the projected invasion; but, before his arrival, information of Hideyoshi's designs had reached the court from the king of the Loochoo islands, who had just been in Japan, paying homage to Hideyoshi.⁴ The diplomatic interchanges between Japan and Korea ended with a mission of the So family in the spring of 1591, which failed to secure the co-operation of Korea in an invasion of China.

Hideyoshi, in the council of the elder generals, decided

¹ *Korean Review, History of Korea*, p. 425. See also *Gaiko-Shiko*, p. 227.

² The text of the letter and the list of tribute may be found in Aston, "Hideyoshi's Invasion of Korea," *Transactions of the Asiatic Society of Japan*, vol. vi, p. 231.

³ *Ibid.*, p. 232. See also *Gaiko-Shiko*, p. 228.

⁴ *Transactions of the Asiatic Society of Japan*, vol. vi, p. 223.

to invade the Asiatic continent and issued a decree proclaiming war measures.¹ Almost a year was spent in preparations.² Hideyoshi gave up the office of *Kiwampbaku* (regent of administration) to his son, Hidetsugu, assuming for himself the title, *Taiko* (the Great Lord); and freed from the cares of internal administration, he concentrated his efforts on the foreign expedition. In March, 1592, the Taiko proceeded to Nagoya, in Kiushu, where his headquarters were established. A force of 150,000 men, including sailors and soldiers, in eight divisions under as many generals, which had gathered at Nagoya, set out for Korea in April. The conditions were favorable to the Japanese. Their warlike spirit had under feudalism, from the time of the struggle between Taira and Minamoto, been constantly developed, and it was intensified by the Mongol invasion. Although dissipated in the military anarchy of the Onin, it was revived and concentrated by Nobunaga, and it was now about to be directed to a foreign invasion by the Napoleon of Japan. Besides, many of the Japanese soldiers were equipped with firearms,³ which were destined to play an important part in the war. On the other hand, Korea and China had enjoyed peace for more than a century, and their people were unwilling to take up arms; nor had they become so well acquainted with the use of firearms as the Japanese. Nevertheless, the Koreans made elaborate preparations for the defence of their kingdom.

One division of the Japanese forces under General Konishi, in spite of desperate naval resistance, landed in Korea near Port Fusan on April 13, 1592. Thence they marched

¹ As to the council of generals, see *Gaiko-Shiko*, p. 229.

² For an account of the war preparations, see *Transactions of the Asiatic Society of Japan*, vol. vi, p. 235.

³ In 1543 firearms were introduced by the Portuguese into Japan, where their manufacture soon developed.

to Tongue, a neighboring castle of Fusan, and subdued the enemy after half a day's skirmish. General Kiyomasa and his corps shortly afterward landed in Korea and easily captured the strong fortress of Kegushagchiu. The whole country was now opened to the vast force of the invaders and they advanced toward the capital. The fall of Tyung-Chiu, considered to be one of the strongest castles in the middle province, caused a great panic in the capital. On April 30 King Lien held a royal council, in which it was decided, on motion of the war minister, Yi-Sanha, that "the court should remove to Ping-Yang, the old capital," and the royal train set out from Seoul that night.¹ Three days later, Seoul surrendered and was occupied by the Japanese army. At a conference with the Korean general, Ri Tokukei, General Konishi offered to spare Korea, if, even at that late day, a free passage to China should be given to the Japanese army. The negotiations, however, ended in failure.² General Kato pushed on to the north and captured two Korean princes in the strong castle of Kaineifu. His demonstration was so formidable that he is known even to present-day Koreans as "*Kishokwun*"—the demon general. King Lien, alarmed by the approach of the Japanese army, on June 2 held a council³ and decided to abandon Ping-Yang, and to proceed north to Hang-Yung; but, finding there that Kato's soldiers had already overrun that district, he turned westward to Wuji on the frontier of China. The Japanese forces occupied Ping-Yang on June 11, and determined to hold the city as their second headquarters.

Meanwhile, the Chinese governor of Loatung, a province adjacent to Korea, on the urgent appeal of King Lien, had

¹ *Korean Review, History of Korea*, vol. ii, p. 472.

² *Transactions of the Asiatic Society of Japan*, vol. vi, p. 240.

³ *Korean Review, History of Korea*, vol. ii, p. 527.

sent 5,000 men to Ping Yang in July.¹ They were, however, defeated with wholesale slaughter. This disaster startled the Chinese court, which determined at once to send a large force to the aid of Korea. But, as time was required for preparation, the Chinese government sent an envoy, named Chin Weiking, who was to gain delay by pretending to enter into peace negotiations.² Weiking, upon his arrival at Ping Yang, immediately entered into conference with General Konishi and succeeded in obtaining an armistice of fifty days. In return, he promised to proceed to Peking and come back to Ping Yang with an "arrangement for a peace satisfactory to both parties." As the result of this agreement, the Japanese troops had rather an idle time during the rest of the year, till Chin Weiking reappeared at Ping Yang, not with terms of peace, but with 40,000 soldiers under General Li-Jusong.³ The Japanese attacked them on January 6, 1593, but so large was the Chinese force that the Japanese were compelled to retire to Seoul in order to concentrate their divisions. After three months of hard fighting, both the Japanese and Chinese grew anxious for peace. Weiking came to the camp of General Konishi in April and proposed negotiations, and, as the Japanese forces were suffering from plague and famine, Konishi, in spite of Weiking's previous treachery, accepted the proposal and sent to the Taiko for instructions.

Hideyoshi drew up in June a basis of peace, consisting

¹ *Transactions of the Asiatic Society of Japan*, vol. vi, p. 242.

² *Ibid.*, p. 243. Chin Weiking, a native of Chekiang and a man of talent and eloquence, was chosen for the mission probably for his knowledge of Japanese and for his ability in the "tricky" diplomacy which prevailed among the feudal kings of China in the age of military anarchy.

³ Aston, "Hideyoshi's Invasion," *Transactions of the Asiatic Society of Japan*, vol. ix, part 1, p. 87.

of seven articles, and forwarded it to Konishi.¹ After several conferences, it was accepted by the Chinese with a few modifications, and Weiking proceeded to Peking to obtain the sanction of the Celestial emperor. The principal provisions of the treaty were, first, the surrender of the two Korean princes captured by General Kato; second, the restoration of half the territory of Korea to the Korean king, the other half to be retained by Japan; third, the payment of an annual tribute to Japan; and fourth, the investing of Hideyoshi with the title of king.² The Japanese understood that the fourth clause meant that Hideyoshi was to be invested with the title of king of China, and, being more accustomed to arms than to diplomacy, they did not foresee the opportunity which the silence of the article on this point would give to the crafty Weiking to pervert and evade the stipulation. After the conclusion of the treaty military operations ceased, and in the spring of 1594 Hideyoshi despatched Naito Nyo-an to obtain a definitive approval of the peace. Time passed and no report was received, and Hideyoshi, becoming impatient, declared that he would in person invade China with 300,000 soldiers, but he delayed action on the advice of General Asano.³ Meanwhile the cunning Weiking had advised the Chinese court that "Taiko Hideyoshi wanted to become king of Japan." The court at first doubted, but, being reassured by the precedent that Ashikago Yoshimitsu was once honored with the title of king, at last decided to act upon Weiking's view.⁴ The document of investiture and the insignia were prepared, and Fang Hsiang and Chin Weiking were commissioned, as ambassador and

¹ For the text of the basis of the treaty, see Takekoshi, *History of 2,500 Years*, p. 552, in note.

² *Gaiko-Shiko*, p. 274. The other three clauses being secret, are unknown.

³ *Gaiko-Shiko*, p. 275.

⁴ *Supra*, p. 69.

vice-ambassador, to proceed to Japan to perform the ceremony. The embassy arrived in Japan in August, 1596, with 300 horses and gold and silver as presents for Hideyoshi. The Taiko, confident that he was to be invested with the title of king of China, and adorning himself with the regalia which he had just received, gave the embassy a most elaborate audience at the Fushimi castle and directed the ambassador to read the investiture. When the ambassador came to the clause where it was stated that "We [the Chinese Emperor] do therefore specially invest you with the dignity of king of Japan,"¹ the Taiko flew into a violent rage, and, seizing the document and throwing it on the floor, declared that he would become king of China and would teach the Chinese court how little it had to do with the sovereignty of Japan, which belonged exclusively to the imperial blood. Thus the transaction was ended, and Hideyoshi immediately issued an order for a second invasion.

The campaign began in February, 1597, and ended on September 15, 1598, when General Tokugawa, in accordance with Hideyoshi's wishes, instructed all the generals to withdraw from Korea.² The last word of the great Taiko on his death-bed, was "not to let the Japanese soldiers turn to the ghosts in the foreign land."

As the Mongol had failed, so Hideyoshi failed to realize the idea of universalism after having wasted more than 260,000 human lives.³ On the other hand, the great hero

¹ The translation of the full text of the document is given in *Transactions of the Asiatic Society of Japan*, vol. ix, p. 218.

² For the account of the second invasion, see Griffis, *The Hermit Nation*, chaps. 18-19. For a more full and trustworthy account, see *Shosen Monogatari (The Story of Korea)*, translated into German by Dr. Pfizmaier.

³ For this estimate by Mr. Ogawuchi, see Griffis, *The Hermit Nation*, p. 144.

was unable to secure for his descendants even the administrative control of his own country; for, while he was engaged in the foreign wars, Tokugawa Iyeyasu usurped the power of the Hideyoshi family. His unsuccessful invasion of Korea would have resulted in fostering piracy in Asia by Japanese sailors who had been engaged in the naval struggle, had not armed vessels of the maritime nations of Europe appeared and had not Tokugawa prohibited the building of ocean-going vessels in the beginning of the seventeenth century.¹

¹ Nitobe, *Intercourse between the United States and Japan*, p. 14. "After 1609, ships above a certain tonnage (500 Koku = 2,500 bushels or 30,000 cu. ft.) were not allowed to be built, the motive of this legislation being to cripple distant navigation."

CHAPTER IV

THE FIRST INTERCOURSE OF JAPAN WITH EUROPEAN NATIONS, 1541-1638

Intercourse with the Portuguese and Spaniards.—Although India and China had intercourse with the Greeks and the Romans in ancient, and with the Italians in mediæval times, none of the western peoples set foot in the Island Empire of Japan until a wrecked Portuguese ship was brought thither by the Black Current in 1541. Japan and the Japanese were first described to Europe by Marco Polo, at the end of the thirteenth century, as

Chipangu, an island towards the east in the high seas, 1,500 miles from the continent; and a very great island it is. The people are white, civilized, and well favored. They are idolaters, and are dependent on nobody, and I can tell you the quantity of gold they have is endless; for they find it in their own islands.¹

His mention of gold may to some extent have stimulated the Portuguese and Spaniards to endeavor to open a new sea route to Asia in the fifteenth century. "Cipango" occupies a significant place to the east of Asia in Toscanelli's map, which was used by Columbus for his voyages, and the latter earnestly inquired for that island when he reached the archipelago of the West Indies.²

¹ Yule, *The Book of Sir Marco Polo* (second edition), vol. ii, p. 235.

² Hildreth, *Japan as it Was and Is*, p. 14. See also Murray, *Japan*, p. 2. In the map there is no American continent between "Cipango"

The lucrative monopoly of Asiatic trade by the overland route, hitherto held by the Venetians, awakened jealousy on the part of the rival commercial nations on the Mediterranean, and the "gold land of Asia" became a watch-word among them. Portugal was the first to launch forth upon the ocean to discover a sea route to India. Pope Nicholas V by the Bull of 1452 authorized the Portuguese king to "attack and subjugate all the countries of the infidels, to reduce all their inhabitants to slavery and to seize all their property."¹ Two years later, rewarding the intention of Prince Henry to discover India by way of the African continent, the same Pope gave to the Portuguese sovereign the right to all the regions discovered and to be discovered "as far as the Indies."² Portugal thus acquired a monopoly of the privilege of colonizing and subjugating all the non-Christian world. Under the guidance of Prince Henry the Portuguese made repeated efforts to round the African continent, but in this they were not successful until Diaz in 1487 reached the southern point of the continent.

Meanwhile, Columbus, believing the earth to be round, hoped to reach the eastern coast of India by sailing across the Atlantic, and applied to Dom João II of Portugal for permission to carry out his plan. The king was not disposed to countenance so vague a project. Applying then to Spain, through the influence of Queen Isabella of Castile, Columbus eventually received permission to fit out an expedition, and in 1492 discovered the New World. Thereupon the Spanish sovereigns asked the Pope for

and Europe. Columbus's aim was to discover "a route to this reputedly rich island and to the eastern shores of Asia."

¹ As to the Bulls of 1452 and 1457, see HARRISSE, *The Diplomatic History of America* (1452-1493), p. 6.

² *Ibid.*

a grant of the newly discovered dominions. By the famous Bulls of partition, in May, 1493, the newly discovered region was recognized as Spanish, and the unknown world was divided by an imaginary line (some leagues west of the Azores or the Cape Verde Islands) between Spain and Portugal.¹ Against this arrangement the Portuguese protested, and it was modified in the next year by the treaty of Tordesillas, between Spain and Portugal, which fixed the divisional line "at a distance of three hundred and seventy leagues west from the Cape Verde Islands."² Each nation then proceeded to exploit its respective sphere.

In 1498, Vasco de Gama, of Portugal, discovered the coveted sea route to India, and the Portuguese then began to swarm to the East. In 1510 they forcibly occupied Goa and established there a provincial government. In the following year they founded a naval station and commercial staff at Malacca. As early as 1516, they sailed to the coasts of Siam, Burmah and southern China. In 1517 Admiral Andrade effected a commercial arrangement with the governor of Canton.³ He also sent an ambassador to Nanking, the old Chinese capital, but the Portuguese representative was there cast into prison. The Portuguese, however, although they established a stronghold in the Spice Islands and maintained regular communication with China, did not attempt to cross the ocean to "Chipangu" mentioned by Marco Polo.

In 1541, certain Portuguese traders from Siam, while sailing for China in a junk, were driven by a typhoon out to sea, and reached the Jinguji bay of the Bungo province,

¹ See chapter iii, "The Three Bulls of May, 1493," in Harisse, *The Diplomatic History of America*. The definite line of demarcation is still unknown.

² *Ibid.*, p. 78.

³ Major, *Prince Henry the Navigator*, p. 418.

in Japan. According to the European account, their names were Antoine Mota, François Zeimoto and Antoine Pexota.¹ By a number of historians, however, Fernando Mendez Pinto is regarded as the first European visitor to "Chipangu." This famous traveler was cast ashore on Tanegashima Island, off the province of Satsuma, in a shipwreck in 1543. The "queer looking persons" were questioned as to "where they came from" and "what they were." Fortunately, there was a Chinaman in the company, named Go How, who was able to answer, by writing in Chinese characters on the sandy beach: "This is a foreign ship from the Southwest [India, Cochín-China or Manila], come to trade with you."² This primitive conference is said to have been the first ever held between Japanese and Europeans. Tokitaka, the governor-lord of the island, was much interested in the Portuguese and treated them with the utmost hospitality, and they made him a present of firearms, which had never before been seen by the natives. Pinto then visited the province of Bungo, from the lord of which he obtained permission to trade at the port of Hirato.³ The reports of these proceedings, detailed and exaggerated by the refugees, attracted eager attention among the Portuguese, both at home and abroad. Their merchants at Goa soon fitted out a number of vessels for Kagoshima, in Satsuma, and for Hirato. The account of Marco Polo of the gold of Chipangu did not prove to be altogether deceptive. The Portuguese found the trade with Japan so lucrative that they were encouraged to come year after year.

¹ *Gaiko-Shiko*, pp. 441 and 787. See also Charlevoix, *Histoire du Japon*, p. 38.

² *Gaiko-Shiko*, p. 788. See also Nitobe, *Intercourse between Japan and the United States*, p. 8.

³ *Gaiko-Shiko*, p. 789. See the note.

This was the epoch of feudal autonomy in Japanese history. Provincial barons, jealous of one another's military supremacy, were anxious to buy firearms. They were also very willing to spend their gold and silver, which had accumulated from generation to generation, for the new luxuries of Europe and India imported by the Portuguese. To foster foreign trade, the feudal barons of Kiushu willingly opened their ports. They granted to the Portuguese the privilege of traveling freely in the interior, and hospitably invited them to settle upon their lands, even offering to exempt them from "all kinds of taxation and duties."¹ Nagasaki was also opened to foreign trade, the Portuguese founding there a large settlement in 1566. The promising commercial intercourse between Japan and Europe thus initiated was, however, eventually hampered by the religious propaganda of the Catholic missions.

Although the Portuguese opened up the Spice Islands by force and tried to gain admission to China by threats, they did not attempt forcibly to colonize or subjugate Japan, for the long distance from Goa, their central station, prevented them from employing military measures, and a warlike people like the Japanese were not likely to be subdued except by the mild means of religion. That "the missionary follows trade" was particularly true of the Portuguese in Japan. With the second visit of Pinto, Francis Xavier came to Koyoshima in 1549 and introduced the work of the Jesuits.² On his fourth visit, in 1556, Pinto acted as ambassador from the Portuguese viceroy, Don Alonzo de Noronha, to the lord of Bungo, and brought with him "Father Gaspard Vilela, four brothers and five young orphans."³

¹ Kampfer, *The History of Japan*, book iv, chap. v, p. 311. See also Suganuma, *Dai-Nihon Shogyo-Shi (Commercial History of Japan)*, p. 305.

² Hildreth, *Japan as it Was and Is*, pp. 47-49.

³ *Ibid.*, p. 76.

“ The meek and comfortable doctrine of the Gospel ” soon gained the hearts of the Japanese; the Jesuits spread throughout Kiushu; and it was estimated in 1581 that the native Christians in the chief ports of the principal islands numbered as many as 150,000.¹ The lords of Arima, Bungo and Omura were not only converted to the alien creed, but in 1582 sent their ambassadors to Rome to pay homage to Pope Gregory XIII.² Converting one by one the provincial lords who maintained their local autonomy, the Portuguese Jesuits would easily have subjugated the whole empire, had there been no central control over the feudal princes.

Nobunaga, though he brought about the unification of Japan, had no opportunity to deal with the new religion. Taiko Hideyoshi, however, Nobunaga's successor, assuming the whole administration, determined to suppress the foreign propaganda and took the first step through the edict of July, 1587.³ By this edict the Jesuit missionaries were ordered to leave Japan. Merchants were not affected by it. Most of the converted lords in Kiushu, whom Hideyoshi had not yet absolutely subjugated, stood firm and protested against the banishment of the missionaries. The edict alarmed the colonial government of Goa, whose viceroy was sent on a special mission to Hideyoshi, with a letter asking him to continue the “ favor ” which had been shown to the the Portuguese in the past.⁴ After careful consideration,

¹ Heine, *Japan, Beiträge zur Kenntniss des Landes und seiner Bewohner*, p. 53.

² For a full account of the Japanese embassy to Rome, and the text of the letter to the Pope, see Mr. Satow's paper, *Transactions of the Asiatic Society of Japan*, vol. xviii, part ii.

³ For the text of the edict, see Heine, *Japan*, p. 57.

⁴ For a copy of the letter, see Hildreth, *Japan as it Was and Is*, p. 105.

Hideyoshi on July 25, 1592, gave an answer justifying the edict.¹ He was not blindly anti-European, for he did not propose to banish Portuguese who were merely engaged in trade; but he desired to exclude any foreign element which would menace the national existence. He aimed at nothing but "self-preservation," or nationalism, as his answer to the viceroy clearly pointed out:

As to what regards religion, Japan is the realm of the *Kami*, that is, of *Sin*, and the beginning of all things, and the good order of the government depends upon the exact observance of the ancient laws of which the *Kami* are the authors. They cannot be departed from without overturning the subordination which ought to exist, of subjects to their sovereign, wives to their husbands, children to their parents, vassals to their lords, and servants to their masters. These laws are necessary to maintain good order within and tranquillity without. The fathers, called the Company, have come to these islands to teach another religion; but as that of the *Kami* is too deeply rooted to be eradicated, this new law can only serve to introduce into Japan a diversity of worship very prejudicial to the state. It is on that account that, by an imperial edict, I have forbidden these strange doctors to continue to preach their doctrine. I have even ordered them to leave Japan, and I am determined not to allow anybody to come hither to retail new opinions.

Of commercial intercourse he spoke as follows:

But I still desire that commerce between you and me may continue on its old footing. I shall keep the way open to you by sea and land, by freeing the one from pirates and the other from robbers. The Portuguese may trade with my subjects in all security, and I shall take care that nobody harms them.

¹ Hildreth, *Japan as it Was and Is*, p. 110, for the full text of Hideyoshi's answer to the Portuguese viceroy. A copy of the original letter, in Japanese, is in Suganuma, *The Commercial History of Japan*, p. 329.

Hideyoshi, however, was unable strictly to enforce his edict, being engaged in the invasion of Korea.

In the sixteenth century, the Spaniards little respected the sovereign rights of other nations. On the contrary, they entertained the idea of establishing a world-empire; and, in spite of the Bull of 1493 and the treaty of Tordesillas, made every effort to destroy the colonial and commercial monopoly of the Portuguese in Asia. While they did not venture to cross the Portuguese sphere by way of the Cape of Good Hope, they came from another direction. Magellan, a native of Portugal who had become a Spaniard by naturalization, penetrated, in the course of his celebrated voyage, to the Philippines and the Moluccas by rounding Cape Horn. This encroachment on the Portuguese sphere was settled in 1529 by the treaty of Saragoça. Portugal recovered the Moluccas by paying to Spain the sum of 350,000 gold ducats, and a line of demarcation was drawn 17° to the east of those islands.¹ But this did not prevent the Spaniards from conquering the Philippine group, which lay well within the Portuguese sphere, as Zebu was captured by them in 1564 and Manila in 1571.

Although Spanish ships from Mexico and the Philippines often touched at Japanese ports, their appearance was not officially recognized until a Spanish ship brought "black slaves" to Nobunaga.² When Philip II seized upon the crown of Portugal, the Spaniards of Manila sought to arrogate to themselves all the privileges of the Portuguese as to commercial and missionary enterprises in Japan. Philip did not endorse this extreme claim, and the exclusive privi-

¹ A full account of the Spanish and Portuguese rivalry is given in Satow's paper, *Transactions of the Asiatic Society of Japan*, vol. xviii, part ii, pp. 155 *et seq.*

² *Gaiko-Shiko*, p. 577.

leges of the Portuguese Jesuits were confirmed by the Bull of Pope Gregory XIII, in 1585;¹ but the governor of Manila did not relinquish his projects. Hideyoshi demanded that the Manila government pay homage to Japan.² This imperious demand the governor of course regarded as an insult to Spanish sovereignty; but he saw in it an opportunity both to gain access to Japan, and to deal a blow at the Portuguese monopoly. In 1592, a Spanish envoy, Liano, appeared and had an audience with Hideyoshi, who, with his staff, was then at Nagoya, in Kiushu, preparing for the invasion of Korea. Liano bitterly complained of the Portuguese trade monopoly at Nagasaki, and charged the Portuguese with being engaged in a religious conspiracy to evade the recent edict.³ The result was that Hideyoshi instantly issued an order for the destruction of the Portuguese churches. The unscrupulous diplomacy of the Spanish envoy was not, however, altogether successful, since the Spaniards did not at once obtain the privilege either of trading or of preaching. Nevertheless, in the following year, another envoy came and secured a charter to trade at Port Sakai, making at the same time an oath not to bring any missionary.⁴ Thereafter the Spaniards came in large numbers to Japan, but their missionaries were more numerous than their traders and promptly engaged in strife with the Portuguese. This religious rivalry between the Jesuits and the Dominicans of the Latin nations, induced Hideyoshi and his successors to impose further restrictions upon them, and enabled the new-comers, the Dutch and the English, to enjoy the lion's share of the trade.

¹ Satow, *loc. cit.*, p. 156. Also Hildreth, *Japan as it Was and Is*, p. 117.

² *Ibid.*, p. 108.

³ *Gaiko-Shiko*, p. 791. See also Hildreth, *op. cit.*, p. 114.

⁴ *Gaiko-Shiko*, p. 792.

Intercourse with the Dutch and English.—It was chiefly England and Holland that checked Spain's scheme of universal empire in Europe; and it was their sailors and merchants who destroyed the colonial and commercial monopoly of Spain and Portugal in America and in Asia. While the Portuguese held the monopoly of the Asiatic trade in the sixteenth century, Dutch merchants made a fair profit by reselling in the north of Europe Asiatic merchandise which had been brought to Lisbon. The Spanish absorption of the Portuguese dominions in 1580 was soon followed by the brutal seizure of fifty Dutch ships at Lisbon, and by the forcible exclusion of Dutch merchants from trade with Portugal. The Dutch then began to cherish, more ardently than any other nation, the design of direct commerce with Asia.¹

Several trading companies soon sprang up to promote ocean trade. At first the Dutch attempted to explore an independent route to the East by the Arctic seas; but, learning its difficulties they adopted the southern route and entered into direct competition with the Portuguese and the Spaniards.² Four vessels, fitted out in 1595 by the East India Company, an association of merchants of Amsterdam, sailed by way of the Cape of Good Hope to Java, where many hindrances were put in their way by the Portuguese. Information as to the Portuguese trade with Japan had already been furnished to the East India Company by Von Linschoten, who returned to Holland from the East in 1592, and in 1595 published his *Reys-Gheschrift von de Navigation der Portugalloyers in Orienten*.³ The first at-

¹ Cunningham, *Western Civilization*, vol. ii, p. 199. See also Hildreth, *op. cit.*, p. 132.

² Cunningham, *Western Civilization*, vol. ii, p. 199.

³ Nachod, *Die Beziehungen der niederländischen ostindischen Compagnie zu Japan im siebzehnten Jahrhundert*, p. 91.

tempt of the Dutch to enter Japan was made by a fleet under the command of Jacques Mahn, which left Holland on June 27, 1598. He was instructed to make his way through the Straits of Magellan and across the Pacific. The fleet, however, became separated during a storm while off the Chilian coast. Some of the ships were wrecked; one was captured by the Spaniards. The "Liefde," the only survivor, conducted by William Adams, an English pilot, steered for Japan and arrived at Hirato in the middle of April, 1600.¹ In consequence of these misfortunes, which fell heavily upon small associations, and in order better to meet the severe competition of the Portuguese and the Spaniards, various Dutch companies, in 1602, consolidated, for greater business efficiency, into a gigantic corporation, which acquired celebrity as the "Dutch East India Company," and which was authorized to make peace and war with the "Eastern Princes."² Immediately after this consolidation, the Dutch successfully established themselves in India, Java and Formosa. In December, 1607, a fleet composed of the ships "Roode Leeuw met Piulen" and "Griffoen," under Pieter Willemszoon Verhoeven, was despatched to Japan. It arrived at Hirato on the evening of June 1, 1609. The supercargoes left on July 27 for the court of the Shogun, at Suruga, bearing a letter to Iyeyasu from the Prince of Orange, and accompanied by Van Santvort as interpreter.³ They had no difficulty in obtaining permission to trade, to build residences and warehouses at any port or harbor where the Dutch merchants came, and to maintain "neighborly relations" with Japan. Iyeyasu

¹ Nachod, *Die Beziehungen der niederländischen ostindischen Kompagnie zu Japan im siebzehnten Jahrhundert*, pp. 95, 98, 99.

² Raynal, *India*, vol. i, p. 166.

³ Nachod, *op. cit.*, pp. 112-113.

furnished them with a reply to the letter of the Prince of Orange, in which these privileges were guaranteed, together with a letter-patent for the free passage of the Dutch ships.¹ Under these favorable conditions the Dutch established their main trading-post at Hirato, where Jacques Specx was appointed as "Cape Merchant" to superintend their business, with three assistants, an interpreter and a boy.²

The success of the Dutch was due largely to the personal influence of William Adams over Iyeyasu, who, impressed by Adams's frankness and straightforwardness, and his knowledge of mathematics and of ship-building, had permitted him to remain in Japan since 1600. Iyeyasu confided in Adams's assurance that the "Dutch had no ambition beyond commercial relations." It is said that Adams was treated as "a lord of England," and that he enjoyed the "office of foreign adviser" at Iyeyasu's court.

As soon as the favorable answer of the Japanese ruler reached Amsterdam, another ship, the "Broch," was despatched, in 1611, by the Dutch East India Company for the Japanese trade. Immediately after its arrival at Hirato, Specx proceeded to Yedo as the Dutch envoy to express the gratitude of the company for the privileges so generously granted by Iyeyasu two years before, and he brought with him presents of European products newly imported.³ Iyeyasu then gave Specx another letter-patent, which is, however, substantially the same as the one given in 1609. Its English translation runs as follows:

¹ The German translation of the text of the reply is given in Nachod, *op. cit.*, appendix 5. An English translation is in Hildreth's *Japan as it Was and Is*, p. 143. A copy of the original Japanese letter is in Suganuma's *The Commercial History of Japan*, p. 562. For the text of the letter-patent, see appendix 6, in Nachod, *op. cit.*

² Nachod, *op. cit.*, pp. 114-115.

³ *Gaiko-Shiko*, p. 795.

All Dutch ships that come into our empire of Japan, whatever place or port they put into, we do hereby expressly command all and every one of our subjects not to molest them in any way, nor in any way to be a hindrance to them; but on the contrary, to show them all manner of help, favor and assistance. Every one shall beware to maintain the friendship in assurance of which we have been pleased to give our imperial word to those people; and every one shall take care that our commands and promises be inviolably kept.¹

A Japanese record mentions, as the first appearance of an English ship, a vessel which anchored near the "Five Islands" of Hizen, in Japanese waters, as early as 1554.² Another English ship, which arrived at Hirato in 1580, obtained a permit to trade from Lord Matsu-ura. William Adams, who took up his residence in Japan in 1600, though originally an English subject, was sworn to Dutch allegiance. But, although these incidents may have been in a sense preliminary, English intercourse with Japan did not assume a definite form until the arrival of Captain Saris, an agent of the East India Company, in 1613. After the destruction of the Spanish armada, Elizabeth put forth every effort to make her colonial and commercial power as great as that of France and Spain. These efforts were not at first very successful, owing in part to anxiety to avoid a collision with the Spaniards. In 1600, however, England, adopting the Dutch policy, entered upon a direct attack on the colonial empire of Spain, by chartering the East India Company.³ In April, 1602, the company entered into an agreement with George Waymouth, navigator, for a voyage by

¹ Kampfer, *The History of Japan*, book iv, p. 382. The German text is found in Nachod's work, p. 148, and the original Japanese text, in Sukanuma's book, p. 509.

² *Gaiko-Shiko*, p. 790.

³ Seeley, *The Growth of British Policy* vol. i, pp. 291-292.

the "north-west" passage to Cathan (India), China, or Japan, but the scheme of Waymouth was not realized.¹ Two years later Sir Edward Michelborne obtained a license to explore the Asiatic countries as far as Japan, by the route around the Cape of Good Hope. His voyage was prematurely ended by the killing of his pilot, John Davis, by Japanese pirates on the coast of the Malay peninsula.² On April 4, 1611, the East India Company issued a commission for the exploration of Asia, by which Captain John Saris was appointed to command a fleet consisting of the "Clove," the "Hector" and the "Thomas," and by which he was specially instructed to proceed to Japan with the "Clove" from Bantam, and to consult, upon his arrival in Japan, with Adams, who lived at the Japanese court and enjoyed great favor.³ The fleet sailed from England on April 16, 1611, with four royal letters addressed respectively to the Great Mogul of Surat, to the king of Bantam, to the lord of Hirato, and to Iyeyasu ("Ruler of Japan"). On January 14, 1613, Captain Saris left Bantam for Japan with only the ship "Clove," and arrived at Hirato after a five-months sail. Through the assistance of the Lord Matsu-ura and Adams, he soon proceeded to the court at Suruga, where, on September 8, he was received in audience by the Shogun, Iyeyasu. Saris delivered to Iyeyasu a letter.⁴ from King James I, and presents of European products. Praising the glory of the Ruler of Japan, and explaining the objects of the English commissioner, the letter requested Iyeyasu to afford English subjects "securities

¹ Satow, *The Voyage of John Saris to Japan*, introduction, p. iv.

² *Ibid.*, introduction, p. v.

³ For the abstract of Saris's commission, see *ibid.*, pp. x-xv.

⁴ *Ibid.*, pp. lxxvi-lxxvii, English text. Suganuma, *The Commercial History of Japan*, p. 514. The Japanese translation was made with the help of Adams.

and liberties of commerce" for the mutual benefit and friendship of both countries, and invited the Japanese merchants to come freely to England. Iyeyasu was very graciously disposed towards a commissioner from Adams's country, and asked Captain Saris to state in writing what privileges he desired.¹ Saris, with the help of Adams, who had a fair knowledge of Japanese, drew up a draft of a petition in Japanese characters and submitted it to the secretary of state, Honda Kodzake-no-suke. The petition was soon approved, and Saris received a letter-patent and an answer to King James on October 8.² By the letter-patent the following privileges were given to the English in the name of the governor of the East India Company:

I. Freedom of commerce and navigation in the ports of Japan.

II. Absolute exemption from tariff duties, import as well as export, and from transit duties.

III. All necessary relief and assistance to wrecked ships and persons, and necessary provision and accommodation during their stay and on their departure.

IV. Judicial control by the Cape Merchant (the head of the English factory) over the property of deceased English subjects and over all offences committed by English subjects—the Japanese law to have no effect upon their persons and their property.

V. An assurance that Japanese subjects would be required to fulfil their contracts of sale.

VI. A guarantee against official confiscation of English goods, and an assurance of payment for official purchases.

¹ Riess, "History of Hirato," in *Transactions of the Asiatic Society of Japan*, vol. xxvi, p. 23.

² The letter to King James is given in the *Diary of Captain Saris*, p. 137. The original text of the Japanese is in Suganuma's *Commercial History of Japan*, p. 515. As to the letter-patent, see the full text, *ibid.*, p. 138, and the Japanese text, *ibid.*, p. 518.

VII. The supply of Japanese subjects to English navigators in case they should need men for service in the prosecution of their trade and navigation.

VIII. Permission to explore Yezo (the present Hokkaido), or any adjacent islands of the empire, without a further passport.

By the earnest assistance of Adams, Captain Saris thus succeeded in obtaining commercial privileges in Japan more liberal than any ever before given to foreigners. Uraga, near Yedo, was first suggested to the English commissioner as the place for the English factory; but Saris preferred Hirato, which afforded better accommodations for Europeans.¹ Before his departure, Saris held a council at Hirato on November 26, and it was resolved to establish the main factory there, its staff to consist of eight Englishmen, with Richard Cocks as "Cape Merchant."

Under the auspicious guarantees of the letter-patent, the English traders, like the Dutch, easily forced out the Portuguese monopoly. The English soon established branch houses at Yedo, Osaka, Fukui, Karatsu, Suruga, Hyogo, Sakai, Nagasaki, and other places. The death of the generous Shogun, Iyeyasu, in 1615, however, was a severe blow to English commerce. Hidetada, the second Shogun, restricted their commercial privileges to the port of Hirato, on account of their alleged adhesion to the Catholic faith, the Dutch having informed him that the English representatives were of the same religious body as the Spanish and Portuguese, as shown by the marriage of King James to the Portuguese princess.² The strenuous efforts of Adams and Cocks

¹ Satow, *Diary of Captain John Saris*, p. 136.

² *Diary of Richard Cocks (1615-1622)*, vol. i, p. 191. See also *Gaiko-Shiko*, p. 798.

could not accomplish the restoration of the English privileges. The Teutonic nations, though they had co-operated with each other until they had crushed the world-monopoly of the Latin nations, now came themselves into serious conflict over the commercial supremacy in Asia. The claim by the Dutch of the monopoly of trade with the Spice Islands was the origin of their difficulties with England. Although the directors of the Dutch East India Company had instructed the governor at Bantam not to interfere with English traders, yet their collision was inevitable. A regular skirmish took place on November 22, 1617. The Hollanders captured the "Attendance," an English ship, at the Moluccas, and brought her into Hirato. This news excited the English traders there, and it was unanimously resolved at their council to despatch Mr. Cocks to the Shogun government for redress for the "unlawful capture of an English ship."¹ The Shogun, Hidetada, refused to take cognizance of anything done outside of his own territory,² it being his policy not to entangle himself in any foreign complication. The struggle between the English and the Dutch grew more and more intense, and, the English factory was often protected by the soldiers of the lord of Hirato against the violence of the Dutch sailors. Happily for the English traders a "treaty of defence" was on June 2, 1619, concluded in London, by which it was agreed that the East India companies of the two nations should act as partners in the trade with the Spice Islands.³ At the same time the Dutch captains were instructed that prizes captured from the Spaniards and their adherents, in the waters near Japan, should be divided between the establishments of England

¹ Cocks's *Diary*, vol. ii, p. 63.

² Riess, *loc. cit.*, p. 81.

³ *Ibid.*, pp. 86-87.

and Holland at Hirato. This arrangement, however, was of brief duration, as it was reported in Hirato on August 2, 1622, by the "council of defence" that the Dutch had separated their shipping trade from the English. The massacre of Amboyna occurred in 1623, and was followed by the exclusion of English traders from the Spice Islands. In the same year the British East India company decided in the council of Batavia, to withdraw from Japan.¹ Nor was this decision strange, since English trade with Japan was practically ruined by the edict of 1616, by which it was confined to Hirato.

The Diplomacy of the Tokugawa Shogunate.—After the death of the celebrated Hideyoshi, and the battle of Sakigahara, Iyeyasu Tokugawa brought all of Japan under his rule and in 1603 inaugurated the Tokugawa régime, establishing the *Bakufu* government in Suruga province. The second Shogun of the Tokugawa, Hidetada, transferred the *Bakufu* to Yedo which, for two centuries and a half, remained the seat of the Tokugawa government.

Iyeyasu appreciated the economic value of foreign intercourse and its effect upon the prosperity of the country more keenly than any of his predecessors in the central authority. He adopted the open-door policy, a policy based upon principles of peace and friendship and freedom of commerce with other nations. He especially sought to appease the Koreans, who deeply resented the terrible reverses inflicted upon them by Hideyoshi's invasion, and, acting through So Yoshitomo, the governor-lord of Tsushima, he repeatedly sent envoys to the Korean court, with a view to re-establish the friendly intercourse of former times. For a while his overtures were in vain, but at last he convinced Korea that

¹ Letter of recall of Mr. Cocks by the East India Company, in his *Diary*, vol. ii, pp. 340-344.

Japan under his rule was totally different from the "Japan of Hideyoshi," and a Korean envoy was despatched to him with a royal letter and presents.¹ The envoy was warmly received at Suruga, in 1607, and two years later Lord So concluded with Korea a commercial treaty.² But, although Korea thus accepted the amicable advances of Japan, China was not inclined to do so. Traders from southern China, however, often came to Nagasaki, and were treated in the same manner as Europeans. So anxious was Iyeyasu to restore commercial relations with China that he gave, in 1610, a charter of "*Shuin*" to the Canton ships, in order to encourage their coming. Two years later he sent Honda as a commercial agent to the viceroy of Foukin, in order to obtain the "*Kan-go*" for Japanese ships. The provincial lords of Kiushu were ordered, in 1613, to open all their ports to Chinese trade.³ European nations were treated with great liberality. The privileges granted to the Portuguese and the Spanish, which were curtailed by Hideyoshi, were restored by Iyeyasu. To the Spanish governor of the Philippines he once wrote a letter, expressing his intention to establish direct commercial intercourse between Japan and Mexico.⁴ He gave letters-patent to Spanish vessels in 1608 and especially opened the port of Uruga, in the province of Sagami, to Spanish trade.⁵ Prior to the arrival of Verhoeven, with the Dutch fleet, in 1609, a Spanish envoy, Don Rodrigo de Vivers, besought Iyeyasu, besides continuing commercial relations, to grant the royal protection to Spanish missionaries, but to deny rights of trade

¹ For the text of the letter, see Aston, *Transactions of the Asiatic Society of Japan*, vol. xi, p. 124.

² The Japanese text of the treaty is given in Suganuma's *Commercial History of Japan*, p. 417.

³ *Gaiko-Shiko*, p. 751.

⁴ *Ibid.*, p. 793.

⁵ Suganuma, *The Commercial History of Japan*, p. 380.

to the Dutch, who were denounced as "pirates and enemies of Spain." The first two requests were granted, but the request for the expulsion of the Dutch traders Iyeyasu pronounced "impossible." To the Dutch and the English, who fully respected the sovereign rights of Japan, who had not the slightest ambition to encroach upon her territory, and who confined themselves to commercial relations for mutual benefit, Iyeyasu granted most liberal privileges. As noted in the Dutch and English letters-patent, all the ports of the empire were opened to them, and, besides being exempt from the local jurisdiction and from taxes, they enjoyed the privilege of the coasting trade.

Nor did Iyeyasu omit to encourage natives to go abroad to trade. He had made a favorite of William Adams because the latter was an able ship-builder. It is said that the Japanese in Iyeyasu's time possessed ocean-going vessels "measuring as much as 120 feet by 54, fully rigged with three masts." The Shogun also adopted the plan of giving to merchant-ships a license called "*Shuin*," or a letter with a vermilion seal, which was originated by Hideyoshi, in order to distinguish them from piratical craft. Such licenses were granted to many Japanese vessels of Sakai, Uruga, Nagasaki and Yedo, and to foreign vessels as well. Under this protection, Japanese sailors freely navigated the coasts of South China, Java, Manila, Anam, Siam and Malacca, and as far as India.¹ While the maritime nations of Europe were struggling with each other for colonial and commercial advantages, Iyeyasu not only opened his country to foreigners, without regard to nationality and race, but also encouraged his fellow-merchants to go abroad for "honest trade."

¹ See Satow, "Notes on the Intercourse between Japan and Siam in the Seventeenth Century," *Transactions of the Asiatic Society of Japan*, vol. xiii, p. 133.

But, while Iyeyasu was liberal to western nations in matters of commerce, he was not indulgent towards the religious enterprises of the Catholic nations. He made as clear a distinction between commerce and religion as had Hideyoshi. He believed that "foreign trade" made the country prosperous, but that "the foreign religion" menaced its "tranquillity." As to the latter, he made up his mind to watch and restrict, and to banish, if necessary. While he was occupied with his campaign against the feudal barons and the ex-generals of Hideyoshi, who had refused to recognize his supremacy, he forbore to act, but, as soon as he had suppressed this opposition, he gave a proof of his policy by issuing, in 1600, an edict for the expulsion of the missionaries. This measure, however, he was compelled to withdraw "in consequence of the threatening attitude adopted by certain Christian nobles."¹ Even Hideyoshi, the great hero, had been unable to enforce his edicts of exclusion effectively, since his general, Konishi Ukinaga, was a chief supporter of the Christians, and the provincial lords of Kiushu often threatened him with civil war. With the exception therefore of certain minor restrictions, Iyeyasu left religious matters in *statu quo* till 1612; and the Catholic missionaries, taking advantage of the opportunity, flocked to Japan in greater numbers than ever before. It is said that out of sixty-four provinces, there were only eight "in which Christianity had no footing."² The Franciscans were in Yedo and Uraga, the Jesuits in the provinces of Kyoto, Shikoku and Kiushu, and the Dominicans in Satsuma. But, from 1612 to 1614, several edicts were issued for the persecution and expulsion of the Franciscans and Jesuits

¹ Gubbins, "Review of the Introduction of Christianity into China," *Transactions of the Asiatic Society of Japan*, vol. xi, p. 17.

² *Ibid.*, p. 20.

and the destruction of their churches, while native converts were called upon to renounce the foreign religion. The Jesuit accounts attribute these anti-Christian measures to the intrigues of the Dutch and the English.¹ Nevertheless, Iyeyasu did not restrict commercial privileges on account of religious difficulties.

The death of Iyeyasu, however, opened the way to new measures. Hidetada, the second Shogun, continued the anti-Catholic policy, and even pushed it a step further when he restricted English traders to Hirato, because they were "Catholic."² It was of course impossible to enforce anti-Catholic measures in localities in which the provincial lord and Christian converts were predominant; but the policy, formulated by Iyeyasu, of weakening the feudal princes so as to secure control over them, was steadily pursued. In 1623 Iyemitsu, a grandson of Iyeyasu, and a man of ability and determination, became the third incumbent of the Shogunate. He reduced the powers and estates of the most powerful lord, called "*Tozama Daimio*," to those of a second-rate baron, "*Fedai Daimio*." The Franciscans in Yedo, who were suspected of smuggling in missionaries, were banished from the town. This was followed by the edict of 1624 by which "all ports of Japan were closed to the foreigners, except Hirato and Nagasaki, of which Hirato remained open to the Dutch and English, Nagasaki to the Portuguese, and both to the Chinese."³ A vigorous effort was made to hold in check the province of Kiushu, in which the foreign faith was still predominant; and Mizuno, lord of the province of Kawachi, was sent to Nagasaki to make a rigid search for Christian conspirators.

¹ Charlevoix, *Histoire du Japon*, p. 214.

² *Supra*, p. 94.

³ Hildreth, *Japan as it Was and Is*, p. 186. See also Charlevoix, *Histoire du Japon*, p. 244.

At the same time, Matsukura Shigemasa, a determined opponent of the Christians, was appointed lord of the province of Hizen, in which lay Amakusa, the stronghold of the converts of the Jesuits. His tyrannical measures and the numerous anti-Christian edicts of the central government aroused hot indignation among the converts and produced, in 1637, a terrible insurrection, known as the "Shimabara rebellion" or the "Amakusa war." Of this revolt, the Portuguese, who were in 1636 removed from Nagasaki proper to the outer harbor, called Deshima, were regarded as the chief instigators, and for this reason they were by the famous edict of 1638 ordered to leave Japan forever. By the same edict, the Japanese were also prohibited from going abroad. So great is the historical interest of this measure that it should be quoted at length :

No Japanese ship nor boat whatever, nor any native of Japan, shall presume to go out of the country : whoever acts contrary to this shall die, and the ship with the crew and goods aboard shall be sequestered until further orders.

All persons who return from abroad shall be put to death. Whoever discovers a priest shall have a reward of 400 to 500 *shuets* of silver, and for every Christian in proportion.

All persons who propagate the doctrine of the Catholics, or bear this scandalous name, shall be imprisoned in the Omra, or common jail of the town.

The whole race of the Portuguese, with their mothers, nurses, and whatever belongs to them, shall be banished to Macao.

Whoever presumes to bring a letter from abroad, or to return after he hath been banished, shall die with all his family ; also whoever presumes to intercede for him shall be put to death. No nobleman nor any soldier shall be suffered to purchase anything of a foreigner.¹

¹ Kampfer, *The History of Japan*, pp. 318-319. See also Woolsey,

The Dutch traders, who thoroughly understood Japanese prejudices and the traditional policy of the Tokugawa government, not only renounced the Christian faith, at least in appearance, but also furnished the Shogun much documentary evidence of the recent conspiracy of the Portuguese. In consequence the Dutch alone were allowed to trade in Japan, and their commercial agent (Cape Merchant) was authorized to furnish the government an annual report on foreign events.¹ In 1641 the Dutch merchants were ordered to reside only at Deshima, where they continued to enjoy a commercial monopoly until the reopening of Japan in 1858.

From what has been related it is evident that the Japanese were not originally "anti-European" or "anti-Christian," nor governed by "race-prejudice" or "hermit" propensities. On the contrary, they welcomed foreigners without regard to nationality, race or religion, and treated them with the greatest liberality, granting them freedom of commerce and religion and in addition the privilege of extra-territoriality. What their statesmen opposed was the religious activity of the Catholic nations, which endangered the existence of the "Land of the Rising Sun." It was for "the tranquillity of the country," that the "Christian nations" were forced to depart. That for which Japan contended was the development and preservation of the "national state," for which the Teutonic nations were also struggling at the same time in Europe. The idea of the national state, or nation, rising against emperor and Pope was the same in the Far East as in Europe. There is, however, a striking divergence between the paths by which in the Orient and

"History of Nagasaki," *Transactions of the Asiatic Society of Japan*, vol. 9, part ii, p. 125. The Japanese text is in Suganuma's *Commercial History of Japan*, p. 568.

¹ *Gaiko-Shiko*, p. 802.

in Europe the principle of national sovereignty was attained. In Europe, the Teutonic nations compelled the Catholic empires to recognize the Protestant states as sovereign equals, and laid the basis of the modern international society by the treaty of Westphalia in 1648. In the Orient, Japan instituted by positive law ten years before the Peace of Westphalia, an "inclusive and exclusive" policy, and preserved her sovereignty by remaining isolated from the society of the West.

CHAPTER V

REOPENING OF THE SEALED JAPAN, 1643-1868

Attempts to Reopen the Empire by European Powers.—The policy of non-intercourse maintained by Japan would be justified from the national standpoint if it had been necessary to her existence; but, from the international point of view, the isolation of a nation from the rest of the world is opposed to the interests of mankind, and is considered inadmissible. European nations did not protest against Japan's edict of exclusion, nor did they attempt to reopen the country by force, for in the seventeenth and eighteenth centuries they possessed no adequate means of communication for such a purpose; but they neglected no opportunity to regain access to the hermit nation.

In 1643, five years after the edict of exclusion, two Portuguese men-of-war arrived at Iwo Island, in Satsuma Bay, and besought the Daimio Shimazu to restore the former intercourse, apologizing for the religious abuses of the past; but they were not listened to.¹ A like failure attended the visit of two Portuguese men-of-war to the harbor of Nagasaki, in 1647.² In 1673, the English ship "Return" came to Nagasaki with a royal letter and demanded the renewal of commerce on the basis of the old agreement; but the governor answered in the negative,³

¹ *Gaiko-Shiko*, p. 804.

² *Ibid.*, p. 153.

³ *Ibid.*, p. 806. See also Hildreth, *Japan as it Was and Is*, p. 205.

pointing to the marriage of Charles II to a daughter of the Catholic sovereign of Portugal, intercourse with whom was prohibited by the positive law of the empire.

France and Russia, though they had previously had no intercourse with the Japanese, made attempts to open the empire. In the reign of Louis XIV, Colbert, who had undertaken to restore the financial administration of France, founded the French East India Company and projected the establishment of commercial intercourse with Japan. As his agent for this purpose he chose Francis Caron, who had once served in the Dutch factory in Japan. Colbert was especially solicitous to avoid the political and religious entanglements into which the Portuguese had fallen.¹ A letter² from Louis XIV to the emperor of Japan, and an instruction to Caron, were prepared in 1666, but the project was not carried out. Russia was the first country to attempt to enter Japan from the North. Catherine II took advantage of the opportunity afforded by the sending home of a Japanese wreck by the governor of Siberia, Lieutenant Laxann. The governor arrived at Yezo in September, 1792, and asked the feudal lord of Matsumaye to enter into diplomatic and commercial relations. The latter answered in the negative, but suggested that commercial intercourse might be opened at Nagasaki, the only port to which foreigners were admitted.³ Lieutenant Laxann did not, however, proceed to Nagasaki. The Emperor Alexander renewed the effort initiated by Catherine. Resanoff, a special envoy of the czar, landed at Nagasaki in 1804, but after tedious conferences with the governor, was informed that "cet Empire entretenait des rapports avec beaucoup de na-

¹ Fraissinet, *Le Japon*, vol. ii, p. 5.

² The letter is found in Hildreth, *op. cit.*, p. 571.

³ *Ibid.*, p. 445. Also *Gaiko-Shiko*, p. 815.

tions; mais l'expérience a fait adopter le principe opposé." ¹ During the first half of the nineteenth century, especially after the opium war in China, numerous attempts to open Japan were made by naval officers of England, France, Russia and the United States; but Japan did not listen to their demands till Commodore Perry appeared in Yedo Bay.

American Mission to Reopen Japan and Treaty Relations with Occidental States.—The United States had no intercourse with Japan in the eighteenth century, apart from the appearance of two ships in Japanese waters.² It seems at one time to have been in contemplation to send thither Commodore Porter, who, in 1815, addressed to Mr. Monroe, secretary of state, a letter concerning the country, but nothing was done.³ Subsequently, John Quincy Adams declared it to be "the right and even the duty of Christian nations to open the ports of Japan, and the duty of Japan to assent, on the ground that no nation has the right," any more than has a man, to withdraw "its private contribution to the welfare of the whole."⁴ The appointment of Edmund Roberts by President Jackson, in 1832, as a special agent to negotiate treaties with the Asiatic nations, was the first official step taken by the United States toward such opening.⁵ Roberts died, however, before reaching Japan; and in 1845 Commodore Biddle was instructed, after conveying to China the ratified treaty of commerce and amity, con-

¹ Fraissinet, *Le Japon*, vol. ii, p. 24.

² The "Eliza" and "Franklin," though they were Dutch ships, came to Nagasaki in 1797 and 1799, respectively, under the American flag and with American crews, in order to avoid capture by English cruisers. Hildreth, *Japan as it Was and Is*, pp. 446-447.

³ Nitobe, *The Intercourse between Japan and the United States*, p. 34.

⁴ *North American Review*, vol. lxxxiii, p. 258.

⁵ Senate Doc., 1st session, 32d Congress, vol. ix, p. 63. Instructions of the secretary of state to Edmund Roberts.

cluded in 1844, to call and test the sentiments of the Japanese government. He was particularly cautioned not to "excite a hostile feeling, or a distrust of the United States." When he at length arrived, in 1848, his advances were repulsed, and he withdrew. In the following year Commodore Glynn, who had been sent to Japan to look into the case of certain wrecked American whalers, submitted to President Fillmore a report in which he strongly urged the necessity of opening the country.¹

During Fillmore's administration, the subject of intercourse with Japan excited great interest. Of this interest, one of the main causes was the industrial and commercial growth of the Pacific coast.² The discovery of gold in California, the increasing trade with China after the establishment of treaty relations, and the development of steam navigation, made the United States feel more and more the necessity of using Japanese harbors and obtaining Japanese coal. Hospitality and protection were also desired for shipwrecked whalers; and it was besides felt that to succeed in a task in which European powers had failed, would redound to the glory of the American republic. Moved by these considerations, the government of the United States determined to adopt vigorous measures. Commodore Aulick was directed to proceed to Japan with a naval force. He was intrusted with a letter from President Fillmore to the Emperor of Japan, accrediting him as an envoy, and was furnished with instructions by Daniel Webster, who was then secretary of state. His credentials and instructions bore date July 10, 1851.³ His sailing, however, was delayed, and he was eventually replaced by Commodore

¹ Senate Doc., *ibid.*, pp. 74-78.

² Murray, *Japan*, p. 311.

³ Senate Doc., *ibid.*, pp. 80-82, for the text of the letter of the president to the Mikado and the instructions.

Matthew C. Perry. Meanwhile, Mr. Webster had died, and had been succeeded as secretary of state by Edward Everett. The president's letter to the Emperor of Japan was modified and enlarged.¹ It contained the following declaration: "I have no other object in sending him [Commodore Perry] to Japan, but to propose to your Imperial Majesty that the United States and Japan should live in friendship and commercial intercourse with each other." Perry was instructed to effect a permanent arrangement as to the treatment of shipwrecks; to obtain permission for American vessels to procure supplies and provisions; and to secure if possible the establishment of a coal depot and the privilege of trading at one or more ports.² Commanding the steam frigate "Mississippi," and several other vessels, he sailed for Japan at the end of November, 1852, by way of the Cape of Good Hope.

The Tokugawa government was more than thrice forewarned by the Cape Merchant, the Dutch factory at Nagasaki, of the coming of the American expedition,³ but it paid so little attention to the report that the appearance of the "black ships" at the entrance of Yedo Bay on July 8, 1853, caused intense surprise and embarrassment among the Japanese, sleeping in the "tranquil epoch of the Tokugawa régime." Commodore Perry, when asked by the governor of Uraga for the reasons of his coming, replied that "he had been sent on a friendly mission to Japan, with a letter from the President of the United States for the Emperor," and that he desired a personal interview

¹ Senate Doc., 2d session, 33d Congress, no. 34, p. 9.

² *Ibid.*, p. 6. Letters from the department of state to that of the navy.

³ For documents of warning by the Cape Merchant, see *Kaikoku-Kigen (The Origin of the Opening of the Country)*, compiled by the Department of the Imperial Household, vol. i, pp. 45-46, 55-58, and 63-66.

with an official of the highest rank, in order to arrange for the formal presentation of the letter.¹ The governor declared that the law of the land forbade any communication with a foreign country to be held elsewhere than at Nagasaki, through Dutch or Chinese agents, and that the squadron should proceed thither. Perry, however, refused to go and firmly insisted that, unless he was allowed to deliver the president's "friendly letter" either to "the Emperor of Japan or to his Secretary of Foreign Affairs" in person, he should "consider his country insulted."² The Yedo government, embarrassed by his determination and his "formidable black ships," appointed Toda, lord of Idzu, as a commissioner to receive the letter; and on July 14, credentials having been exchanged on the preceding day,³ the Japanese commissioner reluctantly received the president's letter at Kurihama, two miles from the town of Uraga, where a building was specially erected for the reception of the American envoy. The preliminaries were thus happily closed without a conflict; but an apprehension was felt by the Japanese that, if the country should be opened, a "war-like nation" might again appear as in the time of the Mongol invasion. Perry went away, announcing that he would return in the ensuing spring to Yedo Bay for an answer,⁴ and intending to augment his squadron with ships which were then employed in protecting American interests in China.

After Perry's departure, the Shogun government sent out a circular, accompanied with a translation⁵ of the president's

¹ Senate Doc., 2d session, 33d Congress, no. 34, p. 46.

² *Ibid.*, p. 49.

³ *Ibid.*, p. 50. Text of credentials of the Japanese commissioner.

⁴ *Ibid.*, p. 54. For the Japanese account, see *Kaikoku-Kigen*, vol. i, p. 96.

⁵ *Ibid.*, pp. 85-89.

letter for the consideration of the feudal lords, in order to ascertain their preference as to the maintenance or abandonment of the exclusion law, the prosecution of war or the maintenance of peace. The daimios almost unanimously advised a policy of seclusion; the celebrated memorial of Prince Mito especially manifesting "the spirit of the times."¹ While the whole nation was in confusion, Commodore Perry reappeared in the bay of Yedo on February 13, 1854, with a formidable squadron of eight ships. Whatever the "fundamental law of the country" or public opinion might be, the statesmen actually attending to public affairs better understood what would be the result of their refusal to enter into the negotiation demanded by the United States, when Perry returned with the additional force. Lord Abe Masahira and the other chief officials of the Shogun government were keen enough to see that such a "traditional" policy could not be successfully maintained. They therefore decided to listen to Perry's demands. After repeated conferences and discussions, proposals and amendments, banquets and exchange of presents, a treaty containing twelve articles was finally signed and exchanged on the last day of March, 1854. This was the first formal treaty ever concluded by Japan with an occidental state; but other nations hastened to obtain similar treaties. Rear Admiral Sir James Stirling, cruising in Pacific waters during the Crimean war, came to Nagasaki and demanded the conclusion of a convention for opening Japanese ports to English ships; it was signed on October 15, 1854. Admiral Pontiatine negotiated a treaty for the settlement of boundaries and the opening of Japanese ports to Russian ships, which was concluded at Shimoda, February, 1855. The Netherlands,

¹ Translated into English by Nitobe, *The Intercourse between the United States and Japan*, pp. 49-50.

though they had enjoyed a monopoly of trade at Nagasaki, concluded their first formal treaty in January, 1855.¹ These treaties, however, were merely in the nature of preliminary arrangements for the opening of the country. They stipulated for access to the ports of Shimoda, Nagasaki and Hokodate, for the purpose of obtaining necessary provisions; for hospitality in case of shipwreck, and for shelter in case of distress. None of them was in the usual sense a treaty of amity and commerce. No provision was made for general trade and its regulation, nor for diplomatic relations, though the western powers were eventually to be allowed to be represented by a consul or commercial agent. Indeed, the Perry treaty was somewhat of a disappointment to the United States;² but, as it served as a preliminary to the opening of a country which had been tightly closed for more than two centuries, it should be regarded as a remarkable achievement.

The United States lost no time in completing what Perry had left unfinished. In August, 1856, Townsend Harris was sent out as consul-general "to reside at Shimoda;" but, though officially only a consular officer, he was "clothed by his government with diplomatic powers."³ He took with him as interpreter Hency C. J. Heusken, a native of Holland.⁴ Harris was a man of great tact and patience, and so thoroughly versed in oriental affairs that he knew how to gain the confidence of eastern princes. When he reached

¹ The text of all these preliminary treaties is found in *British and Foreign State Papers*, and also in *Treaties and Conventions between Japan and other Powers*, compiled by the foreign office of Japan, 1884.

² Nitobe, *The Intercourse between the United States and Japan*, p. 61.

³ Foster, *American Diplomacy in the Orient*, p. 174.

⁴ Harris took a Dutch gentleman for the reason that the Japanese officials who had to do with foreign intercourse understood that language.

Japan, anti-foreign feeling was raging among individuals and officials, and a permanent residence at Simoda was at first denied him. For ten months he wrestled with the question of an audience with the Shogun, at Yedo, where he insisted on delivering the president's letter in person.¹ He was repeatedly informed that the law of the land forbade the entry of any foreigner into that city, and that negotiations with foreign states should be conducted at Shimoda through the governor; but he quietly persisted and patiently urged his suit till at length, on September 25, 1857, he was permitted to proceed to Yedo. Escorted on his journey by a "train numbering some three hundred and fifty persons," the "American ambassador"² was received on December 7, with elaborate ceremony, in the first audience granted to a foreign mission at the Shogun's court since the exclusion edict of 1638. Harris presented a letter from the president, to the Shogun Iyesada, and, while assuring the latter of the president's good wishes, expressed appreciation of the honor bestowed on himself by the royal reception. The Shogun briefly responded: "Pleased with the letter sent with the ambassador from a far distant country, and likewise pleased with his discourse. Intercourse shall be continued forever."⁴ This rupture of the traditional usage of the Tokugawa government, which denied audience to a foreign embassy, was a great diplomatic victory for Harris.

After his reception, Harris concentrated his efforts upon the negotiation of a commercial treaty. In a conference

¹ Griffis, *Townsend Harris* (Diary of Mr. Harris), pp. 161-162.

² In those days the Japanese did not distinguish between a diplomatic officer and a consul. Whoever came to Japan with a letter from a foreign ruler was called an "ambassador."

³ The "letter from the president" was the letter of credence; a Japanese translation is given in *Kaikoku-Kigen*, vol. i, p. 442.

⁴ Griffis, *ibid.*, p. 229.

on December 12,¹ at the residence of Hotta, lord of Bitchu, who was minister of foreign affairs, Harris explained the impossibility of an exclusive policy in the days of steam and commerce, and made known "the true and frank wishes" of the president of the United States for the establishment, by peaceful negotiation, of commercial intercourse not only between Japan and the United States, but also between Japan and all other countries, as well as for the establishment of diplomatic relations through a minister residing at the capital. He adverted to the example of China, and the forcible measures directed against her by England, France and Russia, with resulting or concomitant territorial encroachments and other complications, and intimated that, if those powers should open Japan by force, the results would be the same as in China. He further declared that the United States was different from Europe; that it did not aim at religious propagandism, as did the Spanish and Portuguese in Japan, nor participate in the territorial and commercial abuses which the European powers had perpetrated in China. He remarked, in conclusion, that "if Japan makes a treaty with the United States, all other foreign countries will make the same kind of a treaty, and Japan will be safe thereafter." Harris also explained to the minister how to raise state revenue by customs, and spoke of the willingness of the president to act as "mediator" and use his good offices "in case Japan may have

¹ An interesting account of the conversations between Harris and Hotta upon the preliminary arrangements for the treaty negotiation is given in *Foreign Relations of the United States, 1879*, part i, pp. 624-626. The Japanese version was obtained by the American legation at Tokyo from the successor of Prince Hotta, was translated by Mr. Thompson, and was reported by Mr. D. W. Stevens. The Japanese text is given in *Kaikoku-Kigen*, vol. ii, pp. 445-463. See also Griffis, *op. cit.*, pp. 237-240.

difficulty with other powers." On December 21, in an interview¹ at Harris's hotel, the commissioners of foreign affairs inquired concerning the ceremonials and needs of a resident minister, his rights, duties and rank, and in what respect he differed from a consul. When Harris replied that all these things were regulated by "the law of nations," the commissioners curiously asked, "What is the law of nations?" Numerous questions were also put as to the opium trade in China, and as to foreign trade, the principles and practice of tariff and customs administration, and the procedure of treaty negotiations. The commissioners confessed that they were in the dark and as "children" in regard to these points, which he explained to "their full satisfaction."² It has been remarked that Harris acted as "professor" to the Japanese commissioners on the elements of international law, diplomacy and political economy. By kind advice and tender treatment, seasoned with polite menaces, he gained more and more the confidence of the Shogun government and finally induced it to enter into treaty negotiations on January 18, 1858, in spite of the opposition of the imperial court at Kyoto and the daimios. Conference after conference was held, the negotiations proceeding smoothly; and on the basis of the draft drawn by Harris, with slight modifications, a treaty of amity and commerce was concluded on February 9, 1858.³

With regard to the ratification of the treaty, the Japanese requested a certain delay for "consultation with the daimios and for the Imperial sanction." Hitherto, the *Bakufu*, the Shogun government, had assumed the exclusive conduct of foreign affairs. The *Bakufu* had closed Japan at its own

¹ An account of the second interview is given in *Kaikoku-Kigen*, vol. i, pp. 465-483. Also Griffis, *op. cit.*, pp. 243-244.

² *Ibid.*, p. 244.

³ *Ibid.*, p. 285.

pleasure, and would at its own pleasure re-open it. The preliminary treaties were concluded by the *Bakufu* government, in the name of Taicoon,¹ without reference to the Mikado and the daimios. Historically, the treaty-making power (diplomatic power) was vested in the Shogun alone.² Anti-foreign feeling and anti-*Bakufu* movements were now prevalent throughout the country, however, and public opinion censured the *Bakufu* policy. The Yedo government was no longer able to control the feudal lords, and it was decided to obtain the imperial sanction of the new treaty and also the daimios' consent, in order to share with them the responsibility. The majority of the daimios, of course, declined to give their approval. The imperial throne was then occupied by the Emperor Komei, father of the present Mikado. His court was opposed to opening the country, and he withheld his sanction, in spite of the fact that the *Bakufu* often despatched missions to Kioto to obtain it.³ On the other hand, Harris pressed for action, and declared that, unless the matter was disposed of, he "would proceed forthwith to Kyoto and arrange it himself." But a further complication presented itself. The Shogun Iyesada, whose health was precarious, had no son; and friction arose among the feudal lords of the Tokugawa families in regard to the selection of his heir. These difficulties, combined with the anti-foreign and anti-Shogun movements, produced a crisis in the affairs of the Shogunate. Amid the confusion,

¹ *History of the Empire of Japan*, p. 304. "In those days of the Ashikaga family it had been customary for the Shogun to assume the title of King of Japan in his communication with other sovereigns. The Tokugawa discontinued this, on the ground that it was an infraction of the imperial dignity, and adopted instead the title Taicoon, or Great Prince."

² Ariga, *Kokuko-Gaku*, vol. i, p. 131.

³ *Kaikoku-Kigen*, vol. iii, pp. 2279 et seq.

Iyesada appointed Ii, lord of Hikone, a statesman of determination, as *Kampaku* (regent of the Shogun) and *Tairo* (prime minister), and invested him with the highest authority, in order to enable him to solve the critical questions at issue.¹ Meanwhile, American and Russian men-of-war came to Yedo Bay, and reported that the British and French squadrons, which had been engaged in hostilities with China, were sailing for Japan. Greatly worried over the delay attending the ratification of the treaty, Harris took advantage of this information to press the Shogunate to affix its signature;² and Ii-Kamon, considering that further delay would bring upon Japan misfortunes similar to those of China, decided to assume the entire responsibility, and on July 29, 1858, signed the treaty without the imperial sanction.³ When the British, French, Russian and Dutch envoys sailed into Yedo Bay, escorted by formidable fleets, they found that the most laborious part of their task had already been accomplished. Treaties, like that with the United States, were soon concluded by England, France, the Netherlands and Russia. Harris gave his assistance and the services of his interpreter, Mr. Heusken, to Lord Elgin, viceroy of India, in the negotiation of the British treaty.⁴ The new agreements were called by the Japanese "the Ansei treaties," because they were negotiated in the Ansei era. The Ansei treaties made provision for diplomatic agents at the capital, and for consuls at all the open ports. The ports of Shimoda, Hokodate, Nagasaki, Kanagawa, Nei-

¹ Shimada, *Kaikoku-Shimatsu*, p. 132.

² Griffis, *op. cit.*, p. 319. In a letter to Prince Hotta, minister of foreign affairs, July 24, "Mr. Harris, after epitomizing the news, urged the very great importance of having the treaty signed without the loss of a single day."

³ *Kaikoku-Shimatsu*, p. 147.

⁴ Griffis, *op. cit.*, p. 322.

gata and Hiogo were to be open for foreign trade and residence; Tokyo for foreign residence only, and Osaka for trade only. By these treaties the powers obtained the right to use their own coin in Japan and to exercise consular jurisdiction over their citizens. They also secured freedom of worship. The treaties imposed restrictions upon foreigners (except the diplomatic agents), so that they could neither travel into the interior of the empire without passports nor reside outside the foreign settlements. For purposes of trade, any article except opium was admitted according to the tariff regulations. The most-favored-nation provision was applied not only to commercial privileges but also to judicial concessions. The provisions above mentioned are common to the Ansei treaties with the five powers. The treaty with the United States contained the further stipulation that the president would act as "a friendly mediator," in case of a difference between Japan and "any European power." Later on, the Shogun government concluded treaties of amity and commerce with Prussia, Italy, Spain, Portugal, Denmark, Belgium, Switzerland, and Sweden and Norway. Treaties with Austria-Hungary and Hawaii in 1871, and with Peru in 1873, were concluded by the imperial government; but their provisions were substantially based upon the Ansei treaties.¹

The bringing of Japan into relations with the outer world must to a great extent be ascribed to the patient and sincere toil of the American envoy, Townsend Harris, and to the self-reliant determination of Ii-Kamon. The western nations were satisfied, and Japan was rescued from a grave national crisis.

¹ The text of all these treaties may be found in the *British and Foreign State Papers*, and in the *Treaties and Conventions between Japan and Other Powers*, edition of 1884.

Restoration of the Imperial Sovereignty.—The course of Lord Ii-Kamon aroused the indignation of the imperial court and the loyal party, and excited the anti-foreign party. It was one of the proximate causes of the downfall of the Shogunate and of the ascendancy of the imperial power. In reality it was the forerunner of the revolution of 1868. But the ultimate cause of the imperial restoration had, for more than two centuries, been operating upon the Japanese mind. As has been shown, the Mikado was originally the supreme authority, the fundamental source of all the ruling powers. The imperial power was, in course of time, absorbed by the Soga family, and then restored by the Taika reformation. It was again usurped by the Fujiwara and Taira families, and was eventually overshadowed by the Shogun Yoritomo of the Minamoto family, leaving to the imperial court at Kyoto only religious and ceremonial affairs. The Minamoto, Hojo, Ashikago, Oda (Nobunaga), and Toyotomi (Hideyoshi) families successively occupied the Shogunate for centuries, and, after Iyeyasu Tokugawa became Shogun in 1603, he and his descendants ruled all Japan until the imperial restoration of 1868. Under the Tokugawa régime, as the result of excluding foreigners and checking the powers of the provincial daimios, the country for many generations enjoyed "absolute tranquillity," with no civil war and no foreign complications. The study of literature grew apace in the eighteenth century, and it was mainly this study that led to the destruction of the Shogunate and of the feudal system.¹ Chinese literature, which was largely read, fully explains the doctrine of "imperial sovereignty" and of "centralization of administration" and makes clear the distinction between "emperor" and "vassal." With the abrogation of the law prohibiting the

¹ Fukuchi, *Bakufu-Subo-ron (Essay on the Ruin of the Bakufu)*, p. 8.

importation of foreign books, Dutch works also found their way into Japan and infused the European theory of monarchy and its centralization into the native mind.¹ Japanese ethics, philosophy, history and poetry, naturally lamenting the decline of the imperial power, reiterated the doctrine of Shintoism and emphasized the spirit of reverence for the Mikado. The verses of Moto-ori, Kamo, and Nida inspired nothing but loyalty to the "divine personage." Although Komon, lord of Mito, and Rai Sanyo² were not so radical as Montesquieu and Rousseau, the influence of *Dai-Nihon-Shi* and *Nihon-Gaishi* upon the imperial restoration is comparable to the influence of *Esprit des Lois* and *Du Contrat social* upon the French Revolution. The renaissance of royalism was sooner or later to be transformed into a reformation. "Anti-Shogunism," however, did not openly burst forth until the Shogun government concluded the treaty with Commodore Perry. When Perry came to Japan, the anti-foreign feeling which had been excited by Japanese historians against the Spanish and Portuguese, was revived. The exclusion party, though some of them were friends of the Shogunate, began to attack its foreign policy. On the other hand, the loyal party, though not wholly anti-foreign, attacked the treaty in order to embarrass the Shogunate. And when, later, Tairo Ii signed the Ansei treaties without the imperial sanction, the loyal party and the exclusionists combined and openly directed their attacks against the Shogun's government.

In vain Tairo Ii sought to explain to the imperial court

¹ *Ibid.*, p. 14. The eighth Shogun, Yoshimune (1716-1745), abrogated the law prohibiting the importation of western books.

² Prince Komon's work, *Dai-Nihon-Shi* (*The History of Great Japan*), was published in 1715, and Rai Sanyo's work, *Nihon-Gaishi* (*History of Japan*), in 1727.

and the daimios the emergency in which he had acted.¹ He was not listened to. On the contrary, a secret imperial rescript was issued to Lord Mito, who, though he belonged to the Tokugawa clan, was yet the champion of the exclusionists at Yedo, to advise the Shogun government to expel foreigners from the country.² Convinced that this advice could not be followed without a dangerous collision with the treaty powers, Tairo Ii adopted a decisive measure. Lord Mito was not only compelled to leave Yedo, but was also confined to his private palace in his own province. Many other daimios and officials who had advised Tairo to adopt anti-foreign measures, were deposed from their offices; and there followed the wholesale imprisonment of the "Samurai," who were suspected of inciting the anti-foreign agitation. This arbitrary proceeding, known as the "Ansei Imprisonment," excited the anti-foreign party and the loyalists as well, and the members of the Mito clan were especially indignant. Tairo Ii-Kamon was, on March 23, 1860, assassinated by one of the Mito Samurai while *en route* to the palace of the Shogun government. But the killing of Tairo did not end the anti-Shogun agitation, nor did the proposed marriage of the new Shogun, Iyemochi, to the sister of the emperor, restore harmony between the courts of Yedo and Kyoto.

On the contrary, the *Ronin* (agitators) of the anti-Shogun clans, partly to further the exclusion policy, but chiefly to increase the embarrassment of the Yedo government, began to attack the foreigners as soon as the diplomatic agents and merchants of the treaty powers appeared at the capital and at the treaty ports. On January 14, 1861,

¹ Shimada, *Kaikoku-Shimatsu*, pp. 154 *et seq.*, for the text of the explanations given to the imperial court and the daimios.

² Satow, *Translation of the Kinsei Shiriaku*, p. 11, for the text of the English translation of the imperial rescript.

Mr. Heusken, the secretary and interpreter of the American legation, was, while on his way home from the Prussian legation, assassinated, because he was regarded as one of the conspicuous promoters of foreign intercourse. Through Harris's efforts, an indemnity of \$10,000 was paid to his mother, who was then living at Amsterdam, in Holland.¹ Six months later, the British legation was attacked at night and several guards were mortally wounded; a second attack was made on June 26, 1862. Subsequently, the sum of £10,000 was paid to the families of the murdered guards.² Three months later there occurred one of the celebrated cases of assaults upon foreigners, popularly known as the "Tokaido case." An English merchant, named Richardson, who, while riding on the Tokaido highway, crossed the train of Lord Shimazu, of Satsuma, who was on his way from Yedo to Kyoto, was attacked and slain by his lordship's retainers.³ Though the case was not so significant as the attempt upon the diplomatic agents, the British minister demanded the large indemnity of \$500,000 from the Shogun government, and \$125,000 from the daimio.⁴ The Yedo government soon paid the sum demanded of it, but the lord of Satsuma did not yield until his capital, Kagoshima, was bombarded by a British squadron, in August, 1863. On the night of May 24, 1863, the American legation was mysteriously burned. The cause of the fire was long unknown, but the case was finally settled by the payment of \$10,000.⁵ Assault by *Ronin* on foreign legations and individuals became so prevalent in Yedo that all the legations of the

¹ *U. S. Dip. Cor.* (1862), part ii, p. 806.

² Adams, *History of Japan*, vol. i, pp. 168 *et seq.*

³ Under the feudal régime it was lawful to punish one who crossed the train of a daimio.

⁴ *U. S. Dip. Cor.* (1863), part ii, p. 1071.

⁵ *Ibid.*, p. 1097.

treaty powers finally removed to Yokohama, where their naval forces were stationed.

Meanwhile, the *Samurai*, *Ronin*, and students of the loyalist clans, came secretly to Kyoto and submitted a project for the overthrow of the Shogunate. The daimios Mori, of Choshu, and Shimazu, of Satsuma, were regarded as the most enthusiastic of the loyalists. It is said that secret commissions from the emperor were given to them.¹ The imperial court, backed now by the consuls of these strong daimios, in July, 1862 despatched an envoy, Ohara, to the Shogun, demanding his presence at Kyoto to give information concerning the question of foreign exclusion.² After much hesitation, the Shogun, Iyemochi, on June 15, 1863, repaired to Kyoto. This was the first instance of the Shogun being summoned to the imperial court in order to confer upon the affairs of the country. A conference was held between the daimios and the court nobles; and an imperial exclusion edict was issued and entrusted to the Shogun for execution. On June 24, 1863, the foreign representatives were informed by Prince Ogasawara, minister of foreign affairs of the Shogunate, that he had been directed by the Shogun, following imperial orders, to close all ports and to remove foreigners on the ground that the people of the country did not desire intercourse with foreign countries.³ This intimation all the diplomatic representatives promptly repelled. The American minister, Mr. Pruyn, replied in strong terms that, if such a measure were determined upon and carried into effect by the Mikado and Taicoon, it "must

¹ *History of the Empire of Japan*, p. 356.

² For the full text of the imperial message to the Shogun, see *Kaikoku-Kigen*, vol. iii, p. 2416.

³ *Dip. Cor.* (1863), part ii, p. 1120, note to the American minister. A similar note to the English minister, in the Japanese text, is given in *Kaikoku-Kigen*, vol. iii, p. 2505.

involve Japan in a war with all the treaty powers;" and a similar protest was made by the French and English ministers.¹ While the Shogun's government was thus caught between the pressure of the imperial court and the protests of the foreign representatives, Prince Mori, the daimio of Choshu, took steps to execute the exclusion edict by closing the strait of Shimonoseki; and in June and July, 1863 the "Pembroke," an American merchant steamer, the French Gunboat "Kienchang," and the Dutch warship "Medusa," were fired upon from the adjacent batteries. These attacks were answered in September, 1864, by the bombardment of Shimonoseki by the allied forces of Great Britain, France, Holland and the United States. The daimio of Choshu yielded and pledged himself to grant free passage to foreign ships, and to make indemnity to the amount of \$3,000,000, which the Shogun's government subsequently agreed to pay.² Notwithstanding these attacks upon foreigners, the policy of the United States toward Japan was so generously and so wisely conducted by Secretary Seward, on the basis of accepting "no exclusive advantage," but of acting in co-operation with the other treaty powers, that Japan was led to look with favor upon the western civilization.³

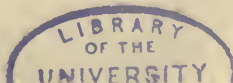
The representatives of the treaty powers gradually became conscious that the treaties negotiated with the Shogun's government would not be respected by the Japanese, unless they were sanctioned by the imperial sovereign.⁴

¹ *Dip. Cor.* (1863), pp. 1121-24.

² See the convention for the payment of the Shimonoseki indemnities, concluded on Oct. 22, 1864. The United States, however, refunded a part of its share to Japan, by the act of Feb. 22, 1883. For details of the Shimonoseki affair, see Nitobe's *The Intercourse between the United States and Japan*, pp. 86-88.

³ *Dip. Cor.* (1862), part ii, p. 818; *ibid.* (1863), part ii, pp. 1037-39; and *ibid.* (1864), part ii, p. 594.

⁴ *Ibid.* (1863), p. 1125.



When therefore the Shogun was again summoned to Kyoto to confer with the Mikado upon public concerns, and for that purpose was occupying Osaka castle, the foreign representatives caused their naval forces to be mobilized nearby, at Hyogo, in order to induce him to obtain imperial approval. Thus menaced, he humbly sued for the imperial sanction and at the same time tendered to the emperor his resignation from office, thus assuming personal responsibility for his mal-administration. The foreign policy of the imperial court, however, had already been greatly modified, owing to the fact that its counselors, the lords of Satsuma and Choshu, had, by the forcible exaction from them of the recent indemnities, been made to feel the superior energy of the western civilization. The Mikado did not accept the Shogun's resignation, but gave his sanction to the treaties on October 23, 1865.¹

Anti-foreign agitation ceased with the imperial approval of the Ansei treaties, but the anti-Shogun movement still continued. The Choshu clan was openly hostile to the Yedo government, while the Satsuma clan sought to reconcile the courts of Kyoto and Yedo. In reality, these two clans were competitors for supremacy at Kyoto; but many men of both perceived that in the co-operation of the two great clans lay the only hope of unifying and consolidating the empire. Foremost among these far-seeing statesmen were Saigo Takamori, of Satsuma, and Kito Koin, of Choshu, who were strongly convinced that dual government had become impossible and that the only solution of existing difficulties lay in the overthrow of the Shogunate. After frequent interviews, they finally drew up the "alliance" of the two powerful clans. Meanwhile, the Shogun Iyemochi died in September, 1866, and was succeeded by his regent,

¹ *Dip. Cor.* (1866), p. 194.

Hitotaubashi Keiki. A few months later, on February 3, 1867, the Emperor Komei also died of smallpox. The Crown Prince Mutsuhito, then in his fifteenth year, ascended the throne, and is now the reigning emperor, the one hundred and twenty-first of the imperial line. When the new Shogun assumed office, he found that his government was powerless. It possessed no control over the provincial daimios; its officials were no longer able to manage the complex domestic and foreign relations; and even the Shogun's further tenure of his own office had become doubtful. Lord Yamanouchi, the daimio of Tosa, one of the loyal party, frankly advised the Shogun to "restore the governing power into the hands of the sovereign and so lay a foundation upon which Japan may take its stand as the equal of other countries."¹ Deeply impressed with this timely advice, the Shogun drew up a document addressed to his vassals, asking their opinion of the advisability of his resignation. He declared:

It appears to me that the laws cannot be maintained in face of the daily extension of our foreign relations, unless the government be conducted by one head, and I propose, therefore, to surrender the whole governing power into the hands of the imperial court. This is the best I can do for the interests of the Empire.²

As there was no open opposition on the part of his vassals, the Shogun, on November 19, 1867, offered to restore his power to the Mikado. This surrender was graciously accepted by the emperor, and the imperial guards, composed

¹ *Kaikoku-Kigen*, vol. iii, p. 2925, contains the Japanese text. The English translation is in Satow's *Kensei-Shiriaku*, p. 79.

² The text of this document may be found in *Horei-Zensho* (annual series of laws and ordinances of the imperial government), vol. of 1868. For the English translation, see *Kensei-Shiriaku*, p. 80.

of troops of the Aizu clan, under the direction of the Shogun, were replaced by those of Satsuma, Tosa, Choshu, *etc.* The imperial government was organized by the *Kuke* princes (imperial princes), under the presidency of Prince Arisugawa. Prince Higashi Kuze was despatched to Yedo, and on February 8, 1868, he formally notified the foreign representatives that the supreme power had been restored to the Mikado and that the "title of Emperor should be substituted for that of Tycoon, which has been hitherto employed in the treaties."¹ This radical transformation was effected without a struggle with the pro-Shogunate daimios. The Shogun, however, desired to retain the post of "Lord Keeper of the Privy Seal" (*Nai-dai-jin*), but he was privately instructed to resign the office and to surrender the greater part of "the provinces hitherto forming his fief."² Moreover, the forcible procedures of the Satsuma and Choshu clans aroused the indignation of the lords of Aizu and Kuwana, the family daimios of the Shogun, which finally resulted in the battles of Fushimi and Toba. The Shogun, who was then in Osaka, retired to Yedo by sea, accompanied by the forces of Aizu and Kuwana. The foreign representatives were informed on February 14, 1868, by the imperial government, that Keiki, ex-Shogun, and the lords of Kuwana and Aizu were in revolt, and were requested to maintain strict neutrality.³ The representatives duly recognized the existence of hostility and maintained neutrality.⁴ The ex-Shogun's party, in May, 1868, surrendered to the imperial forces at the battle of Yedo, and all the governing powers which had been usurped by the Shogun since the day of

¹ *Dip. Cor.* (1868), part i, p. 659.

² Fukuchi, *Bakufu-Subo-ron*, p. 323.

³ *Dip. Cor.* (1868), no. 18, p. 672.

⁴ *Ibid.*, vol. i, pp. 673-675.

Yoritomo (1186) were completely restored to the emperor, while the seat of the imperial court was removed to Yedo, the name of which was changed to Tokyo (the eastern capital). The reorganization and reformation of the administration and of the army and navy, were continued. These revolutionary events, dating from the conclusion of the Harris treaty in 1858, have been termed *Osei-Fukko*, or the imperial restoration.

The new imperial régime was by no means the "Asiatic paganism" prevalent during the old Shogun régime. The new government was not absolute and exclusive, as was the old military and feudal system. On April 6, 1868, when the emperor was still in Kyoto, he took a solemn oath of five items,¹ in the presence of the imperial princes and daimios, which is regarded as one of the germs of the modern constitutional law of Japan. In this charter oath he manifested his eagerness to adopt western civilization. It declared that a deliberative assembly should be established, that all state affairs should be decided by public opinion, and that justice and impartiality should be the basis of the laws, without prejudice to ancient customs. As the first step under the charter oath, the *Kogisho* (public assembly) was established in December,² the members being representatives of the clans, appointed by the daimios. Its chief function was to give advice to the imperial government. In 1871 the clanship system of the daimios was abolished, and the system of prefectures, with governors, established in its place.³ The *Genroin*⁴ (senate of elders) was established in 1875, as an advisory and legislative body. Its members were appointed by the emperor. By the succeeding laws and ordinances, "feudal prerogatives," family

¹ *Horei-Zensho* (1868), p. 64.

² *Ibid.*

³ *Ibid.* (1871), p. 284.

⁴ *Ibid.* (1875), p. 18.

privileges, estates and serfdom were all abolished. Every individual came to participate in the public service according to qualifications prescribed by law. Numerous statutes secured the rights of the individual, so far as his person and property were concerned. In short, all Japanese are equal before the law, and every Japanese subject, official or individual, owes direct allegiance to the emperor.

The modern constitution of Japan, which was promulgated twenty-one years after the restoration, in 1889, is nothing more than "a subtle organism," the outgrowth of the political history of Japan.¹ It was, however, framed in the legal forms of western jurisprudence, the constitutions of the German states (not the constitution of the German Empire) having been especially followed. According to the Japanese constitution, the rights of sovereignty belong exclusively to the emperor, who inherited them from his "Imperial Ancestor;" he himself is the constitution maker.² It is said that "the amending clause" in "a complete constitution" is a test of the sovereignty or organization of the state.³ In amending the Japanese constitution, the emperor alone has the initiatory power, but he must obtain the consent of two-thirds of the legislative body, which, however, cannot modify his original draft. So far as the amending clause is concerned, the sovereign power is limited. It seems that the Japanese constitution has, as to the sovereignty, adopted a confused theory of certain German publicists, who "see danger to individual liberty in recognizing an unlimited power in the government; and" who "immediately conclude that the same danger exists

¹ Ariga, *Kokuho-gaku*, vol. 1, pp. 140-161. This author's historical account of the Japanese constitution is most comprehensive.

² See imperial speech on the promulgation of the constitution, and arts. 1 and 4. See also S. Hozumi, *op. cit.*, pp. 36-39.

³ Burgess, *op. cit.*, vol. i, p. 137.

if the sovereignty of the state be recognized." ¹ But sovereignty in the constitution, instead of antagonizing, protects individual liberty. The power of sovereignty, in making or amending a constitution, should be absolute and unlimited, since it operates not only as an initiative and preventive, but creates positively whatever it wishes. The theory of unlimited sovereignty has been maintained by progressive publicists, like Professors Burgess, Laband, Goodnow, and Hozumi.² Whatever the theory of sovereignty may be, the emperor alone has this supreme power in Japan. He also possesses all governmental powers, legislative, administrative and judicial, but exercises them with "self-limitations" according to the constitutional provisions. For example, the "civil liberty" of the people is constitutionally guaranteed against governmental encroachment; "every law" and "the expenditure of funds and the raising of revenue of the state" require "the consent of the imperial Diet;" "the imposition of a new tax or the modification of the rate shall be determined by law."³ In the exercise of administrative power, the emperor obtains the advice of the cabinet ministers and the privy council, and the ministers are responsible to the emperor.⁴ Moreover, he obtains "the counter-signature of a minister" for all laws and imperial ordinances. Though "the judicature shall be exercised by the courts of law according to law, in the name of the emperor," the courts of justice are independent of the executive, and are organized under a law enacted by the legisla-

¹ Burgess, *Political Science and Comparative Constitutional Law*, vol. i, p. 57.

² *Ibid.*, pp. 53-56. Laband, *Staatsrecht des deutschen Reichs*. Goodnow, *Political Science Quarterly*, vol. iv, p. 702. Hozumi, *Kenpo-tai*, pp. 15-18.

³ As to individual liberty, see the articles of chapter ii of the *Constitutional Provisions of Japan*. Also, articles 5, 37, 62, 64.

⁴ *Constitution of Japan*, articles 55 and 56.

ture, not under imperial ordinances or any other administrative decree.¹ Like continental Europe, Japan has a special administrative court, which is independent of the ordinary courts of law; yet it is an effective institution for the remedy of executive abuses.² As to foreign affairs, the emperor alone "declares war, makes peace, and concludes treaties," despatches and receives diplomatic agents, with the assistance of the cabinet ministers, without consulting the imperial diet.³ In the matter of concluding treaties and conventions with foreign countries, the *Sumitsuin* (the Privy Council) may be consulted by the emperor.⁴ The present Japanese legislature, like those in occidental countries, is in structure based on the "bicameral system," consisting of the *Kizokuin* (the House of Peers) and the *Shugin* (the House of Representatives); but it has no powers other than those enumerated in the constitutional provisions, nor any power to control the executive, as the cabinet is quite independent.⁵ In the matter of local government, regulations as to prefects, districts and communes were enacted in 1878, and prefectural assemblies were established in the same year.⁶ About ten years later, in 1889,

¹ *Constitution of Japan*, arts. 57 and 58.

² *Ibid.*, art. 61. As to the law relating to the organization, jurisdiction and procedure of the administrative court, see *Horei-Zensho* (1890), vol. vi, law no. 48. For general account, and principles of the administrative courts in France and Germany, see Goodnow, *Comparative Administration*, vol. ii, pp. 217-256.

³ *Constitution of Japan*, art. 13. See also Count Ito, *Teikoku-Kenpo-Kaigi*, pp. 25 *et seq.*

⁴ *Imperial ordinance* (1888), no. 22, art. vi; see also its amendment in *Imperial ordinance* (1890), no. 26.

⁵ *Constitution of Japan*, arts. of chap. iii. The law relating to the Imperial Diet is found in *Horei-Zensho* (1889), vol. 2, laws nos. 2-3. Burgess, *Political Science and Comparative Constitutional Law*, vol. ii, pp. 106 *et seq.* Hozumi, *Kenpo-Tai*, pp. 53 and 62.

⁶ *Horei-Zensho* (1878), pp. 10 *et seq.*

a law providing for local self-government for cities, towns and villages was enacted, which was very comprehensive in its scope. The law concerning prefectures was re-enacted in an amplified form in 1899. By a law of the same year the several districts within the prefectures were endowed with powers of local self-government, and district diets were instituted. The Japanese system of local government, however, like the French and the Prussian, but unlike the American, is somewhat controlled by the central administrative authorities in order to prevent unwise conduct on the part of the localities, although there is very little interference on the part of the central legislature.¹

In organization and in power the Japanese administration is very strong and effective, and in fact may be termed bureaucratic. On the other hand, the legislature is still in its infancy, and the security for individual rights as against acts of government is still inadequate. Japan should learn more from the Occident, especially from the English-speaking countries, concerning the ample guarantee of individual rights, and the adequate but sober participation by the legislature in the exercise of governmental power, in order fully to develop the political, economic and social activities of the people.

In a word, the empire of Japan is a monarchical sovereignty, in the form of a state having a constitutional government, with a cabinet responsible to the emperor, a popular legislature and independent courts of justice, and with a centralized administration modified by local self-government.

¹ For the law of local government of city, town or village, see *Law* (1888), no. 1; for those of the prefect and district, *Law* (1899), nos. 64 and 65. For a treatment of Japanese local self-government, see Mr. Clement's paper in the *Political Science Quarterly*, vol. 7. See also Goodnow, *Comparative Administrative Law*, vol. i, p. 336; and his *Municipal Home Rule*.

CHAPTER VI

JAPAN'S ENTRY INTO THE COMITY OF NATIONS, 1868-1899

Consular Jurisdiction and Tariff Questions under the old Treaties.—When the western nations entered into treaty relations with Japan, they secured judicial functions for their consuls. Ordinarily, consuls are concerned principally with matters of commerce, but in certain countries, mostly in the Orient, they exercise an extensive jurisdiction over their fellow-countrymen. It is true indeed that in early times, under the system of “personal law” that then prevailed, consuls, even in Christendom, exercised judicial powers;¹ but, with the growth of the idea of nationality and territorial sovereignty, and the fair application of municipal law to citizens and aliens alike, the judicial powers of consuls declined and were for the most part done away with.² In oriental countries, however, they still retain such powers, the reason assigned being that the legal and moral standards of the Orient are materially different from those of countries of European civilization. Besides, oriental nations have been content rather to allow foreigners to be controlled by their own law than to assert jurisdiction over them.³ The Chinese, however, persistently maintained

¹ Warden, *The Origin, Nature, Progress and Influence of Consular Establishments*, chap. iv. See also Savigny, *Private International Law*, pp. 15, 16 and 20.

² Tarring, *British Consular Jurisdiction in the East*, p. 4.

³ Hall, *Foreign Jurisdiction of the British Crown*, p. 133. “To the oriental mind a personal law is more familiar and appears more nat-

jurisdiction over crimes committed by foreigners before the establishment of treaties with western nations.¹ But, in many cases, the judicial powers of consuls in the Orient were originally accorded by a grant or charter to the merchant or commercial companies of European nations, and were eventually confirmed by treaty stipulations, as in the case of the "capitulations" of the Ottoman Empire.²

The Shogun's government, in the beginning of the seventeenth century, left the Portuguese, Spanish, English and Dutch traders to their own law. This privilege, which was granted to them by letters-patent, was held at the pleasure of the Shogun, and was liable to be annulled. The Japanese, however, were more familiar with the idea of personal than of territorial law; and when, in a later age, they formed treaty relations with the West, they seem not to have insisted upon the principle of territoriality. Harris states that, when he proposed that Americans should be subject to the jurisdiction of their consuls, "to my great and agreeable surprise this was agreed to without demur."³ Article IV of the treaty of 1857, as concluded by Harris, runs as follows: "Americans committing offences in Japan shall be tried by the American Consul General or Consul and shall be punished according to American laws."⁴

It is not certain that this provision covered civil actions;

ural than a territorial law." For an historical account of consular jurisdiction, see Martens, *Das Consularwesen im Orient*, pp. 44 et seq.

¹ See the report of Mr. Cushing, Commissioner of the United States, to negotiate a treaty with China, *U. S. House Ex. Doc.*, 28th Congress, 2d Session, no. 69, pp. 1-15.

² See Van Dyck, *Capitulations of the Ottoman Empire since the Year 1150*.

³ Griffis, *The Diary of Townsend Harris*, p. 124.

⁴ *Treaties and Conventions of the United States since 1776*, edition of 1873, p. 515.

but, by the treaty of 1858, the grant of consular jurisdiction was enlarged, and it was still further increased by the British treaty of the same year. The treaty with Austria-Hungary, in 1869, still further expanded the jurisdiction, as follows:

All questions in regard to right, whether of property or of person, arising between Austro-Hungarian citizens residing in Japan shall be subject to the jurisdictions of the Imperial and Royal authorities. In like manner the Japanese shall not interfere in any question which may arise between Austro-Hungarian citizens and the subjects of any other Treaty Power.

Austro-Hungarian citizens, who may commit any crime against Japanese subjects or the subjects of any other nation, shall be brought before the Imperial and Royal Consular Officer, and punished according to the laws of their country.

Any case involving a penalty or confiscation by reason of any breach of this Treaty, the Trade Regulations, or the Tariff annexed thereto shall be brought before the Imperial and Royal Consular authorities for decision.¹

The other treaty powers of the West were accorded the same concessions by virtue of the most-favored-nation clause.

Analyzing the treaty provisions, we find that the jurisdiction belonging exclusively to consuls embraced, in civil matters: (1) cases in which a citizen of a treaty power was liable to a Japanese subject; (2) actions between citizens of the same treaty power; (3) actions between citizens of different treaty powers; and, in criminal matters: (1) offences committed by citizens of treaty powers against Japanese subjects; (2) crimes committed by subjects of treaty powers against foreigners (including citizens of non-treaty powers, such as Turks, Persians, Chilians, Colombians, Venezuelans or Argentines); and (3) offences committed by citizens of treaty powers in violation of treaty provisions

¹ See articles 5, 6 and 7. *State Papers*, vol. 59, pp. 531-532.

and trade regulations.¹ The residuary jurisdiction, which might be claimed for the Japanese courts, embraced, in civil matters: (1) cases in which a Japanese was liable to a citizen of a treaty power; (2) cases in which a foreigner was liable to the Japanese sovereign or government; (3) cases in which a citizen of a non-treaty power was liable to a citizen of a treaty power; and, in criminal matters: (1) offences committed by a Japanese against a foreigner; (2) crimes committed by a foreigner against the imperial House or government of Japan; (3) violations by a citizen of a treaty power of a law or ordinance on a subject not covered by the treaty (such as games, lottery and sanitary laws, and regulations of the coasting trade). This residuary jurisdiction, however, was not successfully claimed for the Japanese courts, because the treaties were not strictly construed as legal documents.² Taking historical conditions into consideration, it was natural that the western nations should wish to make their jurisdiction as extensive as possible, so long as Japan remained in the old civilization. But it was ludicrous that, when the Japanese administration of justice had become efficient and trustworthy, the treaty powers should claim extra-territorial jurisdiction to the extent of extraditing fugitive criminals, and supervising harbor and pilotage regulations, the opium trade and quarantine, all of which undoubtedly belonged to Japan.³ Under this system, the actual condition of consular jurisdiction

¹ Nakamura, *Shin-Joyaku-ron (Essay on the New Treaties)*, p. 349.

² Pigott, *Consular Jurisdiction and Residence in Oriental Countries*, p. 85.

³ While the treaty powers, except the United States, claimed that these regulations came within their extra-territorial jurisdiction, Japan maintained that they were within her discretion and incorporated them into her national legislation. *For. Rel. of United States*, vols. for 1874, 1875 and 1878. As to extradition, see Moore, *Extradition*, vol. i, sections 93, 487 and 488.

could not be defined, without consulting the legislative acts of the treaty powers, the diplomatic correspondence, the decisions and procedure of the consular courts, and the works of publicists.¹

The Japanese were originally ignorant of the method of raising state revenue by means of a tariff. Shogun Iyeyasu gave free entry to the imports of European traders in the seventeenth century. In the feudal régime, the land tax was the government's main source of revenue. It was Harris who first taught the Japanese to lay customs duties. In the regulations attached to the commercial treaty of 1858, articles of importation were arranged in schedules.² "Class I" included articles free of duty, such as silver and gold, wearing apparel in actual use, household furniture and printed books for private use. "Class II" embraced articles used in the building, rigging or fitting out of ships, salted provisions, bread-stuffs, living animals, coal, rice, paddy, steam machinery, *etc.*, paying a duty of five per cent.; and "Class III," all intoxicating liquors, which were subject to a duty of thirty-five per cent. "Class IV" imposed a duty of twenty per cent on articles not mentioned in any preceding class. All Japanese products, except gold and silver, coins and copper in bars, were dutiable at five per

¹ Hall maintains that even the "territorial sovereign, if he chooses to bring an action, [may] submit himself" to an English court in his territory. See his *Foreign Jurisdiction*, p. 193. In 1892 the Japanese cruiser "Chitose" collided with the English merchantman "Revana" in the territorial waters of Japan and the former was sunk. The Japanese government brought an action in the British consular court at Yokohama. For special treatment of consular jurisdiction in Japan, see Sheppard, *Extraterritoriality*; Senga, *Gestaltung und Kritik der heutigen Konsulargerichtsbarkeit in Japan*; and Scidmore's *Lecture on the Consular Courts of the United States in Japan*.

² *Treaties and Conventions of the United States since 1776*, edition of 1873, p. 524. Treaty with England (1858), *State Papers*, vol. 48, pp. 37-38.

cent on their exportation. These tariff regulations, though arranged by convention with the treaty powers, were remarkably well conceived from the economic as well as fiscal point of view. They were not protective, but permitted virtual free trade, which is desirable for a nation "politically independent, but economically in a very low stage;"¹ they were not so indulgent as to fail to produce an adequate revenue. Subsequently, however, when the Shogun's government was embarrassed by the anti-foreign movement, the treaty powers took advantage of the opportunity to conclude on June 25, 1866, a treaty by which the tariff was revised and reduced.² All food-stuffs, including grain and meat, were admitted free of duty, while tobacco, sugar and all manufactures—woolen, cotton and metallic—were charged a fixed duty of five per cent; and even articles of luxury—jewels, diamonds and gold, perfumes and champagnes—could not be taxed more than five per cent *ad valorem*. Under such a system, Japan largely lost the fiscal value of her tariff.

The Revision of the Treaties and Present Treaty Relations.—Thus was Japan, though an independent state, subjected to grievous disabilities by the treaties, both in respect of revenue and of jurisdiction. It is therefore not strange that, after the imperial government had restored order, the revision of the treaties, so as to recover judicial and fiscal autonomy, became a burning question among officials as well as among the people. The government,

¹ Roscher, *Political Economy*, vol. ii, p. 434. Entire freedom of trade with the outside world "causes the influence of the incentives, wants and means of satisfaction of a higher civilization to be felt soonest in the country."

² A convention with the United States, England, France and Holland. *State Papers*, vol. 58, p. 317. For the diplomatic correspondence concerning this tariff revision, see *Parl. Papers, Japan*, no. 1 (1867).

perceiving that, so long as the country adhered to its Asiatic traditions, the treaty powers would not relinquish their jurisdictional privileges, eagerly introduced western civilization, especially in judicial institutions. The evolution of modern Japanese jurisprudence thus bears a close relation to the subject of treaty revision. Immediately after the Restoration, a separate administration of justice was instituted by the establishment of a department of justice and courts of law.¹ The *Kaitei-Ritsu-rei*, a criminal code, was promulgated in 1871, which, though framed upon a Chinese model, contained an infusion of European principles. Shinpai Yeto, minister of justice, as a step towards introducing western jurisprudence, invited to Japan a number of European jurists, among whom was M. Boissonade, a famous French barrister. By his eight years' labors important reforms were effected in the Japanese law. In January, 1879, torture was abolished, and in 1880, the regulations relating to legal practitioners and to evidence were improved and modernized.² Criminal law and procedure were also revised, on the model of the French codes; the revision was promulgated in 1878 and came into operation in 1882.³ The third article of the criminal code prohibits the application of *ex post facto* laws; capital punishment by beheading was, by the twelfth article, changed to that by hanging, and was limited to murder, high treason and arson.⁴

While judicial reform was in progress the department of foreign affairs lost no time in pressing the work of treaty revision. Iwakura, minister of foreign affairs, the first ambassador plenipotentiary ever commissioned by the imperial

¹ See Dr. Okamura's paper, "The Progress of the Judicial System of Japan," *Journal of the Society of Comparative Legislation* (1899), p. 49.

² *For. Rel. of U. S.* (1879), p. 696.

³ Okamura, *loc. cit.*

⁴ *Criminal Law of Japan*, arts. 116, 121, 129, 130, 292, 380, 402 and 415.

government, was in October, 1871, sent to the United States and Europe in order to sound the governments of the treaty powers. He was courteously received, but his mission was fruitless.

The old treaties not only grieved the Japanese, but also hampered the foreigner. Foreigners could travel into the interior only with passports issued by the foreign office, and were permitted to reside only in the foreign settlements. Owing to the restrictions on travel, which had seriously inconvenienced a number of Italian merchants who were engaged in buying silk-worms' eggs, the Italian government, in 1873, negotiated a revised treaty, by which those restrictions were to be abolished and Japan's judicial autonomy was to a certain extent to be recognized;¹ but, because of the protest of the other powers, the Italian measure was not carried into effect. Count Soyejima, minister of foreign affairs, endeavored in 1874 to secure a revision of the treaties by means of a "joint conference" with the representatives of the treaty powers at Tokyo. The Korean question, the Formosan controversy, and the Saigo rebellion subsequently hindered the work; and little progress towards revision was made till Count Terajima took up the task in 1878.

As agreement in the joint conference had depended upon the unanimous consent of all the representatives in it, Minister Terajima, upon the advice of Mr. Smith, an American counsellor of the foreign office,² adopted the plan of negotiating separately with each treaty power, and in this way succeeded in concluding a commercial convention with the United States in July, 1878.³ By this convention, the

¹ The text of the draft is given in *For. Rel.* (1873), p. 272.

² Ozawa, *Revision of Treaties*, p. 16.

³ *Treaties and Conventions of the United States since 1776*, edition of 1889, pp. 627 *et seq.*

United States recognized the exclusive right of Japan to regulate its tariff and coasting trade, while Japan undertook to open two additional ports and to abolish export duties; and in order to induce other treaty powers to enter into similar arrangements, it was stipulated that the compensations granted to the United States should not be extended to a third power unless it should make the same concessions. The convention, however, accomplished no practical result, since it was to become effective only on the conclusion of similar treaties by other powers, none of which followed the example of the United States.

The next foreign minister was Count Inouye, who occupied himself chiefly with treaty revision. He sought in a measure to recover Japan's judicial and fiscal autonomy, by conceding to foreigners the right to hold real property and to reside and trade throughout the empire.¹ Adopting the plan of a joint conference at Tokyo, Count Inouye opened preliminary negotiations in 1882. The foreign representatives generally were unwilling to concede the Japanese claims, but were very anxious to obtain the privileges of trading and traveling. In Japan, on the other hand, public opinion demanded the recognition of the full jurisdictional rights of the country as an independent nation, but objected to the proposed concessions to foreigners, whose business activities were viewed with apprehension. Under such circumstances, treaty revision was a difficult task. Conferences were held, but nothing definite was accomplished till 1886, when, by the compromise known as "the Anglo-German project,"² the conclusion of an agreement appeared to be rendered possible during the next year, after a radical modification should have been introduced into Japanese

¹ *Essay on Treaty Revision*, Dobunkan's edition, p. 7.

² Siebold, *Japan and the Comity of Nations*, pp. 83-84.

judicial procedure, by the establishment of mixed courts, as in Egypt, with prosecuting attorneys of foreign birth. When, however, the purport of the draft-treaty became known, through its publication in an English paper at Yokohama, popular opinion loudly censured Count Inouye; several outrages were committed upon him; and even Count Toni, the minister of the interior, and M. Boissonade advised the emperor that such a treaty would be inconsistent with the sovereign rights of the empire. In consequence the minister of foreign affairs, in June, 1887, notified the foreign representatives that the treaty negotiations were adjourned.¹

Count Inouye was immediately succeeded by Count Okuma. The new minister's prospects were brightened by the strong support of the political party called the *Kaishin-To* (Progressive party), without whose aid his predecessor had failed. His policy was to consult separately with each treaty nation; as Count Terajima had done in 1878. As a preliminary test, he concluded the treaty² of amity and commerce with Mexico in February, 1887, which fully recognized Japan's judicial and fiscal autonomy, and which was the first treaty ever concluded by Japan with a western state on terms of perfect equality. As it also granted to Mexicans freedom of travel, residence and trade throughout the empire, the most-favored-nation clause was inserted in the treaty in the conditional form, in order to preclude any third power from claiming the privileges granted to Mexicans without making the reciprocal concessions secured to Japan. As a matter of fact, most of the European powers claimed most-favored-nation treatment without giving Japan any compensation for it; but Count Okuma obtained the

¹ *For. Rel.*, 1887, p. 665.

² *British and Foreign State Papers*, vol. 79, pp. 129 *et seq.*

concurrency of America, Germany and Russia, and then entered into negotiations with England.¹ The principal points of the Japanese proposal for a treaty with Great Britain, which was forwarded to London in December, 1888, were as follows: First, the Japanese government was to open the entire country to foreigners, and to concede to them the right to hold real as well as personal property. Secondly, five years after the ratification of the treaty, consular jurisdiction was to be abolished. Thirdly, foreign judges were to be appointed to sit as associates in the "*Dai-Shin-in*" (supreme court), in case the defendant was a foreigner. Lastly, although a majority of imported commodities were to be subject to the statutory tariff of Japan, certain duties on English goods were to be fixed by the convention.² An outline of the proposed treaty was published in the London *Times* of April 29, 1889. It met with disapproval in Japan, especially by reason of the provisions for the appointment of the foreign judges and the ownership of real estate. The constitution of the empire had been promulgated in the preceding February, and it provided that "Japanese subjects may, according to qualifications determined in laws or ordinances, be appointed to civil or military offices equally, and may fill any other public offices." By this, foreigners were not regarded as competent to hold public office in Japan. The party in opposition to Count Okuma declared his treaty measure to be unconstitutional. As to the ownership of real estate by foreigners, conservative Japanese regarded it as having the effect of making Japanese territory a foreign domain. The popular agitation against the treaty became so intense that on

¹ *Annual Register* (1889), pp. 397 *et seq.*

² *Parliamentary Papers*, vol. xcvi, Japan no. 1 (1894), pp. 2-12. Text of the draft.

October 19, 1889, a fanatic threw a bomb at Minister Okuma, and the imperial government again suspended the work of revision.

Viscount Aoki, the next foreign minister, took up the unfinished task with some modification of the draft of his predecessor. He proposed the absolute recognition of Japan's judicial autonomy, without the intervention of any foreign judges, but adhered to the concession of the right to own real estate.¹ The completion of his work was prevented by the cabinet crisis of 1891, and he was succeeded by Count Enomoto, who sought to finish what he had left undone. Count Enomoto believed that, if Japan had satisfactory civil laws and civil procedure, the treaty powers would soon recognize her jurisdiction. Hence he made strenuous efforts to induce the imperial diet to approve the project of a civil code which was then under discussion. He declared in the Lower House, in 1892, that the postponement of the completion of the codes would mean the postponement of treaty revision. In the previous year, the civil code, the code of civil procedure, the commercial code, and the code of the constitution of courts were promulgated; but, although the code of the constitution of courts, the code of civil procedure, and a part of the commercial code, *viz.*, the chapters on companies, partnership, bankruptcy, bills, commercial registration and trade books—were put in force with the sanction of the Diet, the operation of the civil code and of the main parts of the commercial code was postponed until 1894.² When Portugal happened to withdraw her consuls from Japan, without sending new ones in their places, Count Enomoto promptly took steps to assert Japanese jurisdiction over Portuguese residents, and by an

¹ *Parl. Papers*, Japan no. 1 (1894), pp. 27-29.

² See Okamura, *loc. cit.*

imperial ordinance of July 17, 1892, all treaty provisions with Portugal relating to consular jurisdiction were denounced.¹ Treaty revision, however, was again hindered by the cabinet crisis at the end of 1892.

The foreign office was next occupied by Mr. Mutsu, an able and clear-headed man, who had once been minister of Japan at Washington and who had negotiated the commercial treaty with Mexico in 1887. He conceived the idea that treaty revision might be accomplished if Japan, in the first instance, consulted the power whose interests in the country predominated over those of any other. Most of his predecessors had, in the first instance, treated with the United States, which always manifested a readiness to grant Japan's wishes, or with some of the minor countries, and the possibility of revision was in the end usually destroyed by Great Britain. Mr. Mutsu therefore decided to deal first with Great Britain. To this end he availed himself of the opportunity afforded by the presence in London of Mr. Fraser, British minister to Japan, who was then on leave. On August 18, 1893, Viscount Aoki, who was then Japanese minister at Berlin, and who had known Mr. Fraser in Tokyo, was instructed to proceed to London and discuss with him "the basis of a negotiation for treaty revision."² With a view to such a negotiation, Mr. Mutsu, desirous of placing Japan's treaty relations on the basis of absolute equality, had drawn up a draft on the model of the Anglo-Italian treaty of 1881, which was formed on that basis. This draft was sent to Viscount Aoki, and, after an informal discussion between him and Mr. Fraser, was submitted to the British foreign office on December 27, 1893.³ Negotiations between Count Aoki and Lord Kimberley, who was

¹ *Horei-Zensho* (1892), vol. vi, p. 147. Imperial ordinance no. 65.

² *Parl. Papers, Japan no. 1* (1894), p. 75. ³ *Ibid.*, pp. 76-83.

then secretary for foreign affairs, soon ensued. While they were pending, the British chargé d'affaires at Tokyo sent to London translations of speeches made by Count Ito, prime minister, and by Mr. Mutsu, in the Upper House, in which they seem to have intimated that Japan would repudiate the existing treaties, in case the powers should disregard her wishes for revision. This report caused ill-feeling in London, and Lord Kimberley declared that such language would "retard rather than advance the revision" which Japan desired.¹ The incident was in fact due to a sensational translation, the meaning of the original being that Japan could no longer bear up under the weight of the old treaties. On Mr. Fraser's return to Tokyo, all misunderstanding was removed. While negotiations with Great Britain were in progress, Mr. Mutsu on April 10, 1894, seized an opportunity to obtain from the Hawaiian government by exchange of notes the recognition of Japanese jurisdiction over citizens of Hawaii in the empire.²

Happily for Japan, the question of treaty revision, which was so long under discussion, finally came to a definite solution with Great Britain. On July 16, 1894, a treaty of commerce and navigation was signed without any significant departure from the original draft.³ Japan, by her civilized conduct during the war with China, had gained much reputation and credit, and other powers were not slow to imitate the example of Great Britain. New treaties were signed with other powers as follows: the United States, November 22, and Italy, December 1, 1894; Russia, June 8, Denmark, October 19, and Peru, March 22, 1895; Ger-

¹ *Parl. Papers, Japan no. 1* (1894), pp. 98 and 99.

² *British and Foreign State Papers*, vol. 86, pp. 1185 *et seq.* Also Imperial Ordinance no. 41, April 11, 1894, *Horei-Zensho* (1894), vol. iv, p. III.

³ *Parl. Papers, Japan no. 1* (1894), pp. 129 *et seq.*

many, April 4, Sweden and Norway, May 2, Belgium, June 22, France, August 4, the Netherlands, September 8 and Switzerland, November 16, 1896; Spain, January 2, Portugal, January 26 and Austria-Hungary, December 5, 1897; Siam, February 25, 1898. The ratifications of all these treaties were completed in 1898. The treaty with Mexico of 1887 required no revision; but the Anglo-Japanese treaty of 1894 was adopted as the basis of all these revised treaties.¹ Beside these revised treaties, Japan concluded treaties for the first time with Brazil, November 5, 1895; Argentine Republic, February 3, 1898; and Greece, May 20 and June 1, 1899. On January 17, 1900, Japan and the Congo Free State entered into a declaration mutually to extend most-favored-nation treatment in regard to commerce and navigation.²

By the revised treaties, Japan not only recovered her judicial autonomy, but also secured equal treatment for her people in the western countries. The old treaties were one-sided arrangements, designed to secure certain rights and privileges to aliens in Japan. They did not provide for the reciprocal protection of Japanese abroad, and in reality few Japanese ever appeared in western lands in those days. Subsequently, however, the number of Japanese going abroad for travel, trade and education steadily grew; and the new treaties were therefore necessarily founded in this respect on the principle of reciprocity. Their main provisions may be summarized as follows: The subjects of each contracting party are to enjoy in the dominions of the other freedom of travel, residence, commerce, navigation

¹ The texts of all these revised treaties of Japan are found in *Treaties and Conventions between Japan and Other Powers* (edition of 1898), and in the *British and Foreign State Papers*.

² These treaties and declarations are found *ibid.*, vol. 92.

and religion, and of access to the courts of justice, together with national or most-favored-nation treatment in respect to the possession of goods, succession to personalty, disposal of property and taxation. The houses of aliens in each country are protected from search and domiciliary visits except according to law. Foreigners are exempt from military services and compulsory contributions. Most-favored-nation treatment is preserved in commerce and navigation; and particularly in respect to imports and exports, tonnage and other shipping duties, consular officers, and the coasting trade, although they are mostly subject to national law. As regards warehouses, bounties, drawbacks, shipping facilities, patents and trade marks, foreigners are to enjoy the same rights and privileges as natives. The revised treaties all came into operation in July and August, 1899. ✓ From that moment the system of foreign settlements (which had hitherto enjoyed extra-territoriality) was abolished and the settlements were merged into the general municipal system. Consular jurisdiction also ceased.

In the matter of trade, Japan made liberal concessions to England, France and Germany upon their principal imports. By the conventional tariffs appended to the treaties with those countries, their imports were taxed only from five to fifteen per cent *ad valorem*, while the statutory tariff of the empire fixed, in all other cases, rates running from five to forty-five per cent;¹ nor was the large reduction made on imports from those countries compensated by any concession in favor of imports from Japan. The conventional tariff with Austro-Hungary, however, was more

¹ The conventional tariffs are found in Appendix A, *Treaties and Conventions between Japan and Other Powers* (edition of 1899). The new statutory tariff is in *ibid.*, Appendix B; see also *Horei-Zensho*, 1897, vol. iii, pp. 13 *et seq.*; and *Consular Reports of U. S.*, no. 204 (Sept., 1897), p. 91.

nearly reciprocal, that government granting to five classes of Japanese commodities reductions in rates in return for reciprocal reductions on five classes of Austro-Hungarian goods in Japan.¹ The treaty powers, other than those mentioned, enjoy the benefit of the conventional tariffs by virtue of the most-favored-nation clause. By the treaty with Portugal, the most-favored-nation treatment in that country is restricted to thirty-three Japanese articles, while twenty-two Portuguese articles enjoy like treatment in Japan.²

The articles subject to the conventional tariff in Japan number nearly sixty, and, as they include the principal imports from western countries, embrace the most significant part of the foreign trade of the empire. The conventional tariff thus holds an important relation to national finance and economy. The increasing burdens of a progressive nation can be best borne by means of the revenue from customs receipts, and, owing to the conventional reductions, the tariff of Japan does not produce an adequate income. The customs receipts of Japan in 1901 hardly amounted to 6 per cent of the total revenues; while those of France yielded 26 per cent; of Germany, 30 per cent; of Great Britain, 23 per cent; of Russia, 11 per cent; and, of the United States, 40 per cent.³ From an economic point of view, the promising industries of Japan—as yet infant industries—such as woolen, cotton, sugar and glass manufactures, cannot be satisfactorily developed, because similar manufactured goods from other countries are admitted under the low rates of the conventional tariff. In these days of protective tariffs and of heavy national burdens, Japan

¹ *British and Foreign State Papers*, vol. 89, pp. 991 *et seq.* See "Additional Convention" between Japan and Austro-Hungary.

² *British and Foreign State Papers*, vol. 89, pp. 970 and 976 *et seq.*

³ These percentages are calculated from the statistics in *The Statesman's Year-Book*, 1902.

must stand at a great disadvantage till 1911, when the present treaties will expire. The sensational press of Japan criticised and denounced the "poor work" of the treaty revisers, but the representatives of Japan did the best they could. Great Britain, Germany and France, with their large commercial interests, demanded commercial concessions as the price of recognizing Japan's judicial autonomy.

By the revised treaties, concluded with western nations on an equal footing, and with the absolute abolition of the foreign consular jurisdiction, Japan has been admitted into the "family of nations" as a competent member and a subject of international law. According to the orthodox "law of nations," the "family of nations" was regarded as the monopoly of Christendom; but, since the Reformation, which destroyed the religious unity of Europe, the religious test of international right has gradually fallen into disrepute among jurists. At the present day, the accepted test is the possession of the modern civilization developed in the states of western Europe and their derivatives in America. Turkey, though her civilization is not European, was formally admitted to participate in "the public law and concert of Europe,"¹ chiefly for political reasons, by the Treaty of Paris of 1856; but her judicial power over aliens is still limited. Although Japan is different racially and religiously, from the Occident, her healthy assimilation of western civilization made the occidental states recognize her as eligible to the "family of nations." The antipathy at first felt by the Japanese towards foreigners disappeared, and was quickly replaced by the eager adoption and adaptation, so far as seemed to be practicable and desirable, of European science, ethics, arts, education, military methods,

¹ Article vii of the Treaty of Paris of March 30, 1856. Hertslet, *The Map of Europe*, vol. ii, p. 1250.

politics, judicial administration and other economic and social institutions. Freedom of religious faith is secured by constitutional provision.¹ The criminal and civil codes, and the codes of procedure, which, after long elaboration, were completed in 1898 and, with the final revision of the commercial code, came into force in 1899, have freely incorporated the judicial principles which prevail in the Occident.² So liberal is the civil code to foreigners that they can enjoy all the private rights of natives "except as forbidden by law, regulation, or treaty,"³ while, under the criminal procedure, foreign prisoners are specially provided with European meals and quartered in European buildings, because their standard of living is different from that of the Japanese.⁴ In a word, under the existing administration of

¹ Art. xxviii of the Japanese Constitutional Law.

² The code of civil and commercial law, which was originally framed by Boissonade on the model of the French code, was afterward replaced by a code framed on the German model by a commission of native jurists. The reasons for this entire revision of the civil code are said to be as follows: The first civil code "rendered frequent repetition of the same rules necessary in different parts of the code," and made the whole work voluminous, so that it contained 1,762 articles. In order to avoid this unnecessary repetition and make "the body of the law succinct," the new code followed the forms of the Saxon civil code and the draft of the imperial German civil code, and is comprised in 1,146 articles. See Hozumi, *The New Civil Code, a Study in Comparative Jurisdiction*, p. 23.

³ Article ii of the Japanese Civil Law. Ume, *Minpoyogi (Interpretation of the Civil Law)*, vol. i, pp. 8 *et seq.* See also Dr. Masujima's address delivered before the New York State Bar Association in January, 1903. "The cases in which foreigners are restricted in enjoyment of private rights are, the ownership of land or Japanese ships, the rights to work mines, to own shares in the Bank of Japan or the Yokohama Specie Bank, to be member or broker of exchanges, to engage in emigration business, or to receive bounties for navigation or ship-building."

⁴ See *Report of International Prison Congress, Belgium, 1900*, sec. on Japan.

justice, aliens are as secure in person and in property in Japan as in any country in the world.

In her international relations, Japan not only faithfully fulfils her treaty obligations, but also abides by the rules of international law. When the Franco-Prussian war broke out in 1870, she declared her strict neutrality.¹ When a Peruvian ship, the "Maria Luz," entered the harbor of Yokohama in 1872, Japan righteously exercised her territorial jurisdiction against the slave traffic.² Japan has also been sedulously observant of the dictates of courtesy and comity. In 1885 her troops protected the American legation at Seoul against conflagration.³ When, in 1888, the Turkish man-of-war "Ertugrul," was wrecked on the Japanese coast, the survivors, although Turkey was not a treaty power, were taken to Constantinople by the "Hiyei" and "Kongo," Japanese men-of-war, which were said to be the first war vessels that had passed the Dardanelles since 1856. The Grand Duke Alexis of Russia, the Duke of Edinburgh, the crown prince of Germany (the present Kaiser), General Grant (ex-president of the United States), the king of Hawaii, the crown prince of Russia (the present Czar), the Turkish Prince Osman Pasha, and other distinguished personages have been received upon their visits to Japan by the present emperor and his people, with marked hospitality and politeness. The conduct of Japan during the Chino-Japanese war is admitted to have furnished a consummate illustration of adherence to international law.⁴

¹ *For. Rel.* (1870), p. 188.

² The action of the Japanese authorities raised a dispute with Peru, which was decided by the Czar of Russia, Alexander II, in favor of Japan. See Moore, *International Arbitrations*, vol. v, pp. 5035-36.

³ *For. Rel.* (1885), p. 562.

⁴ As to the naval side, see Takahaski, *International Law During the Chino-Japanese War*. As to the military side, see Ariga, *La Guerre Sino-Japonaise*.

The "Kowshing" case, which created some ill-feeling among neutral powers, was subsequently justified by eminent authorities on international law.¹ Since 1884, Japan has become a signatory or adherent of the "universal conventions" which are regarded as facilitating the social, political and commercial life of the international society, such as agreements concerning the sick and wounded in war, weights and measures, posts, telegraphs, trade-marks and patents, and copyrights.²

It is proper to add that, while Japan has, by reason of her healthy assimilation of western civilization, been admitted into the "family of nations" as an equal member, without regard to religious and racial differences, she has retained her consular jurisdiction in China, Korea and Siam.

¹ Letters of Professors Westlake and Holland, in the *London Times*, August 3 and 7, 1894, justifying the sinking of the English ship "Kowshing," while transporting a hostile Chinese force to Korea, by the Japanese man-of-war "Naniwa."

² Japan, after becoming a party to the international convention for the protection of submarine cables, in 1884, adhered to the Geneva Convention (Red Cross), the Universal Postal Union, the Convention for the Establishment of an International Bureau of Weights and Measures, and the Declaration of Paris in relation to Maritime Law. See *Treaties and Conventions between Japan and Other Powers*, ed. 1889, vol. ii, "Universal Conventions," pp. 92 *et seq.* Japan also pledged herself in her revised treaties to be bound by the Berne Convention (copyright) and the Industrial Property Convention.

CHAPTER VII

INTERNATIONAL RELATIONS OF JAPAN WITH ASIATIC NATIONS, 1868-1898

The First Treaty with China.—Although the Asiatic nations entered, in the middle of the nineteenth century, into diplomatic and commercial relations with western nations by treaty stipulations, they had no resident embassies nor any treaties regulating trade among themselves, until China and Japan concluded their first treaty in 1871. Nevertheless, intercourse had previously existed.

After Hideyoshi's invasion of Korea and China, the Ming dynasty in the latter country declined to make peace with Japan, although the Shogun's government often tried to bring it about. Subsequently, however, the Ming dynasty, when it was about to be overthrown by the Manchus, several times solicited the military assistance of Japan through the governor of Nagasaki and the king of Loochoo;¹ but the conservative government of the Tokugawa refused to become entangled in foreign affairs. The Manchu dynasty at length came in 1659 to rule the whole of China, but diplomatic intercourse with Japan was not restored. Nevertheless, commercial intercourse between the two nations remained undisturbed. During Japan's War of Restoration, of 1868, China did not, like the western nations, maintain neutrality. Chinese traders supplied contraband to the revolted Tokugawa, while Chinese subjects in Japanese ports were often guilty of smuggling opium and kidnapping

¹ *Gaiko-Shiko*, pp. 282-283.

Japanese girls. These outrages showed the importance of establishing treaty relations with China. Besides, when the Japanese government, soon after the Restoration, sought to enter into a treaty with Korea, it found itself thwarted by the peculiar relation of Korea to China. It therefore determined first to conclude a treaty of amity and commerce with the latter country.

Such a treaty was concluded at Peking in July, 1871, on absolutely equal terms, "without depreciation on either side."¹ It was based upon the most thorough amity. In case either contracting party was aggrieved by a third power, the other was to render "assistance" or exercise "good offices." This stipulation was described in the occidental press as an "alliance" of the Asiatic nations against the western. Permanent embassies were reciprocally established, and it was expressly provided that the ambassadors should bear their own expenses, although it had been the custom in Asia to pay all the expenses of foreign embassies on the assumption that an ambassador was the guest of the nation. But, while the treaty was made after the western fashion, it still exhibited Asiatic peculiarities. It retained the oriental element of personal law, the consuls of the contracting parties being clothed with jurisdiction over their fellow citizens; and both countries agreed to deliver up fugitive criminals to the consuls. The treaty further provided for the confiscation of contraband. It contained no most-favored-nation clause. The contracting parties were unwilling to extend to each other by treaty the large favors and privileges which they had granted to western nations. On the contrary, they agreed that their imports and exports should be re-

¹ The Japanese text is in *Horei-Zensho*, 1873, pp. 540 *et seq.*; the English text in *British and Foreign State Papers*, vol. 62, p. 321, and *For. Rel.*, 1872, p. 485.

gulated by their respective tariff laws. They did not, however, enact new tariffs, but adopted the trade regulations embodied in their treaties with European nations. It is interesting to note that the treaty specifically prohibited the export of rice and salt,¹ since it was apprehended that, as those articles formed an essential part of the diet of the people, their exportation would ruin both nations. Such were the economic ideas of oriental statesmen at that time.

The Formosan Question.—In September, 1871, sixty-six inhabitants of the Loochoo Islands, which, since their invasion in 1609 by Shimazu, lord of Satsuma, had been claimed by Japan,² were wrecked on the southern coast of Formosa, and were murdered by the "Boutans," one of the savage tribes. Four years before, a similar cruelty had been inflicted upon the captain and his wife and the officers and crew of the American ship, "Rover." As the Chinese government neglected to redress this outrage, General Le Gendre, then American consul at Amoy, himself proceeded with an expedition to Formosa and obtained from Tooke-tok, a native chief, a pledge of good behavior.³ The agreement, however, proved to be of no avail, and further murders of Loochooans were soon committed. The Japanese government then seriously took up the matter, the celebrated diplomat, Mr. Soyejima, being minister of foreign affairs; and General Le Gendre, who happened to pass through Japan on his way to America, was, by reason of his experience in dealing with Formosan savages, engaged as special adviser.⁴ The imperial government eventually decided, before sending out an armed expedition, to despatch

¹ Trade Regulations between Japan and China, arts. xxi and xxv.

² *Infra*, p. 160.

³ Le Gendre to Mr. Burlingame, American minister at Peking, *Dip. Cor.* (1868), part 1, p. 508.

⁴ Black, *Young Japan*, vol. ii, p. 403.

an envoy to ascertain the views of the Chinese government as to its responsibilities in the premises. There were pending at this time the questions of opening up Korea, of the ratification of the Chino-Japanese treaty of 1871, and of an audience of the foreign representatives with the Celestial emperor. Mr. Soyejima was therefore commissioned, in 1873, as the ambassador extraordinary and plenipotentiary to China, and was accompanied by General Le Gendre. He also bore an imperial letter to the Chinese emperor, congratulating him on his recent marriage. The ratifications of the treaty were exchanged at Tientsin on April 3; and Mr. Soyejima then proceeded to Peking, where he persistently demanded an audience on the ground that the imperial letter addressed to the Chinese emperor must be delivered in person, as had been done by Harris in Japan. The Chinese government finally yielded, and the Celestial emperor gave his first audience to the Japanese ambassador on June 29, 1873. A similar concession was immediately made to the other foreign representatives.¹ As to the Formosan question, the Chinese government took the ground that the Loochooans were "Chinese subjects," and that the outrages upon them therefore did not concern any other government. The Japanese ambassador, on the other hand, affirmed that the Loochooan sovereignty had belonged to Japan since 1609, and demanded specific redress for the acts of the Formosan savages. In order to evade responsibility, the Chinese commissioners incautiously declared that their government had nothing to do with the inhabitants of southern Formosa, who were out of its control and jurisdiction.² As to the Korean question, the Chinese commissioners, after long discussion, declared that China would,

¹ For an account of the audience question, see *For. Rel.*, 1873, pp. 195 *et seq.*

² Black, *Young Japan*, vol. ii, p. 404. See also *For. Rel.*, 1873, p. 188.

while maintaining the old tributary relation of Korea, recognize her right to make peace and war with other states.¹ The Japanese ambassador left Peking in July, announcing that Japan, being an independent state, would take the necessary steps to chastise the savages of Formosa who were "out of the jurisdiction" of the Chinese government, and would also independently open Korea.

On receiving the report of Mr. Soyejima, a majority of the cabinet recommended that an expedition be undertaken first to Korea. Shortly afterwards Count Iwakura, envoy to America and Europe, returned to Japan and condemned the warlike policy, especially attacking the proposed Korean expedition. The cabinet was then reorganized by the *Heiwato*, or peace party, but it was unable to stem the current of popular feeling. The late minister of war, General Saigo, and the ex-minister of justice, Yeto, retired to their own provinces and plotted the overthrow of the new cabinet; Prime Minister Iwakura barely escaped assassination at Kuichigai. The imperial government finally determined to send an expedition to Formosa, in order to appease the warlike spirit and maintain peace at home. The expedition was officially announced on April 17, 1874, and Major Saigo, younger brother of General Saigo, was appointed to command it.² American transports and officers were to take part. Ex-Lieutenant-Commander Cassell, United States navy, was offered the rank of lieutenant-commander in the Japanese navy, Lieutenant Wasson was engaged as a military engineer, and General Le Gendre was attached to the "*Banchi-Jimu-Kioku*" (staff of the expedition against the savages). These Americans, however, were discharged before the arrival of the expedition at Formosa,

¹ Ogawa, *Meiji-Gaiko-Yoroku* (*Digest of Diplomacy of the Meiji Era*), p. 86.

² *For. Rel.*, 1874, p. 680.

because of the protest of Mr. Bingham, American minister at Tokyo, who maintained the strict neutrality of his country.¹ By May 22, 1874, all the "Boutans" had surrendered and the southern part of Formosa was occupied by the Japanese forces.

Meanwhile, Mr. Yanagiwara had been sent as Japanese ambassador to China, in order to prevent any misunderstanding as to the objects of the expedition. A few days after his departure, the Chinese government lodged a protest with the Japanese foreign office, alleging that China had been assured by Mr. Soyejima that Japan would limit her action to an official remonstrance to the guilty tribe, and insisting on the immediate evacuation of Formosa by the Japanese forces.² Mr. Yanagiwara held several conferences, but, as he obtained no practical result, Okubo Toshimitsu, a leading member of the Japanese cabinet, was on October 1 sent to Peking as plenipotentiary, armed with full power to do whatever was necessary to the success of his mission. In his negotiations at Peking, he maintained the righteousness of the expedition and defended the occupation of southern Formosa, pointing out the right of civilized states under international law to occupy savage lands "out of the jurisdiction" of any independent power.³ The commissioners of the *Tsung-li Yamên* replied that the Chinese government had little to do with the "law of nations," declaring that such law regulated the affairs of Europe but not those of the Orient, and firmly asserted China's sovereignty over Formosa, on the strength of numerous proofs from historical records and official docu-

¹ *For. Rel.*, 1874, pp. 677 and 681.

² Ogawa, *Meiji-Gaiko-Yoroku*, p. 42.

³ *Gaiko-jihô (Revue Diplomatique)*, no. 50, p. 20. Count Okubo referred to Vattel, vol. i, chap. 18, par. 208; G. F. de Martens, vol. ii, chap. i, par. 37-38; Heffter, par. 70, and Bluntschli, par. 277.

ments.¹ The discussion continued until the Chinese government had recognized the justice of Japan's action and had offered to pay an indemnity on the withdrawal of the Japanese forces. The Japanese plenipotentiary then demanded 3,000,000 taels as the actual cost of the expedition, and in addition an indemnity for the families of the slain Loochooans and a treaty pledge for the future redress of savage outrages. Upon the refusal of the Chinese to agree to these demands, the Japanese plenipotentiary on October 25 sent to the *Tsung-li-Yamên* an ultimatum,² in which he declared "that, as the present case cannot be decided by argument, each country must go its own way and exercise its own right of sovereignty." While the Japanese representatives were preparing for their departure, Mr. Wade, the British minister at Peking, offered his mediation,³ with the result that a convention was signed at Peking on October 31, 1874, by which China agreed to pay to Japan 100,000 taels for the families of the men killed in 1871, and 400,000 taels on the complete withdrawal of her forces from Formosa. Although Japan did not recover a fifth of her expenses, yet, by her expedition, she made herself and other commercial nations secure from further attack by savages in oriental waters.

The Loochoo Complication.—After the Formosan affair, another complication arose between Japan and China, concerning the Loochoo Islands. The political status of the islands had, like that of Korea, been very obscure. These petty kingdoms in Asia, though they maintained *de facto* independence, had feebly preserved their existence from absorption by neighboring empires through their tributary re-

¹ *Gaiko-jiho (Revue Diplomatique)*, no. 51, pp. 80 and 86.

² Black, *Young Japan*, vol. ii, p. 442.

³ Moore, *International Arbitrations*, vol. v, p. 4857; *British and Foreign State Papers*, vol. 66, p. 422, and *For. Rel.*, 1875, p. 222.

lation to Japan and China. It is said that, in the middle of the twelfth century, the Minamoto general, Tanetomo, exiled to the island of Idzu, made his way thence to Loochoo and, having quelled a civil war then raging in the islands, placed his son Shunten on the throne. Loochoo began to pay tribute to China as early as the first year of Hung-wa of the Ming dynasty (1372). She entered into a similar relation with Japan during the period of the Ashikago reign (1451). When the Loochoo government, in the beginning of the seventeenth century, neglected its tributary duties to Japan, Shimazu, the lord of Satsuma, in the fourteenth year of the Keicho era (1609 A. D.), sent an expedition to the island, and brought its king to Satsuma.¹ Since this event, Japan has claimed sovereignty over Loochoo. When Commodore Perry came to Japan, he asked the Japanese commissioner to open Napa-Keang, the capital of Loochoo, for American ships. The reply was that "Loochoo is a very distant place, and a definite answer cannot be given."² From this answer the Commodore, inferring that he could freely enter into treaty negotiations with Loochoo, as if it were an independent kingdom, concluded a treaty of amity on his way home, on July 11, 1854.³ This example was followed by France and by the Netherlands.

After the Restoration in 1868, the imperial government, being busily occupied with the Korean question did not concern itself with Loochoo until June, 1872, when the Loochoo government reported to Governor Oyama, of Satsuma, the massacre of the shipwrecked Loochooans at Formosa. The government, availing itself of this opportunity, ordered

¹ See Satow's note on Loochoo, *Transactions of the Asiatic Society of Japan*, vol. i, pp. 1-2.

² *Senate Doc.*, 2d Session, 33d Cong., no. 34, pp. 130 and 139.

³ *Ibid.*, p. 174.

Sho-tai, king of Loochoo, to proceed to Tokyo in order to offer congratulations to the Mikado upon the Restoration.¹ The king excused himself on the ground of illness, but sent the young prince, who arrived at Tokyo on September 13. The prince being respected more than the ordinary daimio, or nobility, he was received, with his suite, by the department of foreign affairs. In September, by successive imperial ordinances, Sho-tai, king of Loochoo, was privileged to join the *Kazoku*, or noble class, with gifts of a residence in Tokyo and 30,000 yen; the originals of his treaties with the United States, France and the Netherlands he was ordered to hand over to Japan; and all diplomatic affairs were directed to be in the future administered by the Japanese foreign office.² When Mr. De Long, the American minister at Tokyo, inquired as to the effect of these measures on the treaty relations of Loochoo with the United States, the reply was made that the provisions of the treaty would be observed by Japan.³ In September, 1873, Japan, at the request of the Italian government, granted most-favored-nation treatment to its subjects in Loochoo.⁴ By the settlement of the Formosan trouble in 1874, China tacitly recognized the sovereign rights of Japan over the Loochoo Islands.

Although these facts confirmed the political dependence of the Loochoo Islands on Japan, *de facto* and *de jure*, Japan had not interfered with their tributary relation to China. After the Formosan affair, however, the Japanese government decided to annul this relation. By ordinances in 1875

¹ Ogawa, *Diplomacy of the Meiji Era*, p. 64.

² *Horei-Zensho* (1872), pp. 200 and 505.

³ Ogawa, *Diplomacy of the Meiji Era*, p. 66; *For. Rel.*, 1873, part 1, p. 555.

⁴ *British and Foreign State Papers*, vol. 65, p. 740.

and 1876, a governor was installed, protected by military guards; the king was required to renounce his Chinese investiture as well as the payment of tribute to China, and to substitute the Japanese calendar for the Chinese; and the Japanese courts were ordered to administer justice in the islands. The pro-Chinese officials were unwilling to renounce their Chinese allegiance, and envoys were sent to China and Japan to solicit the privilege of bearing a joint allegiance. The appeal was rejected by the Japanese government, and the young prince, the Loochoo envoy, applied in vain, in 1876, to the ministers of the United States, Netherlands, France and China at Tokyo, to exercise their good offices.¹ In 1878 the Chinese government, which did not desire to act alone, solicited the good offices of the United States.² In the following year, General Grant, while on his journey around the world, offered his mediation, but it brought no practical result.³ Japan declined to make even the slightest concession. By a proclamation in March, 1879, she incorporated the islands into the general administration,⁴ and, by a proclamation in 1880, she assumed liability for the public debt of the islands contracted since 1844.⁵ The efforts of General Grant, however, brought Japan and China into negotiation, and in October, 1880, a treaty was drawn up, but the Chinese representatives afterwards refused to sign it.⁶ Eventually, China seems to have acquiesced in the Japanese claim.⁷

¹ Ogawa, *Diplomacy of the Meiji Era*, p. 69.

² *For. Rel. of U. S.*, 1879, p. 607.

³ Moore, *International Arbitrations*, vol. v, p. 5047.

⁴ *For. Rel.*, 1879, p. 637. See also *Horei-Zensho*, 1879, no. 40.

⁵ *For. Rel.*, 1880, p. 686.

⁶ *For. Rel.*, 1881, p. 230.

⁷ Moore, *International Arbitrations*, vol. v, p. 5048.

Japan's Policy to open Korea to the World.—Korea, though she had long held a vassal relation to Japan and China, gradually neglected her duty to Japan after the invasion of Taidsoong, of the Manchu dynasty in 1634, and her tribute to Japan finally ceased after the eighth year of the Bunka era (1811).¹ Yet, the Lord-Governor So, of Tsushima, maintained undisturbed the usage of *Saikensen*—the custom of sending a certain number of Japanese junks to Fusan, a southern port of Korea, for the barter of the national products of the two nations. After the revolution of 1868, Lord So was sent to Korea, as an envoy, formally to announce the resumption by the Mikado of the imperial sovereignty and to invite the Koreans to re-establish the old relations.² As the So mission obtained no satisfaction, the Japanese government in the following year sent three commissioners to investigate the internal condition and foreign relations of Korea. It was represented that the secret designs of Russia, coupled with Chinese control in the peninsula, would endanger the existence of the Hermit Nation, and that it was of vital importance to Japan to take measures for its preservation.³ The envoy Hanabusa was sent, with two men-of-war, in 1872, to open the peninsula, but he returned disappointed. Previously attempts of France and the United States, in 1866 and 1871, had likewise failed.⁴ The obstinacy of the Koreans so incensed General Saigo that he insisted upon an immediate expedition for their chastisement, but a majority of the cabinet voted to try “the subtle movement of diplomatic finesse.” As soon as the Formosan question was settled, General Kuroda and Count Inouye, escorted by several

¹ *Gaiko-Shiko*, p. 65.

² *Horei-Zensho* (1868).

³ Ogawa, *Diplomacy of the Meiji Era*, p. 83.

⁴ *Dip. Cor.*, 1867, part 1, p. 426. *For. Rel.*, 1871, pp. 142 *et seq.*

men-of-war, were despatched, in December, 1875, to Korea, and, after many patient struggles, making the tactics of Commodore Perry and Townsend Harris their own, they finally succeeded in concluding a treaty of amity and commerce on February 26, 1876.¹

By this treaty, which has much political significance, it was declared that "Chosen [the Japanese name of Korea] being an independent state, enjoys the same sovereign rights as Japan," and the Chinese claim of suzerainty was formally ignored. The right of permanent embassy at Seoul and Tokyo was recognized. A promise was made to open two ports to Japanese trade. The consuls of Japan were permitted to reside at the open ports and administer justice to Japanese. The treaty also provided that the "official establishment of Japan" at Sorio, in Fusan, which was originally opened to commercial intercourse by Lord So, and the "practice of *Saikensen*," should be abolished, and that the Japanese trade at Fusan should be conducted in accordance with treaty regulations. Korea, by her trade regulations with Japan,² prohibited the importation of opium, as Japan had done under the advice of Townsend Harris.

It was the policy of the imperial government, whose objects were commercial and not territorial, to secure the perfect independence of the Hermit Nation and to lead it into the light of modern civilization. This policy Japan made every effort to carry out. As soon as Fusan, Wongsan and Chemulpo were opened, Japanese merchants swarmed to the ports to trade. For purposes of administrative improvement and military training, numerous Japan-

¹ *British and Foreign State Papers*, vol. 67, pp. 530 *et seq.*

² A supplementary treaty and trade regulations were concluded on August 27, 1876. *Ibid.*, pp. 1269 *et seq.*

ese advisers and instructors were employed by the Korean court. Youths were sent to Japan to be educated. The Japanese minister, seconding the efforts of the progressive party, advised the Korean king to grant the request of other nations for treaty relations. These innovations aroused the intense opposition of the conservative or anti-foreign party, in which Taiwon-Kun (father of the king), and the Min family (from which the queen came), were the chief figures; and on July 23, 1882, a mob, directed by a "scholar" of the orthodox school, named Pe Lo-kuan, attempted to seize the king and his ministers and frantically attacked the Japanese legation. Mr. Hanabusa, the Japanese minister, escorting the women and children of the legation, made his way with difficulty through the darkness to Chemulpo, whence, escaping by boat, he was taken to Nagasaki by the "Flying Fish," an English man-of-war. The Japanese government promptly despatched three cruisers, as an escort to Minister Hanabusa, to demand reparation. At the same time, China sent several warships, and sought to arbitrate the difference, in the capacity of protector of Korea.¹ Japan, however, disregarding the pretensions of China, immediately entered into negotiations with the Korean government, and on July 27, 1882, concluded the famous "Convention of Chemulpo."² By this convention, the Korean government was to punish the perpetrators of the recent outrage, to pay 550,000 yen as an indemnity, and to send an apology to Japan by a special embassy. More important still was the following clause:

Some Japanese soldiers may be kept in the Japanese legation

¹ Ogawa, *Diplomacy of the Meiji Era*, p. 108.

² The text of the Chemulpo convention is given in Ogawa, *Diplomacy of the Meiji Era*, p. 117; a general account is given in the *New York Tribune*, Oct. 2, 1882.

as a guard, their station being built at the expense of the Korean government, but they are to be removed one year hereafter, if the Korean people shall preserve order, and the Japanese minister finds it unnecessary to keep the guard.¹

China, however, still asserted her claim as protector of Korea. In the commercial regulations concluded between the two countries in September, 1882, it was declared that, "Korea having been, from ancient times, a tributary state, the canons of her intercourse in all matters with the government of China are fixed and need not be changed."² Yet the United States in 1882, Great Britain and Germany in 1883, and Italy and Russia in 1884, established commercial and diplomatic relations with Korea by treaty, as with an independent state.³

After the outrage of 1882, the Korean cabinet was once more organized by the progressive or pro-Japanese party and the Japanese troops were stationed at Seoul for the protection of their legation. China lost no time in counterbalancing the Japanese influence. Yen Shih-Kai, the most efficient colleague of Li Hung Chang, and a man of shrewd intellect, was appointed Chinese commissioner to Korea; Mr. Möllendorff, a German gentleman, who had once been personal secretary to Li Hung Chang, was recommended as adviser in foreign affairs; and 3000 Chinese soldiers were stationed at Seoul.⁴ These measures caused great anxiety at Tokyo. Steps were gradually taken to check

¹ *For. Rel.*, 1885, p. 343.

² *For. Rel.*, 1883, p. 173, contains text of treaty.

³ The American treaty with Korea may be found in *British and Foreign State Papers*, vol. 73, p. 586; the British and German treaties, *ibid.*, vol. 74, pp. 86 and 633; the Italian and Russian, *ibid.*, vol. 75, pp. 195 and 308.

⁴ Ogawa, *Diplomacy of the Meiji Era*, p. 116.

the growth of Chinese influence, and to overthrow the Chinese claim of suzerainty. When the Korean envoys, Kim-ok-ki and Pok-Eiko, came to Japan to make the apology required by the Chemulpo convention, they were cordially welcomed by the people and the government, and were strongly advised, by prominent statesmen of Japan, to adopt western civilization in order to form a stable and independent nation. The envoys took home with them several Japanese civil and military advisers; and the Japanese government, with a view to encourage the Koreans to adopt modern institutions, returned on November 11, 1883, for the purpose of establishing an educational fund, a part of the indemnity paid by Korea for the outrage of 1882;¹ just as the United States had contributed a part of the Shimonoseki indemnity to education in Japan.

In the course of administration, collisions between the progressive and conservative parties (the pro-Japanese and pro-Chinese) at the Korean court became inevitable. The reform policy of the progressive party was so radical that the reaction toward the conservatives brought on, on December 5, 1884, a *coup d'état*. The Japanese legation was again attacked by a Korean mob and Chinese soldiers. Thirty Japanese were killed and the legation was burned. Mr. Takezoye, the Japanese chargé d'affaires, barely escaped to Chemulpo. Count Inouye was immediately despatched to demand an explanation. The Chinese commissioner at Seoul claimed the right to arbitrate, by virtue of China's

¹ Ogawa, *Diplomacy of the Meiji Era*, p. 119.

² Taking advantage of the embroilment of China with France, the progressive party took a step towards sweeping reforms; they tried to kill Min Yong Ik, the prime minister, and to seize the government and control the person of the king. See Watanabe, *Tobo-Kankei (Relations of the Eastern Nations)*, p. 132. For a detailed account of the *coup d'état* see *For. Rel.*, 1885, pp. 332-342.

suzerainty;¹ but the representatives of Japan, declaring that the matter between Japan and Korea should be settled as between "two sovereign states, without any co-operation of a third power," concluded on January 9, 1885, a convention² by which Japan obtained substantially the conditions secured in 1882.

Not only was the Chinese claim of suzerainty thus disregarded, but Count Ito was sent to Tientsin to demand satisfaction from China for the part taken by Chinese soldiers in the attack on the Japanese legation at Seoul, and to provide, by diplomatic arrangement, against future aggressions by the Chinese in Korea. Negotiations between Count Ito and Earl Li were opened at Tientsin on April 3, 1885, but were prolonged upon the question of the equal right of Japan and China to send troops to Korea in the event of a disturbance.³ Li Hung Chang insisted upon China's special privilege by virtue of her alleged suzerain power, but Count Ito threatened to break off negotiations unless the equal rights of Japan were recognized. Troubled by the English occupation of Port Hamilton and the Franco-Chinese complication, the Chinese commissioner finally came to an understanding, and a convention was signed in April, 1885.⁴ The contracting parties mutually agreed to withdraw their troops from Korea and not to send any armed force to the peninsula in the future without previously giving notice each to the other. Li also handed to the Japanese embassy a note of apology for the Chinese attack on

¹ Ogawa, *Diplomacy of the Meiji Era*, p. 122.

² *British and Foreign State Papers*, vol. 76, p. 574; *For. Rel.*, 1885, p. 343.

³ Ogawa, *Diplomacy of the Meiji Era*, p. 145.

⁴ *British and Foreign State Papers*, vol. 76, p. 297; *For. Rel.*, 1885, pp. 563 *et seq.*

the Japanese in Seoul.¹ This was a diplomatic triumph for Japan, since she compelled China to recognize her equal right as to armed interference in Korea and thus again ignored China's claims of suzerainty.

Nevertheless, after the *coup d'état* of 1884, the Korean government was organized by the conservative party and Kim-ok-ki and Pok-Eiko sought refuge in Japan. Yen-Shih-kai, the Chinese commissioner, became the most influential figure in Seoul, and the foreigners regarded him as "Mayor of the Palace." In spite of the Korean-Japanese agreement in regard to telegraphic construction, China, in 1885, secured a concession to erect a telegraph line to Seoul and to control all telegraphs in the peninsula; and against this Japan vainly protested to the Korean government.² In 1888, the Chinese government more openly pressed its claim of suzerainty and tried to interfere with the sending of a Korean minister to the United States. President Cleveland, however, treated the Korean minister as the "representative of an independent state."³ In 1889 the Korean government, without previous notice, issued a decree prohibiting the exportation of beans to Japan. This act resulted in a loss of 140,000 yen to Japanese merchants, who had made advances to the Korean producers. Japan immediately demanded damages,⁴ but the claim was not discharged until 1893, owing to the interference of the Chinese commissioner at Seoul, who controlled the custom-houses in Korea. In April, 1894, Kim-ok-ki, the Korean

¹ Ogawa, *Diplomacy of the Meiji Era*, p. 149. The English text is given in *For. Rel.*, 1885, p. 564.

² *For. Rel.*, 1885, pp. 354 *et seq.* See also Watanabe, *Tobokankei*, pp. 269 *et seq.*, for an account of telegraph concessions to Japan.

³ *For. Rel.*, 1888, part 1, pp. 222, 381, 443.

⁴ For a detailed account of the rice exporting question, see Watanabe, *op. cit.*, pp. 265 *et seq.*

refugee in Japan, who was looked upon by the Japanese as the only man to reform the corrupt administration of Korea, was induced by the treacherous Koreans to proceed to China to consult Li Hung Chang concerning reform measures, and was assassinated by a Korean at Shang-hai.¹ This sensational crime was believed by the Japanese to have been effected by the connivance or with the aid of the Chinese, and it greatly stimulated the national indignation at the repeated acts of interference by China in the affairs of the peninsula.

The Chinese-Japanese War.—In the summer of 1894, the Tonghak rebels² rose in the province of Zenra, and, marching toward Seoul, got beyond the control of the government forces. On June 2 the government asked China to despatch troops to suppress the insurrection, whereupon Mr. Suki-mura, the Japanese chargé at Seoul, learning what had been done, requested his government also to send troops, so as to be prepared for possible emergencies.³ Five days later the Chinese government, in accordance with the Tientsin convention of 1884, informed Japan that it had despatched troops to the revolted district, but added: "It is in harmony with our constant practice to protect our tributary states by sending our troops."⁴ Viscount Mutsu, who was then minister of foreign affairs, protested against the phrase "tributary states," and declared that the imperial government had "never recognized Korea as a tributary state of China."⁵ Nor did Japan on this occasion wait for the ex-

¹ *Tobokankei*, p. 238.

² The Tonghak was an anti-foreign association, especially hostile to the Roman Catholics. Full information as to the revolt is given in *For. Rel.*, 1894, volume relating to the Chinese-Japanese war, pp. 5-17.

³ Ogawa, *Diplomacy of the Meiji Era*, p. 158.

⁴ Mr. Wang, Chinese minister at Tokyo, to Viscount Mutsu, minister of foreign affairs, Vladimer, *The China-Japanese War*, App. B, no. 1.

⁵ *Ibid.*, no. 2.

pulsion of her diplomatic representative, or the burning of her legation by Korean or Chinese soldiers, as in 1882 and 1884. On the contrary, Mr. Komura, her chargé at Peking, was instructed to state that his government, in view of "the existence of a disturbance of a grave nature in Korea," proposed to send "a body of troops to the peninsula."¹ At the same time, a force of 1000 men and a warship, the "Yayeyama," escorting Mr. Otori, the Japanese minister to Korea, left for Chemulpo, and arrangements were made to despatch several thousand more troops. Alarmed by Japan's action, China, on June 9, submitted the following protest:

Our country has despatched troops to Korea in compliance with an application from that country, for the purpose of assisting her to suppress the insurgents, and the measure is in accordance with the practice hitherto pursued by our country in protecting tributary states. Besides, the sole object being the suppression of insurgents in the interior, the troops are to be withdrawn as soon as that object is attained.

The sole object of your country in sending troops is evidently to protect the legation, consulates and commercial people in Korea, and consequently it may not be necessary, on the part of your country, to despatch a great number of troops, and besides, as no application therefor has been made by Korea, it is requested that no troops shall proceed to the interior of Korea, so that they may not cause alarm to her people.²

As the Chinese government thus ignored the equal treaty right of Japan to send troops to Korea, Mr. Komura was, on June 12, instructed to answer the *Tsung-li-Yamên* as follows:

The imperial government has never recognized Korea as a

¹ Vladimer, *The China-Japanese War*, App. B, no. 3.

² *Ibid.*, no. 4.

tributary state of China. Japan dispatched her troops in virtue of the Chemulpo convention, and in so doing she has followed the procedure laid down in the treaty of Tientsin. As to the number of troops, the Japanese government is compelled to exercise its own judgment. Although no restriction is placed upon the movement of the Japanese troops in Korea, they will not be sent where their presence is not deemed necessary.¹

Meanwhile, the Tonghak rebellion was nearly over, but neither the Japanese nor the Chinese troops were withdrawn from Korea.² Japan was in reality unwilling to withdraw her forces until she had secured such a measure of administrative reform as would enable Korea to preserve peace and order and to discharge her responsibility toward the treaty powers. With this end in view, Japan invited China, on June 17, to take joint action to restore the peace of the peninsula, first, by suppressing the Tonghak rebels, and secondly, after the disturbance was over, by appointing commissioners who were to be charged with the following duties: "(a) The examination of the financial administration. (b) The selection of the central and local officials. (c) The establishment of an army necessary for national defence, in order to preserve the peace of the land."³ China declined the proposal, and, insisting upon non-interference with the internal administration of Korea, suggested, on the strength of the Tientsin convention, the immediate withdrawal of the troops from Korea.⁴ Japan, however, on June 22, once more declared that it was impossible to withdraw her forces without securing the reforms

¹ Vladimer, *The China-Japanese War*, App. B, no. 5.

² *For. Rel.*, 1894, p. 21. "The king [of Korea] has begged the Chinese to leave, but they refuse to do so as long as the Japanese remain, and the latter positively refuse to leave until the Chinese go."

³ Vladimer, *op. cit.*, App. B, no. 6.

⁴ *Ibid.*, no. 7.

which she considered to be vital not only to the independence of Korea but also to her own commercial and political interests.¹

In this dilemma, Japan gradually determined to assume the responsibility of her policy at any cost, and to solve the Korean question, which had so long been at stake, if necessary, without consulting the Chinese government. Mr. Otori, the Japanese minister at Seoul, was therefore authorized to do whatever he deemed requisite for the attainment of measures of reform. As a first step, he demanded of the Korean government a definite answer to the question whether Korea was "tributary to China" or an independent state.² On June 30 he received an answer to the effect that Korea was an independent state, and he then immediately entered into negotiations. He advised the Korean government to reform its corrupt administration, both in respect of the organization of the government and the method of appointing officials; to regulate the tax system and exploit the national resources; to readjust the old system of courts of justice; to re-organize the military and police force on a national basis; and to adopt universal education and send abroad a certain number of young men for higher education.³ His advice was formally accepted, but he was requested to withdraw the Japanese troops. He declared this to be impossible till the reform measures had been carried out; and on July 19 he further demanded, (1) that the Korean government on the strength of the Chemulpo convention furnish an adequate building for the accommodation of the Japanese soldiers; (2) that it drive out the Chinese soldiers who were unreasonably despatched to Ansan; (3) that it allow Japan to guard with her troops

¹ Vladimer, *op. cit.*, App. B, no. 8.

² *For. Rel.*, 1894, p. 28.

³ *For. Rel.*, 1894, p. 35.

the military telegraph between Seoul and Fusan; (4) and that it abrogate all agreements with China which conflicted with the sovereign rights of Korea.¹ The Korean government, which was still dominated by the conservative party at first refused to comply, but, in the presence of Japan's determined attitude, was practically helpless. Kim-Yun-Sik and his colleagues of the progressive party were summoned to re-organize the king's cabinet; and Tai-Om-Kun, the father of the king, who was originally a conservative, but now favored reform, was invited to conduct the administration of the kingdom. Japanese troops were asked to guard the royal palace. On July 24 Korea finally abrogated her treaty with China and entrusted to the Japanese troops the expulsion of the Chinese forces occupying Ansan.²

The course of Japan tended to provoke China to immediate hostilities, but the Chinese government on July 3 requested Great Britain and Russia to use their influence to reconcile the existing differences.³ Li Hung Chang also specially asked, on July 8, the Washington government to take the initiative in urging the powers to unite in a request to Japan to withdraw her troops from Korea.⁴ At the same time the British ambassador at Washington inquired "whether the United States would unite with Great Britain in an intervention to avert war between China and Japan." The United States replied that it "could not intervene otherwise than as a friendly neutral" and "could not join another power even in a friendly intervention."⁵ A similar answer was made to the Korean and Chinese ministers at Wash-

¹ Ogawa, *Diplomacy of the Meiji Era*, p. 175.

² *Ibid.*, p. 177. See also *For. Rel.*, 1894, p. 56.

³ *For. Rel.*, 1894, p. 30.

⁴ *Ibid.*

⁵ *Ibid.*, p. 38.

ington. As a matter of fact, Mr. Dun, the American minister at Tokyo, "made a strong but friendly representation to Japan in the interest of peace."¹ The United States, however, soon perceived that Japan could not be diverted from her purpose. It is said that from time to time the ministers of Great Britain and Russia at Tokyo separately requested the withdrawal of the Japanese troops from Korea,² but their interposition did not go beyond diplomatic remonstrance.

Meanwhile, the relations between Japan and China became more and more strained. On the morning of July 25, three Japanese men-of-war had an engagement with several warships of China near the island of Sho-pai-oul. Two hours later the steamer "Kowshing," under the British flag, carrying Chinese reinforcements to Ansan, was fired upon by the "Naniwa," a Japanese man-of-war. The war thus began *de facto*, on July 25, without a declaration on either side, but declarations were formally issued by Japan and China on August 1 and 2, respectively.³ On August 20, Japan concluded a treaty of alliance with Korea in order "to expel the Chinese forces from the Korean kingdom, and to establish the independence of Korea." By this treaty, the Japanese forces were "to attack the Chinese" and the Koreans were "to exert the utmost efforts in all possible ways to facilitate the movement of the Japanese troops, and to prepare provisions for these troops."⁴ This treaty was to expire as soon as Japan had concluded peace with China.

¹ *For. Rel.*, 1894, p. 39.

² Ogawa, *The Diplomacy of the Meiji Era*, pp. 165 *et seq.* and 171 *et seq.*

³ Vladimer, *The China-Japanese War*, App. D.

⁴ *For. Rel.*, 1894, p. 94; Ariga, *La Guerre Sino-Japonaise*, p. 277.

The Peace of Shimonoseki and the New Commercial Treaty with China.—The Japanese were successively victorious at the battles of Ansan, Ping-Yang, and the Yellow Sea, and, while they were planning the invasion of Manchuria, China asked the great powers of Europe to intervene for the purpose of compelling Japan to conclude peace. On October 6, 1894, Great Britain invited the United States "to join with England, Germany, France and Russia in intervening between China and Japan," the basis of such intervention to be "that the independence of Korea should be guaranteed by the powers and that Japan should receive an indemnity for the expense of the war."¹ The United States replied that, "while the president earnestly desires that China and Japan shall speedily agree upon terms of peace alike honorable to both, and not humiliating to Korea, he cannot join [the powers] in an intervention, as requested." Meanwhile, Port Arthur was besieged by the Japanese, and China again appealed, on November 3, to England, France, Germany, Russia and the United States for their assistance in establishing peace.² The United States, acting independently, tendered its good offices to both belligerents. England also sounded Japan as to mediation. But the Japanese government, while appreciating these friendly overtures, declined to accept them, for the reason that the war had "not made sufficient progress to insure a satisfactory result of negotiation," since China had not yet found herself "in a position to approach Japan directly on the subject of peace."³

Several days after the fall of Port Arthur, the Chinese government took the initiative in making overtures for

¹ *For. Rel.*, 1894, p. 70.

² *For. Rel.*, 1894, pp. 73 and 74-75.

³ *For. Rel.*, 1894, p. 79.

peace. Mr. Detring, commissioner of customs at Tientsin, came to Kobe, on November 26, as a special commissioner with a letter from the viceroy, Li Hung Chang, to Count Ito, the premier, and requested the governor of the Hyogo prefecture to obtain for him a conference with Count Ito as to the preliminaries of peace. After some delay, Mr. Detring was informed that his mission was not recognized, as he "was not properly accredited by the government of China."¹ While Japan was planning the assaults on Wai-hai-wei, Newchwang and Mukden, China informed the Japanese government, on December 23, through the American minister at Tokyo, that she had appointed Messrs. Chang In Hoon and Shao Yu Lien as plenipotentiaries to negotiate a peace. The Japanese government promised to appoint plenipotentiaries to meet them at Hiroshima, where the imperial general staff and the cabinet were then established. The Chinese plenipotentiaries arrived on January 31, 1895, accompanied by Messrs. Wu-Ting-Fang and John W. Foster, and on the next day held their first conference with the Japanese plenipotentiaries, Count Ito, the premier, and Viscount Mutsu, minister of foreign affairs, at the prefectural building. Upon the exchange of powers, those of the Chinese plenipotentiaries were found to be inadequate, since they authorized them to conclude nothing, but merely to act *ad referendum* to Peking.² At the next conference, therefore, Count Ito declined to proceed further,³ but intimated that, in case China should send representatives duly clothed with full powers, negotiations would be re-opened. The Chinese plenipotentiaries then returned home, having accomplished nothing.

At this stage of the war, Japan having been completely

¹ *For. Rel.*, 1894, pp. 83, 92, 93.

² *Ibid.*, p. 101.

³ *Ibid.*, p. 102.

victorious, it was not to be expected that China could obtain peace without substantial sacrifices; and it was natural that Japan should wish her to appoint a plenipotentiary who would not only be invested with full power, but who would also be so influential as to be able to assume the responsibility of the negotiations. It is said that Count Ito hinted to the Chinese representatives, in private conversation, on the eve of their departure, that the presence of the viceroy Li Hung Chang was desirable.¹ The strong fortress of Wei-hai-wei had fallen and Japan was concentrating her army and navy at the mouth of the Gulf of Pechili for a direct assault on Peking. Under these circumstances, the viceroy Li Hung Chang was sent out as ambassador plenipotentiary by China, with a suite of a hundred and thirty persons accompanied by Lord Li Ching Fang, an adopted son, and Messrs. Wu and Foster. On March 20 the first conference was held at Shimonoseki, and credentials were formally exchanged. Earl Li asked for an armistice as a preliminary to peace negotiations, but the conditions imposed by Japan were so onerous² that, at the second conference, he abandoned the subject and requested Count Ito to enter upon peace negotiations immediately. Unfortunately, while Earl Li was leaving the conference on March 24, he was fired upon and wounded by a Japanese fanatic named Koyama, who in his madness imagined he would benefit his country by assassinating "the strongest statesman of China." The imperial government and the people did their utmost to

¹ Count Ito became acquainted with Mr. Wu when he concluded the Tientsin convention with Earl Li in 1885.

² Ariga, *La Guerre Sino-Japonaise*, p. 250. The conditions were to surrender the fortresses of Tark, Tientsin, Shan-hai-kwan, with their munitions and provisions, to the Japanese troops, to put the Tientsin-Shan-hai-kwan railway under control of military officers of Japan, and to bear all expenses of the Japanese force during the armistice.

atone for this disgraceful act; the emperor sent his own physician, and the empress prepared with her own hands the bandages for the distinguished invalid; the governor and the chief of police of the prefecture were dismissed; and more than ten thousand letters of sympathy were sent in the course of a week from all parts of the empire to the stricken ambassador. Soon after the accident, the emperor ordered his plenipotentiaries to grant an armistice without the previous heavy conditions, and on March 30 an armistice to last twenty-one days was concluded for the provinces of Mukden, Pechili and Shan Tung.¹ Meanwhile, the condition of Viceroy Li had so much improved that he informed Count Ito that he would resume negotiations with the aid of Lord Li Ching Fang, his adopted son.

Japan's first draft of a treaty of peace was submitted on April 1.² China was asked to recognize the absolute independence of Korea; to cede that portion of the southern province of Shengking (Liao-Tung peninsula) lying between the rivers Yalu and Liao up to 41° north latitude, as well as Formosa and the Pescadores Islands; to pay an indemnity of three hundred million taels; to conclude a new commercial treaty based upon existing treaties of China with European nations; to grant to the Japanese in China the rights and privileges accorded to the most-favored nation until the new commercial treaty should come into force; to open seven new ports and four waterways to foreign trade; to modify the customs regulations and especially the "likin system;" and to grant to the Japanese the right freely to engage in "all kinds of manufacturing industries in China." As a guarantee of the faithful performance of the treaty, Mukden and Wei-hai-wei were to be temporarily occupied

¹ Ariga, *La Guerre Sino-Japonaise*, p. 251.

² Vladimer, *The China-Japanese War*, pp. 405-411.

by Japanese troops. Five days later, the Chinese plenipotentiary presented an elaborate memorandum, in which he stated his objections especially to the large indemnity, to the territorial cessions, and to the customs revision.¹ The Japanese plenipotentiaries demanded a reply in a more "concrete form," and on April 9 the Chinese plenipotentiary submitted a counter-proposal by which Korean independence was to be guaranteed by both countries, the territorial cessions were to be limited to the Pescadores Islands and several districts in Shengking, the indemnity was to be reduced to a hundred million taels without interest, the Japanese troops were to be temporarily stationed only at Wei-hai-wei, and China and Japan were to agree to submit any subsequent disputes to the arbitration of a friendly power "in order to avoid future conflict or war."² In view of this counter-proposal, Japan next day modified her original draft in certain particulars.³ The cession of territory in Shengking was to be decreased by drawing a line through Fenghuang, Haichang and Yingkou; the indemnity was to be reduced to two hundred million kuping taels; the ports and waterways to be opened to foreign trade were to be reduced to four and two, respectively. Japan also agreed to occupy only Wei-hai-wei as a guarantee, but refused to admit into the treaty any clause concerning arbitration. On the following day an ultimatum was sent by Japan.⁴ Earl Li appealed to the Japanese for further modifications, but on April 13 Count Ito answered: "It only seems necessary for me to say in response to your Excellency's note, that

¹ Vladimer, *The China-Japanese War*, pp. 411 *et seq.*

² For the text of China's counter-draft of treaty of peace, see *ibid.*, pp. 424 *et seq.*

³ *Ibid.*, pp. 429-431.

⁴ Vladimer, *The China-Japanese War*, p. 432.

the demands which I handed to your Excellency on the 10th inst., being final, are no longer open to discussion.”¹

Only a few days of the armistice remained, and the Japanese forces were concentrated, under the command of Prince Komatsu, at the mouth of the Gulf of Pechili, ready for the attack on Peking. Under such circumstances, Viceroy Li could do no more for his emperor and his country than accept the Japanese ultimatum, and the treaty of peace was signed at Shimonoseki on April 17, 1895.² The ratifications were to be exchanged at Chi-fu; but, on April 22, Russia, France and Germany, acting in alliance, advised Japan to restore the whole territory of the Liao Tung peninsula, as “the Japanese occupation of that territory not only endangered the existence of the Chinese capital and of Korean independence, but would upset the peace of the Orient.”³ The formidable squadrons of the three great powers were concentrated in the north of China, and prepared for an emergency. Excited Japanese officers insisted on forcibly resisting the interference of the triple alliance, while idealistic diplomatists proposed to submit the territorial question to an international conference of the great powers of Europe and America. But the naval forces of Japan, after hard wrestling with China, were unable to cope with the fresh squadron of the three powers, and an international conference would create another complication. The only practical answer was to accept the advice of the allies, and on May 3 Japan assured them that she was ready to renounce the permanent possession of the Liao-Tung

¹ Vladimer, *The China-Japanese War*, p. 436.

² *British and Foreign State Papers*, vol. 87, pp. 799 *et seq.*

³ Note of the Russian minister at Tokyo to the Japanese minister of foreign affairs, on April 23. Ogawa, *Diplomacy of the Meiji Era*, p. 213. See also Leroy-Beaulieu, *The Awakening of the East*, p. 247.

peninsula.¹ By a separate convention, China gave to Japan an additional indemnity of 30,000,000 taels in consideration of the restoration.² In the light of subsequent events it is matter for regret that Japan did not take advantage of the situation to exact from China a pledge that the Liao-Tung peninsula should not be occupied by any other power, especially as excellent precedent for such a course was provided by the pledge exacted from China by Great Britain upon the occasion of the evacuation by the latter of Port Hamilton.³ Had such a pledge been exacted one of the principal causes of the Russo-Japanese conflict would have been removed.

In accordance with the terms of the Peace of Shimonoseki, a new commercial treaty between Japan and China was signed at Peking on July 21, 1896.⁴ Its most significant feature was that the reciprocal form of the old treaty was replaced with the unilateral form. The new treaty recognized the consular jurisdiction of Japan in China and guaranteed to Japan most-favored-nation treatment in all that concerns consular jurisdiction, commerce, industry and navigation, but did not guarantee similar treatment to Chinese in Japan, except as to diplomatic agents.

Although the legitimate fruits of the war were snatched from Japan by the interference of the continental powers of Europe, the conflict produced important results. China was compelled to recognize Korean independence,⁵ which had

¹ Ogawa, *Diplomacy of the Meiji Era*, p. 227. See also Imperial Rescript of May 10, concerning the restoration of the peninsula, *British and Foreign State Papers*, vol. 87, p. 805.

² *Ibid.*, p. 1195.

³ *Infra*, p. 186.

⁴ Ogawa, *Diplomacy of the Meiji Era*, vol. 88, pp. 473 *et seq.*

⁵ China recognizes Korean independence by the first article of the Shimonoseki treaty. Korea also concluded a treaty of amity and commerce with China on an equal footing on September 11, 1899. *For. Rel.*, 1899, p. 492.

been at stake for two decades. Significant steps were also taken towards opening China to the world's commerce, especially by securing access to new ports and to waterways extending into the interior. The privilege was obtained of hiring or renting warehouses for the storage of articles purchased in the interior, and of transporting imported merchandise into the interior "without the payment of any taxes or exactions whatever." Foreigners were also permitted to "engage in all kinds of manufacturing industries in all the open cities, towns and ports of China," and it was stipulated that all these manufactured articles should "enjoy the same privileges and exemptions as merchandise imported by foreigners into China."

Treaty Relations with Siam.—Treaty relations between Japan and Siam were first established in 1887 when Prince Devawongse visited Tokyo and concluded a declaration with Mr. Aoki, vice-minister of foreign affairs.¹ By this declaration, provision was made for the exchange of ministers and the establishment of consulates, and for the encouragement of commerce and navigation. As both contracting countries then strongly aspired to judicial autonomy, and to the development of civilization on western lines, their treaty relations were somewhat different from those formed with China and Korea. The declaration did not recognize consular jurisdiction, but provided that, until a "complete convention" should be made, the subjects of each power should have in the dominions of the other full security of person and of property, and the right to "be treated in a fair and equitable manner."

A new treaty was concluded in 1899; and notwithstanding the fact that, while Japan had abolished foreign consular jurisdiction, Siam still retained it, the new treaty re-

¹ *British and Foreign State Papers*, vol. 79, p. 319.

cognized the territorial law of both countries.¹ By a separate agreement, however, Japan secured consular jurisdiction in Siam, except as to the laws of succession and marriage, until the codification of the laws of that country should be completed.² While Japan does not concede most-favored-nation treatment in the case of the Chinese and Koreans, the new treaty with Siam stipulates for reciprocal most-favored-nation treatment in commerce and navigation. A striking feature of the treaty is a provision for arbitration, in case the contracting parties cannot agree as to the interpretation of the treaty provisions.

Japan's readiness to recognize the judicial autonomy of Siam may serve to encourage the Siamese in their desire to enter into the "comity of nations."

¹ *British and Foreign State Papers*, vol. 90, pp. 66 *et seq.*

² *Ibid.*, pp. 70 *et seq.*

CHAPTER VIII

THE FAR EASTERN QUESTION, 1895-1900

Russo-Japanese Rivalry in Korea.—As soon as the war with China was over, Japan entered into international politics in association with western powers; and she at once began to play, especially with Russia in Korea, a significant part in the drama.

After the Crimean War, Russia, checked in her designs upon the Ottoman Empire and thus prevented from obtaining an outlet to the Mediterranean, determined to push her way to the Pacific. She secured, by the treaty of Peking in 1860, the possession of the Pacific coast of Manchuria from the Amur River to Vladivostock and the Korean frontier;¹ and in 1875 she finally acquired Saghalien Island from Japan in exchange for the Kurile Islands.² After her approach to the Mediterranean through the Balkan peninsula had been definitely blocked by the treaties of Paris, London and Berlin, for the reason that the great powers considered her advance in that direction dangerous to the integrity of the Ottoman Empire and to the balance of power in Europe as well, and after her route to the Persian Gulf and Indian Ocean through Persia or Central Asia had been closed by England, Russia decided to con-

¹ *British and Foreign State Papers*, vol. 53, pp. 970 *et seq.*

² *Dip. Cor.*, 1867, part 2, pp. 61 *et seq.* *For. Rel.*, 1875, p. 1065. See also Martens, *Traité*s, vol. ii, p. 582. Russia laid claim to the island of Saghalien in 1867, and secured possession of it by the treaty of 1875.

concentrate all her energies upon establishing her foothold on the Pacific Ocean. The Russian ministers at Peking and Seoul therefore moved hand in glove with Li Hung Chang, Yen-shi-gai, and Möllendorff; and this was true prior to the British occupation of Port Hamilton, a Korean Island, which had been, in 1885, occupied by the English government "in order to anticipate the Russian seizure" of Port Lazareff.¹ But Great Britain evacuated the island in 1887 on the strength of an assurance from China that "the Russian government would not occupy Korean territory under any circumstances."² In 1891, Russia commenced her gigantic undertaking for the construction of a trans-Siberian railway east to Vladivostock. She was not, however, satisfied with Vladivostock as her outlet on the Pacific, for the port is ice-bound more than half the year. Seeking a better terminal in the extreme Orient which might be free from this natural restriction, Russia cast longing eyes upon Korea and Manchuria. She secured from the Korean government, in 1893, an overland telegraphic connection between Korea and Siberia.³ Had Japan, as the result of the Shimonoseki treaty, obtained the Liao-Tung peninsula, fortified Port Arthur and Talienwan, and secured a free hand for the preservation of Korean independence, it would have been next to impossible for Russia to obtain a satisfactory outlet on the Pacific coast. It was therefore inevitable that Russia should come more and more to interfere in the Korean as well as in the Manchurian question.

Japan fought with China mainly for the reform of the corrupt administration of Korea, which was endangering Korean independence and menacing the interests of the

¹ Cordier, *Histoire des relations de la Chine*, vol. iii, p. 3.

² *Parliamentary Papers, China no. 1* (1887).

³ Curzon, *Problems of the Far East* (edition of 1896), p. 212.

world; and for the carrying out of her policy Japan had of course expected to assume the unavoidable responsibility. After the Chino-Japanese war broke out in July, 1894, numerous laws were introduced in Korea, and a "council of state" was instituted for the preparation of reform measures. On New Year's day of 1895, Li-Hsi, king of Korea, promulgated at the Ancestral Temple the fundamental law of the country,¹ which was regarded as a brief summary of its constitutional system, just as the Mikado had proclaimed the "imperial oath of five items" on the eve of the Restoration of 1868. By this law, Korean independence was again declared; the ruling power was affirmed to belong to the king alone, with the advice of his ministers and council; all administrative measures were to be executed according to law; the old feudalism and social classes were to be abolished; a new educational system was to be introduced. Hitherto, the queen and her relatives, the Min family (the old pro-Chinese party), had often interfered with the king and prevented reforms by their reactionary influence. The constitution, therefore, specially provided that "the queen and her relatives must not oppose these." Count Inouye, one of the founders of modern Japan, was sent to Korea as advisory commissioner. Pok-Eiko, a Korean refugee who had been in Japan since the insurrection of 1884, was now recalled and appointed to the post of minister of the interior. Numerous laws and ordinances regulating the details of every branch of the administration, including education, taxation and courts of justice, were issued, but the execution of this "busy legislation" was poorly performed. The reform party, led by Pok-Eiko, soon came into conflict with the Min party and the queen, and after plots and

¹ An English translation is given in Curzon, *Problems of the Far East*, p. 375.

counter-plots, Pok finally fled to Japan for safety. Meanwhile Count Inouye was replaced by Baron Miura, a man of decision and executive ability, but who lacked diplomatic tact, and Tai-Om-Kun, the father of the king, was once more called to the regency. The reform party, backed by new and active advisers and a strong regency, now undertook sweeping reforms, and, as the result of a plot led by Boku-Sen, the queen and her colleagues, who obstinately opposed all reform measures, were killed.

Russia, who had been watching for an opportunity to interfere in Korean affairs, professed to regard the recent plot as the treacherous work of the Japanese *Soshi*,¹ and exaggerated the insecurity of the Korean royal family. The conservative party, backed by Russian influence, again became active and now persuaded the king to shake off the Japanese influence and to depend upon Russian support. A secret attempt to remove the throne to the Russian legation had been prevented in December, 1895, by the national guard. Subsequently, the guard was sent to the revolted district in northern Korea. Taking advantage of its absence, the conservative party, on February 11, 1896, perpetrated a riot at the palace. Tai-Won-Kun was killed, the king and the heir-apparent were taken from the palace and were received in asylum at the Russian legation, which was guarded by Russian marines who had landed the day before at Chemulpo. The cabinet ministers were declared guilty of treason and a new cabinet was organized exclusively of the pro-Russian party led by Min-Chong-Mok.² The result of the recent *émente* was that all reform measures and improvements, undertaken by Japanese advice, were utterly annulled. To prevent the further encroachment of Russian influence in Korea, there was no other course left

¹ A sort of Japanese outlaws.

² *Annual Register*, 1896, p. 351.

open to Japan than that of negotiation with her rival. The Komura-Waerber memorandum was therefore concluded at Seoul in May, 1896, and the Yamagata-Lobanow protocol at St. Petersburg, in July, when Marquis Yamagata attended the Czar's coronation.¹ By these agreements the contracting parties engaged that their representatives should give "friendly advice" to the Korean king to return to his palace from the Russian legation, while the Japanese representative was to give an assurance that the most complete and effective measures would be taken for the control of the Japanese *Soshi* at Seoul. Japan was also required to limit the number of her troops in Korea to a thousand, for the protection of her telegraph line between Fusan and Seoul and of her settlements in the capital and in the open ports of Fusan, Wongsan and Chemulpo. On the other hand, Japan recognized the right of Russia to keep troops in Korea as well as her concession to construct a telegraph line between Seoul and Siberia. Russia also obtained the right to advise Korea concerning financial and military matters as freely as Japan.

It must be frankly admitted that the Japanese advisers, in their reforming zeal, made a gross error in introducing into Korea radically new institutions for which there was no desire and which conflicted with established customs and traditions. Not only are the Koreans less adaptable than the Japanese, but they are, on the contrary, peculiarly impervious to new ideas. Even the Japanese assimilation of modern institutions was the work of several decades. It is no wonder then that the radical reforms attempted in Korea provoked antagonism to Japan among the conservatives and finally opened the way to the active interference of Russia in Korean affairs.

¹ *British and Foreign State Papers*, vol. 88, pp. 471-472.

King Li-Hsi, after receiving many petitions from the people, left the Russian legation for his palace in February, 1897, but the progress of Russian influence was not checked. M. Speyer, the new Russian minister at Seoul, is said to have obtained a promise from the Korean government that the Korean army should be trained by Russian instructors, in spite of the objections of the king, who feared that international complications might result.¹ Not only did Russia seek military control, but she also sought to take charge of the finances of Korea. A secret agreement is said to have been concluded on November 5, 1897, under which M. Alexieff, the secretary of the Russian legation, was to be appointed financial adviser to the Korean government, and Mr. Brown, a British subject, was to be dismissed from his office in the custom house.² At the same time, the so-called Russo-Korean Bank, a branch of the Russo-Chinese Bank, was established at Seoul. So pervasive indeed had Russian influence become that Korean independence seemed to be little more than a name.

Meanwhile, Japan, though she had failed in her attempted reforms, was quietly and patiently preparing to oppose the Russian domination. In 1897 an extraordinary increase was made in her budget for the army and navy.³ On the other hand, her subjects, in order to gain a firm footing in the peninsula, were developing the commercial and industrial privileges which had been granted by the various treaties. At the same time Great Britain immensely increased her fleet in the Orient, as a counter-check to Russian activity in north China, and, when Mr. Brown was dismissed

¹ *The Far East* (a Japanese periodical published in English), vol. ii, p. 533.

² *Ibid.*, p. 725. See also *Annual Register*, 1897, p. 362.

³ *Annual Register*, 1897, p. 363.

from the customs service, a part of the British squadron appeared at Chemulpo. There was also much speculation in the Japanese as well as in the English press as to the possibilities of an Anglo-Japanese alliance, while the Russian navy was concentrating in the Gulf of Pechili prior to the occupation of Port Arthur. No sooner, however, had Russia obtained a lease of the Kwan-Tung peninsula, including Port Arthur and Tai-Lien-Wan, from China, in March, 1898, than she prudently determined to abandon her intervention in Korea "in order not to add the powerful support [of Japan] to that of England."¹ The request of the Korean government for the withdrawal of the Russian financial adviser and the Russian military instructor was heeded, and even the Russo-Korean Bank was closed;² and on April 25, 1898, a very satisfactory protocol between Japan and Russia was signed at Tokyo.³ The contracting parties, definitely recognizing "the sovereignty and entire independence of Korea," agreed not to interfere in the affairs of that country, nor to take any steps to nominate military instructors or financial advisers without a previous mutual understanding. Russia especially pledged herself not to interfere with the peculiar development of the commercial and industrial relations between Japan and Korea, thus giving Japan a free hand, so far as her economic interests in Korea were concerned. As a result of this favorable agreement, Japanese syndicates were enabled to obtain from the Korean government a definite grant of the concession of the Fusan-Seoul railroad, a first claim to

¹ Leroy-Beaulieu, *The Awakening of the East*, p. 272.

² *The Far East*, 1898, vol. iii, p. 332.

³ *Gaiko-Jiho (Revue Diplomatique)*, Tokyo, vol. i, no. 5, p. 27. *For. Rel.*, 1898, p. 473.

which they had previously obtained in 1894.¹ They also bought up the Seoul-Chemulpo concession which had originally been granted to Mr. Morse, an American citizen.²

The coincidence of the Russian recession from Korea with the Russian occupation of Port Arthur would seem to indicate that Russia then thought that she could secure freedom of action in the Pacific by the fortification of Port Arthur and the building of the Manchurian railway. From a strategic point of view, however, her line of water communication between Vladivostock and Port Arthur was obviously unsafe without a naval station or a coal depot on the Korean coast, since it could at any moment be cut by Japan, who was energetically increasing her naval force and who had fortified the strait of Tsushima as a wedge in the Russian waterway. Russia therefore renewed her activities in Korea, but under the guise of private transactions in order to avoid the protest of Japan. On May 1, 1899, the Korean government opened the harbor of Masanpho, thirty miles from Fusan. Masanpho is one of the finest harbors in Korea, and is protected by Koje Island, facing Tsushima Strait. Five days after the opening of the harbor, M. Pavloff, the Russian representative at Seoul, while on his way to Russia on leave, met at Masanpho Admiral Makaroff, the famous strategist, and after a thorough survey of the coast and harbor they selected a large tract on the shore—a most available strategic site—which M. Pavloff informed the local authorities would soon be purchased by the Russian Steamship Company for a dock and coaling station. Before the legal formalities were completed, the owner of the land sold it for a higher price to Japanese. The Russian

¹ Rockhill, *Treaties and Conventions with, or concerning, China and Korea* (1894-1904), pp. 453 *et seq.*

² *Ibid.*, pp. 450 *et seq.* The text of the original contract between Mr. Morse and the Korean government is given.

government demanded of the governments of Japan and Korea that the land be restored to the original contractor,¹ but they replied that they had no right to interfere in legitimate transactions between Japanese and Korean subjects.² The resulting irritation gave rise to persistent rumors of war in the European press as well as in the Japanese. Fortunately, however, the year 1899 passed away without a collision.

M. Pavloff returned to Seoul on March 19, 1900, and presently demanded from the Korean government the cession to the Russian Steamship Company of "Atkinson's Point," commanding the entrance of Masanpo harbor. At the same time he required that Korea should hold on to Koje Island, so as to keep it out of the counter-occupation of the Japanese. Meanwhile the Russian Rear Admiral Hildebrand, came to Chemulpo with several men-of-war. His appearance was regarded by the Japanese as a repetition of what preceded the Russian occupation of Port Arthur, and again there arose a wild rumor of war; but, as the Korean government, acting on Japan's advice, remained firm, Russia somewhat modified her terms, and agreed to take a lease within the foreign settlement of Masanpho, Korea giving her pledge not to alienate Koje Island.³ Russia is said further to have obtained the right to use her leased lot for a coaling station and a naval hospital for her Pacific squadron,⁴ but this did not necessarily impair the sovereign rights of Korea, nor the interests of Japan or of any other treaty power, since similar concessions might be obtained by the other powers within the foreign settlement.

¹ *Revue française de l'étranger et des colonies*, 1900, vol. 25, p. 396.

² *Gaiko-Jiho (Revue Diplomatique)*, Tokyo, 1900, no. 26, p. 45.

³ *International Year Book*, vol. of 1900, p. 255.

⁴ *London Times*, May 5, 1900, p. 5, Peking correspondence.

The other powers, however, would not have kept silence, had Russia fortified the leased territory or stationed her forces therein.

The Struggle of the Great Powers in China—Spheres of Interest.—The Liao-Tung peninsula, being barren land, is economically valueless, but it is of vital importance to Japan for the preservation of Korean independence against the possible encroachments of China or Russia, because it includes the magnificent naval station of Port Arthur, and the fine port of Tailien-Wan, which is situated in a dominant position in the Yellow Sea between China and Korea. For this reason, Japan had sought to obtain the Liao-Tung peninsula by the treaty of Shimonoseki; but she was forced by Russia, France and Germany to restore it on the ground that her possession of it “would be detrimental to the lasting peace of the Orient.” Russian interference would be theoretically justified so long as it respected this principle, but in reality its aim was to obtain the peninsula for Russia herself. France and Germany supported her against Japan on account of political relations in Europe, and, wishing “to gain the good graces of the czar,” “they both answered all proposals which came from St. Petersburg favourably.”¹ Besides, they seem also to have expected handsome concessions from China as a reward for their attitude. Their action produced a great change in the situation in the Far East. The preponderant influence previously held by Great Britain in China was superseded by that of Russia, France and Germany; and, while the antagonism between Russia and Japan became more pronounced the relations between Great Britain and Japan began to grow closer.

After the war with Japan, when the Chinese government was confronted with the question of how to pay the

¹ Leroy-Beaulieu, *The Awakening of the East*, p. 248.

heavy indemnity imposed by the treaty of Shimonoseki, Russia seized the opportunity to strengthen her position in China by doing a favor to the "sick man." Herself heavily burdened with a foreign debt of more than £240,000,000, she could not directly make an adequate loan to China; but, under the able management of the "financial diplomat," M. de Witte, then minister of finance, the Russian government, on June 24, 1895, gave its guarantee to a syndicate, mainly composed of French financiers, to furnish China a four per cent loan of 400,000,000 francs.¹ The services repeatedly rendered by Russia to China could not fail to be appreciated by the latter. Count Cassini, the foremost diplomat of the czar, is said to have succeeded, while Russian minister at Peking, in concluding a secret arrangement, known as the "Cassini convention," between the Russo-Chinese Bank and China, for the construction of a railway in eastern China. According to this agreement, which is said to have been confirmed when Li Hung Chang attended the czar's coronation in 1896,² Russia was to prolong the trans-Siberian railway into the "three Eastern Provinces" of Manchuria (art. 1), and to provide the funds in case China built a branch line from Kirin to Newchwang *via* Mukden (art. 3).³ China was to "follow the Russian rail-

¹ The details of the loan and the text of the contract are given in Cordier, *Histoire des relations de la Chine avec les puissances occidentales*, vol. iii, pp. 305-308.

² Krausse, *Russia in Asia*, p. 183.

³ The French text is given in Cordier's work, pp. 343 *et seq.*; the English text in Drace, *Russian Affairs*, pp. 663 *et seq.* According to Professor Cordier, the alleged convention consisted of two documents, one relating to the railway in Manchuria, negotiated between the Russo-Chinese Bank and China, the other to Kiao-Chou Bay, between Li Hung Chang and Prince Lobanoff at St. Petersburg. These two became confused and were generally known to the public as the "Cassini convention." See Cordier, *ibid.*, pp. 347-348.

way regulations" in case she built the line from Shan-hai-kwan to Port Arthur through Newchwang and Chinchou (art. 4). The railways to be built by Russia in China, and the Russian subjects engaged in building them, were to be protected by the local civil and military officials; although in the barren and sparsely inhabited territory where the Chinese authorities were not able to afford proper protection, Russia was to "be allowed to place special battalions of horse and foot soldiers at the various stations," (art. 5). The Russians, with the co-operation of the Chinese, were to be permitted "to exploit and open any mines" in the three provinces (art. 7); and Russian officers were to be engaged to instruct the Chinese forces in the "Eastern Provinces" (art. 8). The port of Kiao-Chou, in the Shan-Tung province, was to be leased to Russia for fifteen years, should Russia enter into hostilities with any power on the Asiatic continent (art. 9). China was to rebuild the forts at Port Arthur and Talien-Wan, while Russia was to help protect them against encroachment by other powers; China, besides, was not "to cede them to any power," but was to grant to Russia the right "to concentrate her land and naval force within the said ports," in case she became involved in war (art. 10). As the result of this agreement, the Chinese Eastern Railway Company¹ was formed by the Russo-Chinese Bank, and was authorized to construct a line across Manchuria, connecting the branch of the Trans-Siberian Railway from the Baikal region directly with Vladivostock, and thus reducing the originally estimated length of the railway by 568 miles.² Most significant of all, however, was the provision that all Russian imports by the

¹ The statutes of the Chinese Eastern Railway Company are given in *British and Foreign State Papers*, vol. 88, p. 773.

² Pierre Leroy-Beaulieu, *The Awakening of the East*, p. 72.

railway should be admitted at a rate of duty one-third less than that imposed at Chinese seaport custom-houses.

For her services in the triple intervention of 1895, France obtained from China, by the conventions signed at Peking on June 20 of the same year, the extension of her commercial concessions on the frontier of Cochin-China and certain concessions as to the boundary in that quarter.¹

Germany for a time kept quiet. She apparently thought that her services could not be requited within the ordinary bounds of diplomacy, and awaited an opportunity to demand a liberal reward. On the first of November, 1897, a Chinese mob attacked the German church at Yenchow, in the Shan-Tung province, and murdered two missionaries. This event furnished an occasion for the disclosure of Germany's commercial and naval ambitions in the Far East. In due time a German squadron commanded by Prince Henry, a brother of the Emperor William, entered the Kiao-Chau bay and occupied the place. The German example was quickly followed by other powers. Russia, in December, 1897, occupied Port Arthur and Tailien-Wan. Germany, on March 6, 1898, concluded a convention for the occupation of Kiao-Chau, and on March 27 a similar convention was made by Russia as to Port Arthur and Tailien-Wan. Kiao-Chau bay and the adjacent territories were, by the first convention, leased to Germany for a term of ninety-nine years with the right to construct fortifications, to establish a naval and coaling station, and to build a dockyard. Germany further obtained the concession of a preferential right to construct railways and to exploit mines throughout the Shan-Tung province.² Russia obtained a

¹ Leroy-Beaulieu, *op. cit.*, p. 259. For the text of the convention, see Cordier, *op. cit.*, vol. iii, pp. 163 *et seq.*; Rockhill's edition, pp. 21 *et seq.*

² The full German text is given in *Das Staatsarchiv*, vol. 61, pp. 1 *et seq.* See also *Parl. Papers, China no. 1* (1899), pp. 69 *et seq.*

lease of Port Arthur, Tailien-Wan and the adjacent waters for twenty-five years, with the right to erect fortifications and to establish naval and military stations. Moreover, the Russo-Chinese Bank was authorized to construct a branch line of the Trans-Siberian Railroad through Manchuria to Tailien-Wan and to Port Arthur.¹ Following the example of Russia and of Germany, France, on April 10, 1898, secured a lease of Kwang-chow-Wang, a bay on the south coast of China, for ninety-nine years as a naval station; the right to construct a railway connecting Tonquin with Yunnan-fu by the Red River; a pledge of the non-alienation of the three southern provinces and the appointment of a French subject as the director general of the Chinese post office.²

Toward these transactions, Great Britain assumed a self-defensive attitude, although, in her opposition to Russia and France, she co-operated to a certain extent with Germany and Italy. To counterbalance the loan policy of Russia of 1895, Great Britain, in 1896, gave her guarantee to the Hongkong and Shanghai Bank and the Deutsch-Asiatische Bank to enable them to float another Chinese loan of £16,000,000.³ She also obtained by a convention of February 4, 1897, certain important modifications of the boundaries of Burma and Thibet.⁴ Great Britain, though she has ever sought to maintain the balance of power against Russian encroachments in the Far East, never more openly displayed her traditional policy than in the case of the

¹ *Parl. Papers, China no. 1* (1899), pp. 128 *et seq.*

² *Ibid.*, p. 12. The full French text is given in Cordier, *op. cit.*, vol. iii, pp. 370 *et seq.*; its English translation in Rockhill's edition, p. 55.

³ *Consular Reports of the United States*, October, 1899, p. 328; Cordier, *op. cit.*, vol. iii, p. 303.

⁴ *Parliamentary Papers, Treaty Series*, no. 7, 1897; Rockhill's edition, pp. 40 *et seq.*

Russian occupation of Port Arthur. Recognizing the fact that Russia, in possession of a station like Port Arthur, in the Gulf of Pechili, near the Chinese capital, could easily overawe the Peking government and menace the interests of the other treaty powers in Manchuria, she immediately protested against the proposed acquisition. Russia pleaded that Port Arthur had been "temporarily lent" to her as a "winter anchorage for Russian vessels,"¹ but meanwhile, as the *London Times* reported, demanded from China the same rights over Port Arthur and Tailien-Wan as Germany had secured over Kiao-Chau, and threatened that, if an agreement was not signed within five days, to move her troops into Manchuria.² Alarmed by this report, the British foreign office demanded information as to what was going on. Count Mouravieff answered that Russia was negotiating for the lease of Port Arthur and Tailien-Wan, as "the possession of a port on an ice-free coast was a matter of vital importance to Russia," and that a part of Tailien-Wan would be open to foreign trade.³ The British government of course did not object to Russia's acquiring an ice-free harbor on the Pacific, so long as it remained a free commercial port like Hongkong; but the "military occupation or fortification of Port Arthur or any other harbors in the Gulf of Pechili" by Russia was another matter. Sir Claude Macdonald, British minister at Peking, warned China not to make such a concession, while Sir Nicholas O'Connor lodged a protest at St. Petersburg. But it was all in vain. Russia insisted and China yielded.⁴ The "balance of power in the Gulf of Pechili," declared the

¹ *Parliamentary Papers, China no. 1* (1898), pp. 9, 10 and 12.

² *London Times*, March 7, 1898.

³ *Parliamentary Papers, China no. 1* (1898), p. 43.

⁴ *Ibid.*, p. 53.

✓ Marquis of Salisbury, "is materially altered by the surrender of Port Arthur by the *Yamên* to Russia;"¹ but, being unwilling to go to war, the British government, with a view to counteract the new Russian advantage, demanded of China a similar concession, and, by advancing the money to pay off the Japanese war indemnity, secured on April 3, 1898, a lease of Wei-hai-wei, which was then occupied by Japanese troops as a guarantee.² Meanwhile, the French squadron had been manoeuvring near the harbor of Shanghai; but England had quietly secured from China on February 9, 1898, a promise not to alienate the rich valley of the Yang-tsze-Kiang,³ thus anticipating the demands of other powers. English influence, however, was also endangered in the south of China, where the fortification of Kwang-Chow Bay by France⁴ was likely to endanger Hong-Kong. To meet this danger, Great Britain on June 9, 1898, concluded the so-called "Hong-Kong Extension Agreement," by which China granted a lease for ninety-nine years of 400 square miles of territory in the peninsula of Kowloon, immediately opposite to Hong-Kong, on the same terms as the French lease of Kwang-Chow Bay.⁴ What Great Britain desired in China was to preserve the Celestial Empire as an open market for the world's commerce, in which all nations might have fair play; and if this policy was put in jeopardy or hampered by exclusive concessions, or by the predominant influences of particular powers, the only thing remaining for England to do was either to fight or to make counter-demands for similar concessions or for the exercise of a like influence. During the early part of

¹ *Parliamentary Papers, China no. 1* (1898), p. 54.

² *State Papers*, vol. 90, p. 16.

³ *Parliamentary Papers, China no. 2* (1898).

⁴ *British and Foreign State Papers*, vol. 90, p. 16.

1898, when the continental powers of Europe were pursuing exclusive aims in China, the "integrity of the empire," an "open door to the world commerce," and "equality of opportunity" were the watchwords in the House of Commons,¹ while demands for counter-concessions and for the maintenance of the balance of power in Pechili were advocated by Lords Salisbury and Kimberley, and by Messrs. Balfour and Curzon.

The policy of Japan, up to the Chino-Japanese war, seems to have been to keep aloof from European entanglements in the Far East. In 1884, when China was involved in the Korean complications with Japan and in the Tonking dispute with France, France offered to form an alliance with Japan against China,² but Japan politely declined. China, however, pursued a different course, and, during the war with Japan, introduced European political intervention into the Orient. As the result of the triple intervention of 1895, Japan's policy of aloofness became utterly untenable. The European powers having acquired important footholds in the Orient, it became impossible to maintain the principle of "Asia for the Asiatics," and the only course left open to Japan was to co-operate with the powers having views similar to her own, in order to preserve the balance of power against disturbers. Japan thus naturally became desirous of co-operating with Great Britain, and welcomed the request for the evacuation of Wei-hai-wei when England obtained the lease of it.³ At the same time there was much discussion of the possibility of an Anglo-Japanese alliance in the native press.⁴

¹ See speech of Mr. Balfour, in the House of Commons, *London Times*, April 6, 1898, pp. 8-9.

² Ogawa, *Diplomacy of the Meiji Era*, p. 123; Curzon, *The Far East*, p. 210.

³ *Parl. Papers, China no. 1* (1899), p. 86.

⁴ *Annual Register*, 1898, p. 341.

Germany, Russia, France and England having obtained "leases" on the seaboard of China and thus strengthened their position in the Far East, the *Taigai-doshi-Kwai*, or Association on Foreign Policy, was formed in Japan, in April, 1898, by prominent statesmen of the different political parties, with a view to induce the government to take measures to meet the new order of things. When its representative called upon Marquis Ito on April 7, the premier "assured them that the government would not neglect to promote the interests of the nation," and is said to have intimated "that the attitude of Great Britain was very favorable" to Japan.¹ And in April, 1898, the Japanese government, in order to forestall the lease or occupation of the province of Fokien opposite Formosa, by a European power, so as to menace Japan's possession of Formosa and the Pascadores Islands, demanded and obtained from China a promise not to alienate the province just as England had done in respect of the Yang-tsze valley.²

The last country to be considered with reference to the Far Eastern question, is Italy. On February 28, 1899, Sgr. Martino, the Italian minister, demanded of the Chinese government

the lease of Sammum Bay on the coast of Che-kiang as a coaling station and naval base, including the concession of three islands off the coast, with the right to construct a railway from Sammum Bay to Poyang Lake within a sphere of influence comprising the southern two-thirds of Che-kiang province.³

Great Britain apparently regarded the Italian co-operation

¹ *The Far East*, 1898, vol. iii, pp. 333-334.

² *Annual Register*, 1898, p. 340; *China no. 1* (1899), p. 112. See also Rockhill's edition, p. 181.

³ *Annual Register*, 1899, p. 358.

as necessary to the preservation of the balance of power in the Far East, and the British minister supported the Italian demands; but the *Tsung-li-Yamên* would not listen to them; and the Italian government, limiting its activity to commercial matters, obtained a mining concession in northern Che-kiang in August.¹

The weakness displayed by the Chinese government in the Japanese war, and in the subsequent concessions to European powers, was, by the patriotic party in South China and by the progressive Chinese in Peking, ascribed to the corruption of the governmental system and to the mandarins' ignorance of western ideas. Prince Chun, the emperor's personal adviser, had already called attention to the superiority of the military methods of the western peoples. Meanwhile, certain scholars, professing a renaissance of Confucianism, but imbued with enthusiasm for western civilization, had started at Canton and Shanghai an agitation for reform. Kang-Yu-Wei,² a leader of the new school, had tendered, from time to time, since the German occupation of Kiao-Chau, petitions to the Emperor Kwang-Su for the adoption of reform measures. The emperor, being rather a student of politics than a ruler, adopted the artificial measures of the new school and appointed Kang-Yu-Wei to the important office of secretary of the board of works. By an edict issued on June 11, 1898, all mandarins, central or local, from princes to "literati" (petty officials), were instructed to do their "utmost to discover which foreign country has the best system in any branch of learning;" and the establishment of a "metropolitan university" was

¹ *Annual Register*, 1899, p. 358.

² His article on "The Reform of China," in the *Contemporary Review* for August, 1899, shows the motive and attitude of the reform party.

suggested as a necessary institution of the reform régime.¹ Another edict was issued to replace the old system of appointment of mandarins by the more modern competitive system. By an edict of June 12, a "special minister of commerce" was to be appointed, and a number of the imperial princes were to be sent abroad to investigate modern affairs and ideas.² Besides these, reformatory edicts regarding military organization, the judicial system and railways and mines were successively issued. The reform party naturally obtained the sympathy of the Japanese and the English, who were very jealous of the predominant influence of Russia at Peking. The reformation went on. Weng-Tung-Ho, a member of the Privy Council, and Li Hung Chang, a leading member of *Tsung-li-Yamên*, both most conservative figures among the mandarins, were dismissed from office.³

The proceedings of the reformers were so radical that Marquis Ito, during his stay at Peking, sought to discourage Kang-Yu-Wei, the leader of the reform party, by intimating that they were attempting "to carry out in a week reforms which it had taken more than a quarter of a century to accomplish in Japan."⁴ It is no wonder that they brought about a reaction, which on September 21 produced a *coup d'état*, since their radical measures not only violated Chinese prejudices, but also destroyed mandarinism, the fundamental fabric of the Manchu government. The empress dowager resumed her controlling power and all reform measures were suspended by an edict. The emperor became only the nominal ruler; the mandarins of the conservative party were restored to their offices; most of the

¹ *Parliamentary Papers, China no. 1* (1899), p. 179.

² *Ibid.*, p. 180.

³ *Ibid.*, pp. 181 and 240.

⁴ Pierre Leroy-Beaulieu, *The Awakening of the East*, p. 278.

reform party were beheaded or sent into exile, and its leader, Kang-Yu-Wei, secretly took refuge on board an English ship.¹ Thus the reform measures brought no cure to "the Sick Man of the Far East."

After obtaining leases of territory on the Chinese coast, the powers entered into a scramble for further concessions, relating to railway construction, the exploitation of mines, and the extension of the foreign settlements; but the contest as to railways was the most active. As Russia desired to obtain exclusive control of railway matters in Manchuria and Pechili, her chargé d'affaires, M. Pavloff, in March, 1898, pressed the *Yamên* for the removal of Mr. Kinder, a British subject, from his position as superintendent of the Tientsin-Shan-hai-kwan Railway, and demanded that the "line north of Shan-hai-kwan should be constructed by Russian engineers and with Russian capital."² Had Russia been permitted to connect Peking and the Manchurian branch of her railway by the proposed line, she would have obtained direct control of Peking; New-Chwang, the only treaty port in North China, would have been doomed; and in the end the commerce of Japan, Great Britain and other powers would have been excluded from North China. Instead of awaiting the ruin of the British interests in that quarter, the Hong-Kong and Shanghai Bank entered into a preliminary agreement to furnish the capital to construct a railway between Peking and New-Chwang, taking a mortgage on the line.³ This caused much irritation in Russia, where the English concession was regarded as an invasion of the Russian sphere of interest.

¹ *Parliamentary Papers, China no. 1* (1899), pp. 256, 257, 258 and 265; *For. Rel.*, 1898, pp. 218-223.

² *Parliamentary Papers, China no. 2* (1899), p. 1.

³ *Ibid.*, pp. 2 and 4.

On the other hand, Great Britain became involved in another contest over the trunk line between Peking and Hankow, projected by Belgium, backed by France and Russia. As such a highway would pass through the Yang-tze valley, the proposal was sure to provoke the opposition both of England and of China. Belgium, a "neutral country," was therefore introduced as the builder of the line, and a Belgian syndicate, termed *La Société d'Etude des Chemins de fer en Chine*, acting under the patronage of the Russian and French ministers at Peking, entered in May, 1898, into negotiations with China for the construction of a trunk line between Peking and Hankow.¹ This railway was to connect with the Manchurian line in the north and the French line in the south. England lost no time in endeavoring to check this scheme of Russia and France. She protested to China, Lord Salisbury declaring that "a concession of this nature is no longer a commercial or industrial enterprise and becomes a political movement against the British interests in the region of Yang-tsze."² China, however, granted the concession to the Belgian syndicate, and England then demanded a corresponding concession. English and German syndicates obtained a concession to construct a line between Tientsin and Ching-kiang, near Nanking; the American-China Development Company, an American syndicate, secured a concession for a trunk line between Hankow and Canton, in which British capital is largely invested; and a trunk line from Canton to Hong-Kong was to be constructed by the Jardine Syndicate, an English association. As an offset to the concession to the Russo-Chinese Bank in Honan and Shanse, Anglo-Italian capitalists, called the "Peking Syndicate," obtained a cor-

¹ *China no. 1* (1899), pp. 96-97; *London Times*, May 23, 1898.

² *China no. 1* (1899), p. 117.

responding concession in the same provinces; while, as against the French concession for the Tonking railway, an English firm secured the right to extend the Indo-Burmese line to the head of the navigable waters of the Yang-tze.¹

Amid these railway struggles and mutual encroachments, M. Lesser, the Russian chargé d'affaires in London, on August 12, proposed to Mr. Balfour that the spheres of interest of the powers should be definitely settled.² After numerous diplomatic discussions, England and Russia, in April, 1899, entered into a solemn agreement to respect each other's spheres of interest in Manchuria and in Yang-tze respectively, excepting as to the New-Chwang-Shan-hai-kwan line, which had already been mortgaged to the English.³ Although Germany and Great Britain co-operated in obtaining the concession for the Tientsin-Nanking railroad, their financiers agreed to respect their particular spheres, so that Germany is to guarantee the line in Shantung and England in the Yang-tse valley.⁴

In this way the powers have, from the political and economic points of view, established their so-called "spheres of interest," thus dividing up the Chinese Empire, and leaving it only in name a sovereign state. Such a condition of things necessarily suggests the possibility that the various powers may, by an extension of their acquired jurisdictional and administrative rights, seek to annul the treaty rela-

¹ See "Summary of Railway Concessions," *China no. 1* (1899), pp. 344-347; the texts of contracts of these railway concessions are found in Rockhill's edition. But as to the Canton-Hankow Railroad concession, the American-China Development Co., on Aug. 29, 1905, decided to sell the concession back to the Chinese government. The price to be paid is \$6,750,000. *The New York Times*, Aug. 30, 1905.

² *China no. 2* (1899), p. 6.

³ *Ibid.*, p. 85.

⁴ *Annual Register*, 1899, p. 360.

tions of the mercantile nations with China by imposing discriminating taxes, duties and charges in the ports and rivers and on the railways in their respective spheres, and thus practically exclude their competitors from the Chinese market. Nevertheless, although the commercial interests of the United States in China are among the first in extent and importance, Uncle Sam, in 1898, being occupied in the annexation of Hawaii and the war with Spain, exhibited little concern over the Far Eastern complications. But, after the war with Spain was over, the government eventually came to exert itself to protect its commercial interests, which were threatened by the "special concessions," the "preferential rights" and the "spheres of interest" of the European nations. Mr. Hay, as secretary of state, on September 8, 1899, submitted a circular note to the powers for the purpose of securing a declaration in favor of equal commercial opportunities for all treaty nations.¹ This circular sounded the keynote of the "open door" policy. It requested the powers to pledge themselves not to "interfere with any treaty port or any vested interests" within any so-called "sphere of interest" in China, and to engage that the customs tariff upon goods imported by any nationality into any port within any "sphere of interest" should be collected by the Chinese government, and that no higher harbor duties on vessels, and no higher railway charges on merchandise, belonging to any other nation should be levied than on those belonging to the nation which maintained such "sphere of interest." France, Germany, Great Britain, Italy and Japan gave the United States a satisfactory pledge of the formal recognition of the "open door" policy; but Russia's answer was less satisfactory, as she reserved the right to levy customs duties on foreign im-

¹ *For. Rel.*, 1899, pp. 128 *et seq.*

ports in her sphere, and only promised not to make any discrimination between foreign nations. Furthermore, the Russian answer is silent upon harbor duties and railway charges.¹

¹ *For. Rel.*, 1899, pp. 141 *et seq.* Count Mouravieff to Mr. Tower.

CHAPTER IX

THE FAR EASTERN QUESTION, 1900-1905

The Boxer Troubles of 1900.—European activities and enterprises within their “spheres of interest” in China, especially those of Germany in the Shantung province, aroused the anti-foreign or anti-Christian feelings of the Chinese in the spring of 1900. A secret society, known as the Boxers, first appearing in the Shantung and Chili provinces, marched thence toward Tientsin and Peking with overwhelming force, destroying and burning churches, stations and railways. The Chinese government despatched troops to subdue the insurgents, but so strong were the rebels that the imperial forces were repelled. The foreign representatives in Peking, on May 28, 1900, felt obliged to summon marines from their respective fleets in order to meet a possible emergency.¹ Prince Tuan, commander-in-chief of the Chinese army, however, combined with the Boxers instead of suppressing them, when they approached the capital. On June 12, the Peking telegraph line was cut and the legations were besieged. From this time, the foreign representatives were absolutely isolated from the outside world. The “international relief expedition,” 2000 strong, consisting of the marines of Great Britain, Germany, France, Austria, Japan, Italy, the United States and Russia, under the command of Admiral Seymour, was unable even to reach Tientsin. Meanwhile, Mr. Sukiyama, the chan-

¹ *Parl. Papers, China no. 3 (1900), p. 30.*

cellor of the Japanese legation, and Baron Von Ketteler, the German minister, were murdered, and some of the legations at Peking were burned or otherwise destroyed.

At this critical juncture, Lord Salisbury, as "considerable time [would] elapse before the relief from India or Europe could arrive," made an earnest appeal, on June 25, to the powers concerned in Chinese affairs to approve the immediate despatch of a Japanese force of 20,000 to 30,000 men.¹ Japan agreed to send 13,000 men and mobilized 2,500, in addition to those already despatched; but, fearing lest complications might arise among the powers themselves, she hesitated to do more.¹ The British government became impatient and urged Japan to complete the expedition, Lord Salisbury declaring:)

Japan is the only power which can act with any hope of success for the urgent purpose of saving the legations, and, if they delay, heavy responsibility must rest with them. We are prepared to furnish any financial assistance which is necessary, in addition to our forces already on the spot.

In spite of this strong exhortation, Japan held back. The United States approved the British proposal, in case Japan should send an expedition "with the assent of the other powers,"² but continental Europe, especially Germany and Russia, openly dissented.³ To give to Japan "a special mandate," Russia intimated, might "entitle that country to claim an independent solution of the difficulty and any other privilege," and "might, to a certain extent, encroach on the fundamental principle—the maintenance of the union between the powers; the maintenance of the existing system

¹ *Parl. Papers, China no. 3* (1900), p. 75.

² *China no. 1* (1901), p. 3.

³ *China no. 3* (1900), p. 92, and *China no. 1* (1901), pp. 37-40.

of government in China; the exclusion of anything which might lead to the partition of the empire; finally, the re-establishment by common effort of a legitimate central power, itself capable of assuring order and security to the country."¹ The English proposal involved nothing political, but was intended only to meet without delay a grave emergency. As between Japan and Russia, however, the urgent purpose of the proposal was subordinated to political jealousy. Owing to the Russian objection and the consequent Japanese hesitation, the relief expedition did not set out from Tientsin until August 6, when all the powers had joined their forces and agreed to act together. Had the legations succumbed to the Boxers before the relief forces reached Peking, Japan and Russia doubtless would have been blamed.

As the action of the powers, apart from the immediate object of saving their legations, was not governed by any definite understanding, there was danger that the opportunity might be seized by ambitious governments to carry out schemes for the partition of the Chinese empire. The United States, therefore, sent a circular note, on July 3, 1900, to Berlin, London, Paris, Rome, St. Petersburg and other European courts, and to Tokyo, inviting the powers to adhere to the principles maintained by the United States on the Chinese question.² Secretary Hay's former circular of September, 1899, was designed to preserve equal privileges in China for all commercial nations. By the new circular, the United States not only re-affirmed the open-door policy but also strongly declared itself in favor of maintaining the integrity of the Chinese Empire. Great Britain announced

¹ *China no. 1* (1901), pp. 12 and 25.

² Report of Mr. Rockhill, *Sen. Ex. Doc. 67*, 57th Cong., 1st Sess., printed also as an Appendix to *For. Rel.*, 1901, p. 12.

a similar policy in the House of Commons on August 4, and communicated it to the powers.¹

After numerous skirmishes and battles, the allied forces entered Peking; the legations were relieved on August 15; the emperor and the empress dowager fled to Taiyuan, the capital of Shanshi; the Boxers were scattered; the palaces and main buildings in Peking were occupied by the international forces.² In the joint expedition the Japanese soldiers won marked distinction by their excellent behavior and ability. Lord Salisbury instructed the British minister at Tokyo to express to the government his earnest admiration of their "gallantry and efficiency," which had, as he declared, "contributed to the success of the expedition so very largely."

Li Hung Chang soon appealed to Great Britain, France, Germany, Japan and the United States for the cessation of hostilities, the immediate commencement of peace negotiations and the withdrawal of the foreign troops from Peking.³ Russia deferred action on the appeal, and submitted to the powers on August 28 a proposal for the evacuation of Peking by the allied troops and their legations, and their retirement to Tientsin, where peace negotiations should be opened.⁴ It was practically impossible to adopt this proposal, as the Boxers were still infesting the provinces adjacent to Peking, so that the evacuation of the city would tend to a renewal of hostilities, and would throw away the best opportunity to bring China to satisfactory terms. It is therefore not strange that most of the powers rejected the Russian proposal.

After the question of evacuating Peking was disposed

¹ *China no. 1* (1901), p. 49.

² *China no. 3* (1901).

³ *China no. 1* (1901), pp. 99 and 101.

⁴ *Ibid.*, pp. 113 and 122; *For. Rel.*, 1900, p. 379.

of, the German government, on September 18, sent a circular note to the governments of Great Britain, France, Austro-Hungary, Italy, Japan, Russia and the United States, proposing that China should surrender to the allies for punishment the chief instigators of the outrages and offenders against international law, who were to be designated by the foreign representatives, before entering on peace negotiations.¹ The suggestion that punishment should be made a preliminary condition to negotiation provoked disagreement among the powers. The United States frankly declined the German proposal, pointing out that preliminary punitive measures would tend to endanger the negotiations.² As some of the ring-leaders were princes or royal personages, the Chinese court took alarm at the German proposal, and in an edict of September 25, published a list of offenders together with a statement of the accusations against them.³ Germany then proposed, on October 2 that the powers should instruct their representatives in Peking "to examine and give their opinion on the following points: (1) whether the lists of the names contained in the edicts are correct;" (2) "whether the punishments proposed [by China] meet the case;" (3) "in what way the powers can control the carrying out of the penalties proposed."⁴

On October 4, 1900, the French government submitted to the powers a summary basis of peace negotiations, as follows:⁵

(1) Punishment of the principal culprits, to be designated by

¹ *China no. 1* (1901), p. 175.

² Appendix to *For. Rel.* (1901), pp. 24-25.

³ *China no. 5* (1901), p. 6.

⁴ *Ibid.*, p. 4.

⁵ *Ibid.*, p. 5.

the representatives of the powers at Peking; (2) maintenance of the prohibition of imports of arms; (3) equitable indemnities for states, societies and individuals; (4) establishment of a permanent legation guard at Peking; (5) dismantlement of the ports at Taku; military occupation of two or three points on the road from Tientsin to Taku

in order to keep the way open to the sea. The French proposal is said to have been suggested by Russia.¹ However this may be, it was eventually approved by all the powers, and the draft of a joint note consisting of eleven articles was completed on November 24, the representatives of the powers waiting at Peking for the approval of their governments.² As to the punishment of the ring-leaders, the execution of eleven, including Prince Tuan and General Tang-fuh-siang, was demanded by the joint note, under the championship of Germany, whose policy was that of "severity and vengeance." Japan, on the other hand, did not agree to capital punishment, pointing out the impossibility of enforcing so severe a measure upon persons of royal rank who were still dominating the Chinese court at Singan-fu, its place of refuge.³ The United States particularly insisted on moderation, and intimated an intention to withdraw from the conference unless the stipulation as to capital punishment should be adjusted. Finally, the "death penalty" was replaced with the "severest punishment," under the leadership of the United States, supported by Japan, Russia and Great Britain.⁴ Although the draft

¹ Dunnell's paper, "The Settlement with China," *The Forum*, vol. 32, p. 649.

² *China no. 5* (1901), pp. 111 *et seq.*

³ *Ibid.*, p. 107.

⁴ Appendix to *For. Rel.*, 1901, p. 54. The death penalty was insisted on by the German, Italian and Austro-Hungarian representatives.

of the protocol provided for the sending to Berlin of an extraordinary mission to express the regret of the Chinese government for the murder of the German minister, it contained no clause of apology for the murder of the chancellor of the Japanese legation. The Japanese government therefore proposed to insert a stipulation for suitable reparation for that crime, and this was approved by the other powers.¹ As regards the prohibition of imports of ammunition, the draft of the joint note used the words, "material necessary for the manufacture of arms and ammunition." As this clause might include materials which, though necessary for warlike objects, were still required for other purposes, and might thus prohibit the importation of things essential to trade and industry, Japan suggested that the words "material used exclusively for" be substituted for the words "material necessary for."² After these several modifications, the joint note, embodying the irrevocable conditions of peace, was signed by eleven powers on December 22, 1900.³ The note demanded (1) that China should despatch envoys to Germany and to Japan to apologize for the murder of their diplomatic agents; (2) that the severest punishment should be inflicted on the persons designated in the imperial decree of September 25, 1900; (3) that, to prevent the recurrence of anti-foreign movements, legation guards should be stationed at Peking, the importation of arms prohibited, the Taku forts dismantled, and the Tientsin-Peking route placed in military occupation; (4) that "an equitable indemnity" should be paid to the allies; (5) that treaties should be negotiated, in order to improve

¹ *China no. 5* (1901), pp. 107, 118.

² *Ibid.*, pp. 107, 118, 120.

³ *China no. 6* (1901), pp. 60 *et seq.*; Appendix to *For. Rel.*, 1901, pp. 59 *et seq.*

commercial facilities; (6) and that the procedure of the foreign office should be reformed. It may here be observed that by an imperial edict of July 24, 1901, the *Tsung-li Yamên* was transformed into the *Wai-wa Pu*, or ministry of foreign affairs, which has precedence of the other six ministries of state.

The protocol, embodying the definitive terms of settlement, was not signed until September 7, 1901.¹ The conferences in the early part of 1901 were greatly hindered by the question of a "secret treaty" between Russia and China concerning Manchuria, which arrested the serious attention of the other powers, and by the question of indemnity. From the beginning the United States advocated a "lump sum," which should not exceed China's ability to pay.² A heavy indemnity would also necessitate an increase of tariff duties, which would operate as a hindrance to foreign importations. Commercial nations, like Great Britain and Japan, supported the moderate American plan, but they were out-voted by France, Germany, Russia and other continental powers.³ China finally agreed to pay an indemnity of 450,000,000 taels, of which Russia was to receive 130 millions, Germany 90, France 70, Great Britain 50, Japan 34, the United States 32, and so on. It is a striking fact that, although the claims of indemnity of each power were ostensibly based on actual cost and damage, those of the continental powers were comparatively greater in amount than were those of the powers specially identified with the open-door policy.

The Manchurian Question.—After the Boxer uprising, Russia mobilized a considerable number of soldiers on the

¹ Appendix to *For. Rel.*, 1901, p. 312; *China no. 1* (1902).

² Appendix to *For. Rel.*, 1901, pp. 359, 361, 366, 369, 372, 373.

³ See Dunnell, *loc. cit.*

Mongolian frontier and in Manchuria under the pretense of railway protection; Newchwang, a treaty port, was captured on August 4, 1900, and on the same evening the Russian flag was hoisted on the Chinese customs flag-post.¹ The city of Mukden was occupied on October 1; and a military occupation was regularly instituted along the Russian railways in North China. In the meantime, Russia was supporting the wishes of the Chinese court, while the other powers were eagerly opposing the evacuation of Peking by the allied troops. Russian influence, which was dominant at Peking, and Russian activities in Manchuria, induced a rumor in Europe, as well as in Japan, of a possible Russian annexation of Manchuria and Mongolia. Russia, from time to time, issued an "official communiqué," or a semi-official note, to set at rest the rumor, by pretending that her occupation of Manchuria was of a purely "provisional and temporary nature."²

Under the circumstances, England and Germany concluded, on October 15, 1900, an agreement regarding Chinese affairs and embodied it in a circular to Austria-Hungary, France, Italy, Japan, Russia and the United States for their acceptance.³ Its main object was to restrain any power which might be disposed to violate the principle of commercial equality in China or her territorial integrity. As the aim of the Anglo-German convention was identical with that of Mr. Hay's circulars of September, 1899, and July, 1900, the United States expressed full sympathy.⁴

¹ *Parl. Papers, China no. 1* (1901), p. 190. See the report of Mr. Fulford, the British consul at Newchwang.

² *Ibid.*, pp. 102, 113, 154.

³ For the text of agreement and diplomatic correspondence among the powers, see *China no. 5* (1900).

⁴ Appendix to *For. Rel.*, 1901, p. 31. Mr. Hay to Lord Pauncefote.

All the other powers professed to assent to the principle of the agreement. Japan, being especially interested, inquired of Great Britain as to the status of adherents to the agreement. Being assured that they would be "in exactly the same position as if they had concluded with her Majesty's government a like agreement," Japan made a solemn declaration of adhesion.¹

Notwithstanding the fact that Russia professed to accept the principles of the Anglo-German agreement, she was secretly preparing to conclude a separate treaty with China in regard to the occupation of Manchuria. The Peking correspondent of the London *Times*, Dr. Morrison reported, in the issue of January 3, 1901, a "Manchurian convention," consisting of nine articles, concluded between delegates of Tsêng Chi, the Tartar general, and Admiral Alexieff, commander of the Russian Pacific squadron, under which, as he pointed out, Manchuria would be "a *de facto* Russian protectorate." The *Times* further suggested, in its editorial column, that the principle of the Anglo-German agreement should be applied to the alleged convention. The report alarmed the powers, especially Japan and England. The British government immediately instructed its representatives at St. Petersburg and Peking to ascertain whether the convention really existed. Sir Earnest Satow, English minister at Peking, replied that the *Times*' report was believed to be authentic; that the convention had been signed on the 22d of the preceding November, and was then in Peking awaiting confirmation.² Japan directly inquired of the Russian and Chinese governments as to the existence of the alleged convention, but both governments kept it a strict secret. On February 15,

¹ *China no. 5* (1900).

² *China no. 6* (1901), p. 3.

Japan warned the Chinese government of the danger to which it exposed its territorial rights by entering into a separate agreement with one power, while it was negotiating for peace with all the powers collectively.¹ The same warning was given by Great Britain, Germany and the United States.² Thus pressed, the Chinese finally allowed the viceroy of Hankow to communicate to Mr. Fraser, the British consul-general at that port, a summary of the convention.³ The viceroy at the same time asked how far the British government would support China, if she refused to sign. The full text of the convention was obtained by Sir E. Satow on March 6.⁴ By its terms, Manchuria was to be restored to China, but Russia was to retain a body of troops in Manchuria, in addition to those designed for railway protection, until China should have fulfilled "the last four provisions" of the convention. In case of disturbance, the Russian soldiers were to afford every assistance to China (art. 3); China was to agree not to establish an army, nor to import munitions into Manchuria (art. 4). China was to dismiss those governors and high officials who were antagonistic to friendly relations with Russia; a police force was to be organized by China, but she was not to employ in it the subjects of any other power (art. 5); nor were the "subjects of any other power" to be employed "in training Chinese soldiers and sailors in North China" (art. 6). "China's autonomous rights in the city of Chin-chou" were to be abrogated (art. 7). Mining and railway concessions or leases of land to other powers, in Manchuria, Mongolia and other domains of Ili, Kashgar, Yar-

¹ *China no. 6* (1901), p. 41.

² *Ibid.*, pp. 78, 107, 108.

³ *Ibid.*, p. 90.

⁴ *Ibid.*, p. 110.

kand, except Newchwang, were forbidden, nor were the Chinese themselves to build railways without Russian consent (art. 8). Russia was to construct a railway from the Trans-Manchurian line in "the direction of Peking up to the Great Wall."

By an imperial edict dated February 28, 1901, the Chinese government instructed its ministers at Berlin, London, Tokyo and Washington to ask the governments to which they were accredited to join in a mediation between Russia and China.¹ Germany suggested, in reply, that China should "apply to the conference of [foreign] ministers at Peking in this matter."² Meanwhile, on March 20 Russia modified her demands, by striking out the provisions regarding the abrogation of China's autonomous rights in the city of Chin-Chou and the non-employment of subjects of other powers for purposes of military instruction in North China, and by limiting to Manchuria the prohibition to alienate railway and mining concessions to other powers,³ but threatened to break off the negotiation if the convention as thus amended was not signed by March 26. China, however, appealed on March 21 to Great Britain, Japan and the United States to influence Russia to extend the time for negotiation, since even the amended agreement would "not only prove injurious to China, but to the other countries who have treaty rights in that region" (Manchuria).⁴ The United States again admonished China and Russia not to enter into a "separate agreement with an individual power while negotiations were going on at Peking with the concert of the allied powers," while the British government de-

¹ *China no. 6* (1901), p. 93.

² *Ibid.*, p. 109.

³ *China no. 2* (1904), pp. 13, 14, 15.

⁴ *China no. 6* (1901), p. 137.

clared that "no good purpose could be served by applying for an extension of time," but suggested that the draft be submitted to the conference of representatives at Peking, in which his Majesty's minister would be instructed to act in conjunction with his colleagues on the subject.¹

Japan, on her part, saw that a crisis had come. Perceiving that the intentions of Russia in Manchuria menaced not only the integrity of China but also the independence of Korea, she decided to take whatever steps might be necessary to check the high-handed Muscovite policy. Accordingly, she at first asked the powers jointly to demand that the Anglo-German convention of 1900 should be applied to Manchuria;² but, after learning that Germany, because of her desire to be on good terms with Russia in Europe, did not consider the convention to be applicable to Manchuria;³ that England, by reason of the Boer War, was unable to control an adequate force in case of emergency, and that the United States, owing to her traditional policy, would probably be unwilling to combine with one power against others, Japan made known her purpose to stand alone against the Russian policy in Manchuria. Hence, on March 25 the day before the date fixed by Russia for the signature, Japan made a direct friendly request to the St. Petersburg government that the Manchurian agreement be submitted to the conference of the powers at Peking for examination;⁴ at the same time, she was preparing for any possible emergency, a meeting of the commanders of the imperial army and navy being held in Tokyo. Russia

¹ *China no. 6* (1901), pp. 139, 142 and 144.

² *Annual Register*, 1901, p. 367.

³ *London Times*, speeches by the Chancellor Count von Bülow, in the Reichstag, on March 15, 1901.

⁴ *Gaiko-Jiho*, no. 39, p. 31.

replied that, "in regard to the matter which is still in the course of negotiation between China and Russia, the latter is not inclined to discuss it with any third power."¹ The convention, however, was not signed on the 26th, and Russia extended the time till April 1.² But, backed by the moral support of the powers, China again failed to sign, and Russia announced in the *Messenger Officiel* of April 6, that the agreement had been temporarily withdrawn.³

The Anglo-Japanese Alliance.—Russia secretly resumed her negotiations concerning the occupation of Manchuria in August, 1901. Her new proposal was substantially identical with the amended draft of March 20; no date was fixed for evacuation.⁴ Her demands were still incompatible with the open-door policy and with Chinese sovereignty, but she does not appear at this time to have pressed China very hard, since the negotiations were without effect. After the conclusion, however, of the peace protocol between China and the allied powers, which was signed on September 7, the Russian chargé d'affaires, M. Lessar, sought an opportunity to resume negotiations with Prince Ching. The Russian demands were now greatly modified, and the date of evacuation was definitely fixed at three years.⁵ Nevertheless, Great Britain and Japan urged China not to sign, while Mr. Hay instructed Mr. Conger, the American minister at Peking

to advise Prince Ching that the president trusts and expects

¹ *Gaiko-Jiho*, no. 39, p. 32.

² *Ibid.*

³ *China no. 6* (1901), nos. 237 and 238, pp. 169, 170, *et seq.*

⁴ In *Parl. Papers, China no. 2* (1904), pp. 25 *et seq.*, three draft-conventions are given: the original text reported by Sir E. Satow on March 6, the text as modified on March 20, and the proposal made in August.

⁵ *For. Rel.*, 1902, p. 271.

that no arrangement which will permanently impair the territorial integrity of China, or injure the legitimate interests of the United States, or impair the ability of China to meet her international obligations, will be made with any single power.¹

Nor did Russia abandon her designs in south Korea, with the failure of her strategic measures at Masampho in 1900. M. Pavloff, the Russian minister at Seoul, in 1901, endeavored to obtain a lease of Ching-Kaiwan, an important bay in the extreme south, between Port Hamilton and Masampho, for naval purposes.² As on the previous occasion, Japan objected, because "only Russia would have access" to the bay, and its possession by her would constitute a menace to the Japan Sea.

Under these circumstances, Great Britain and Japan, being constantly disturbed by the Russian movements in Manchuria, entered into an alliance, which was signed in London on January 30, 1902, by Lord Lansdowne for England, and by Baron Hayashi for Japan.³ Its fundamental aims are to maintain "the *status quo* and the general peace in the extreme East," to guarantee "the independence and territorial integrity of the Empire of China and Korea," and to secure "equal opportunities in those countries for the commerce and industry of all nations." More particularly were the British interests, which are principally in China, and the Japanese interests in China and in a peculiar degree in Korea politically as well as commercially, to be guaranteed. The provisions of the alliance are exceptional in that, should Japan or Great Britain go to war with a single power for the defence of the interests above stated, the other contracting power is required only to maintain "strict neutrality"

¹ *For. Rel.*, 1902, p. 271.

² *Hamilton, Korea*, p. 200.

³ *Parl. Papers, Japan no. 1 (1902)*; *For. Rel.*, 1902, pp. 513 *et seq.*

and to exercise "its efforts to prevent other [third] powers from joining in hostilities against its ally," but if two or more powers should go to war with one of the contracting parties, then the "other high contracting party will come to its assistance." The contracting parties evidently felt able each to hold its own, singlehanded, against any other power, but deemed it best to provide for joint action against the possible coalition of Russia with France. The term of the treaty is comparatively short, being only five years. This is as it should be, for the diplomacy and foreign relations of a government are more dynamic than the national policy. "It would be unwise," observed Prince Bismarck upon the Triple Alliance, "to regard it as affording a permanently stable guarantee against all possible contingencies which in future may modify the political, material and moral conditions under which it was brought into being."¹ The Anglo-Japanese convention is obviously a defensive alliance. Lord Lansdowne declared that it was entered into "purely as a measure of precaution," and that it "in no way" threatened "the present position or legitimate interests of other powers." It may become an offensive alliance only "where attack is the best mode of providing for the defence."² Evidently it is a connection which should not be abused, since "the *casus foederis* of the defensive alliance does not apply" to an unjust war on the part of the power demanding the assistance of the coalition.³ The Anglo-Japanese alliance is nothing more than the formulation of those principles which the great powers have already declared or pledged themselves to observe in the Far East, such as the open-door policy of the United States, Great Britain and Japan,

¹ *Memoirs of Prince Bismarck*, chap. xxix, p. 284.

² Wheaton, *Elem. of Int. Law*, part 3, chap. 2, par. 15.

³ *Ibid.*

the "fundamental principles" of Russian policy as supported by France, and the Anglo-German agreement of 1900. It differs from those declarations only in providing a measure for their effective defense, in case they should in violation of assurances repeatedly given, be infringed.

In America, though there was no official expression by the government, the Anglo-Japanese treaty was hailed by the press and the people as a measure that would secure the open door without involving the United States in political complications with European powers. Nevertheless, Secretary Hay, on February 2, 1902, reminded the powers that exclusive measures in developing Manchuria would be detrimental to the open-door policy and to Chinese sovereignty, and specially requested "the earnest consideration of the imperial governments of China and Russia in this matter."¹

Russia and France responded to the Anglo-Japanese agreement with a joint declaration, which was sent on March 16, 1902, to the signatories of the peace protocol of 1901.² In this declaration "the allied governments of Russia and France" expressed approval of the principle of the Anglo-Japanese treaty. The "two allied governments" reserved to themselves, however, "the right to consult" as to "the means to be adopted for securing those interests," in case "either the aggressive action of third powers, or the recurrence of disturbances in China, jeopardizing the integrity and free development of that power, might become a menace to their own interests."

¹ Memorandum on the grave conditions existing in Manchuria, addressed to the signatories of the peace protocol of 1901, *For. Rel.*, 1902, p. 275.

² *Parl. Papers, China no. 2* (1904), p. 35; *For. Rel.*, 1902, p. 931; *London Times*, March 19, 1902.

The Russo-Japanese Difference. — Influenced by the Anglo-Japanese alliance and by the American representation of February 2, Russia further modified her demands in respect of Manchuria, and on April 8, 1902, concluded an agreement with China in the following terms:¹ (1) Manchuria was to be restored to the Chinese government; (2) but, in resuming the administration, China was to “observe strictly the stipulations of the contract concluded with the Russo-Chinese Bank on the 27th of August, 1896;” (3) the Russian troops were to be withdrawn from “the southwestern portion of the Province of Mukden up to the River Liao-Che” within six months, from “the remainder of the Province of Mukden and Province of Kirin” within a further six months, and from “the province of Heihung-Chiang” within yet another six months; (4) the military and police administration in Manchuria was to be restored to the Chinese government without heavy restrictions; (5) Russia was “to restore to the owners the Railway Shan-hai-kwan-Newchwang-Sinminting,” which had been held by Russian troops since the end of September, 1900. As the railway is mortgaged to the Hongkong-Shanghai Bank (an English institution), Russia, in consideration of restoring the line, required China (1) not to “invite other powers to participate in its protection, construction, or working, nor allow other powers to occupy the territory evacuated by Russia,” in case protection of the line should be necessary; (2) strictly to observe the agreement as to the Anglo-Russian sphere concluded in April, 1899, and not to allow the bank “to enter into possession of or in any way to administer” the line; (3) to consult Russia as to the extension of the line, the construction of the branch line,

¹ *Parl. Papers, China no. 2* (1904), pp. 36 *et seq.*; *For. Rel.*, 1902, pp. 280 *et seq.*

the erection of a bridge on the Liao River at Newchwang, and the moving of the terminus thither; (4) to pay Russia all expenses of the "repair and working" of the line incurred during the occupation. Russia promised China, by a separate note,¹ to restore the civil government of Newchwang as soon as the "international administration at Tientsin" was surrendered to Chinese authority. The Russian demands concerning Manchuria were thus made less exclusive than before, and the period of three years for evacuation was reduced to eighteen months. The ministers of Great Britain, Japan and the United States, at Peking, therefore notified Prince Ching of their assent to the signing of the agreement.²

Russia faithfully observed the first term of the evacuation; by October 8 the withdrawal of the Russian troops from the region between the Great Wall and the Liao River was complete. But, when the second term expired on April 8, 1903, no actual evacuation had taken place in the designated places, except the city of Mukden. Not only did the evacuation of Newchwang remain to be carried out, but in April Russia seized the customs and the municipal administration of the treaty ports, and in the beginning of May occupied the forts at the mouth of the Liao River.³ Moreover, M. de Plançon, the Russian chargé d'affaires at Peking, had, on April 18, submitted to Prince Ching a series of new demands as to the conditions of evacuation. They ran as follows:⁴

I. No restored territory, particularly in Newchwang and on the Liao River, was to be transferred to any other power, "whether by way of cession, lease, concession, or in any

¹ *China no. 2* (1904), p. 38.

² *For. Rel.*, 1902, p. 277.

³ *China no. 2* (1904), p. 63.

⁴ *For. Rel.*, 1903, pp. 57 *et seq.*

other form." Any such transfer to another power, Russia would regard as "a threat" to her interests.

II. The existing system of Russian administration, as during the occupation, was to be preserved in Mongolia.

III. Without consulting Russia, no port was to be opened to foreign trade, nor were consuls of the powers to be permitted to reside in Manchuria.

IV. No foreign adviser engaged by China was to interfere in any branch of administration in northern China, "where Russian interest predominates."

V. Russia was to control the entire telegraph line in north China.

VI. "After the transfer of Newchwang to Chinese administration," the Russo-Chinese Bank was to continue "to fulfill the function of the customs bank."

VII. All rights acquired in Manchuria by Russian subjects or established during the occupation" were to "remain in full force after the departure of the troops." Russia further demanded the control of the sanitary administration at Newchwang.

These Russian demands soon came to the knowledge of Great Britain, Japan and the United States, who lost no time in seeking to counteract them. Especially could they not keep silence as to the Russian measures at Newchwang, where "the trade is almost exclusively British, American and Japanese." The British government particularly called the serious attention of the Chinese and Russian governments to the exclusive demands of Russia as violating the most-favored-nation clause in the Tientsin treaty of 1858.¹ In negotiating new commercial treaties with China, Japan and the United States demanded that certain ports

¹ *China no. 2* (1904), pp. 55, 58.

be opened and consulates established in Manchuria for the benefit of foreign trade, but the Chinese government each time declined to discuss the subject, owing to Russian objections. Nor would China agree to open Mukden and Ta-tung-kou until Secretary Hay had obtained, on July 14, the assent of the Russian government after several conferences with Count Cassini at Washington.¹

Japan regarded the conditions demanded by Russia as not only destructive of the equal opportunities of the commercial nations, but as an infringement on Chinese sovereignty. The Japanese were further provoked by the movements of Russian troops in Manchuria and Korea. The troops evacuated Mukden, but concentrated at Liao Yang and occupied Feng Hang Ching and, later, Antung, on the Korean frontier, opposite Wuji, on the Yalu river. While Russia often objected to the opening of Wuji, she established a settlement at Yungampo, and, on the pretext of protecting her timber concession, sent her troops across the Yalu into Korea. These aggressive acts produced a strong war feeling in Japan; even the conservative papers *Jiji* and *Asahi* often calling for the decisive settlement of the Manchurian and Korean questions. A memorial on the Far Eastern question, by seven professors of the law school of the Imperial University at Tokyo, was submitted for serious consideration to Count Katsura, the prime minister.² It substantially suggested a resort to arms, if necessary to

¹ *For. Rel.*, 1903, pp. 51 *et seq.*, and 91 *et seq.* The United States originally demanded the opening of Ta-tung-kou, Mukden and Harbin. As the result of the Hay-Cassini conferences, Harbin was waived for future negotiation, and Ta-tung-kou was replaced by Antung in the treaty signed October 8, 1903. Japan also succeeded in getting her treaty signed on the same day on which Mukden and Ta-tung-kou were opened to foreign trade. The text of these treaties is given in Rockhill's edition, pp. 121-170.

² The text of the petition is given in the *Taiyo*.

defeat the Russian movement. General Kuropatkin, then Russian minister of war, came to Japan in the summer of 1903 in order to cultivate a more friendly feeling. He was politely and cordially welcomed by the emperor and his people, but his visit could effect no change in the Japanese attitude, so long as the Russian movement in Manchuria and Korea was not modified. Japan maintained that this movement not only was a constant menace to the tranquillity of the Orient, but would result in the Russian absorption of Manchuria and Korea, whereby the interests of Japan in that important quarter would be destroyed and her power of self-preservation vitally endangered. The Japanese government therefore calmly, but seriously, took up the question at issue. The *Gosen-Kaigi*¹ met on June 26, in order to formulate a definite policy.

It was decided to open direct negotiations with the Russian government in order to secure a friendly adjustment of all conflicting questions pending between the two countries in the Far East; and Mr. Kurina, the Japanese minister at St. Petersburg, was instructed, on June 27, to make known the wishes of his government. As Russia expressed her willingness to enter into negotiations, the basis of a settlement was, on August 12, submitted by Japan, as follows:²

I. A "mutual engagement to respect the independence and territorial integrity of the Chinese and Korean empires, and to maintain the principle of equal opportunity of commerce and industry of all nations in those countries."

¹ An imperial council composed of the cabinet members, and of the "Genros," or elder statesmen, and held before the throne.

² The diplomatic correspondence between Japan and Russia prior to the late war was laid before the imperial Diet by Baron Komura, minister of foreign affairs, on March 25, 1904. An English text is given in *The Japan Weekly Mail*, March 26, 1904; the Japanese text, in the *Kwampo* (*Official Gazette*) of March 24 and 27.

II. The "reciprocal recognition of Japan's preponderating interest in Korea and of Russia's special interest in railway enterprises in Manchuria," and the mutual recognition of the right of Japan and Russia, respectively, to take measures for the protection of the above mentioned interests so far as such measures do not violate the principles enunciated in the first provision, such as the open-door policy and the territorial integrity of the countries in question.

III. A reciprocal pledge "not to impede the development of those industrial and commercial activities respectively of Japan in Korea, and of Russia in Manchuria, which are not inconsistent with the stipulations" of the first provision; and an "additional engagement on the part of Russia not to impede the eventual extension of the Korean railway into southern Manchuria so as to connect with the East China and Shan-hai-kwan-Newchwang lines."

IV. A reciprocal engagement to send troops to the actual number required, by Japan to Korea, or by Russia to Manchuria, in case their respective interests were menaced or insurrection threatened to create international complications, and to withdraw the troops "as soon as their mission is accomplished."

V. The "recognition on the part of Russia of the exclusive right of Japan to give advice and assistance in the interest of reform and good government in Korea, including necessary military assistance."

VI. This agreement was to supplant "all previous arrangements between Japan and Russia respecting Korea," by which Russia had the right to give advice upon Korean affairs.

It was Japan's original idea to make St. Petersburg the seat of the negotiations in the hope that they might be

carried on as quickly and satisfactorily as possible.¹ On August 13, however, the day after the Japanese proposal was handed to Count Lamsdorff, the Russian minister of foreign affairs, the czar, "in view of the complex problems of administration on the eastern confines of the empire," issued an imperial ukase,² by which he erected the "territories of the Amur and of Kwantung" into a special viceroyalty and appointed Admiral Alexieff as viceroy, investing him with supreme power in civil and military administration, and with the control of the diplomatic relations of the designated territories with "neighbouring states." The viceroy was "released from the jurisdiction of the ministries," but was made subject to "le comité special de l'Extrême-Orient,"³ nominated by the czar and presided over by himself. As to the seat of the negotiations, Count Lamsdorff asked that it be transferred to Tokyo, which he regarded as more convenient, for the reason that there were "many details" concerning which it was necessary to consult Viceroy Alexieff at Port Arthur, and that the czar was to be absent from St. Petersburg for some time. Over this question some days were spent, when Japan, being unwilling to waste more time upon it, agreed to Count Lamsdorff's request.

The negotiations were transferred to Tokyo, but Russia's reply to Japan's proposal was not made until October 3. It embraced: (1) a "mutual engagement to respect the independence and territorial integrity" of Korea; (2) the "recognition by Russia of Japan's preponderating interests" in Korea and of her right to advise the civil administration therein without infringing the first provision; (3) a Russian

¹ Baron Komura's speech before the Diet, March 25, 1904.

² *Parl. Papers, China no. 2* (1904), p. 85.

³ *Ibid.*, p. 92. By a ukase of September 30, the organization and jurisdiction of this special committee of the Far East were defined.

pledge not to interfere with economic undertakings of Japan in Korea, "nor to oppose any measure taken for the purpose" of protecting such undertakings; (4) the recognition of Japan's right to send troops to Korea for the purpose of protecting her interests with the knowledge of Russia; (5) a mutual engagement not to use any part of the Korean territory "for strategical purposes nor to undertake on the Korean coast any military works capable of menacing the freedom of navigation in the straits of Korea;" (6) a mutual engagement to establish a neutral zone on the Korean territory, "lying to the north of the 39th parallel;" (7) the recognition by Japan of Manchuria and its littoral as being "in all respects outside her sphere of interest."¹ Russia thus definitely refused either to enter into any engagement for the preservation of the territorial integrity of China, or to commit herself to the maintenance of the principle of equal opportunity for all nations in commercial matters. Furthermore, by requiring Japan to recognize Manchuria as being entirely outside her sphere of influence, and by striking out the Japanese proposal concerning the connection of the Korean railway with Newchwang through Manchuria, Russia virtually refused to make any engagement concerning Manchuria. On the other hand, she proposed to forbid Japan to send troops to Korea without the "knowledge of Russia," or "to use any part of Korea for strategic purposes," or "to undertake" fortifications on the Korean straits; and struck out the provision permitting Japan to render "military assistance" to Korea.

Japan desired certain military facilities in Korea in order to safeguard Korean independence from foreign attack, to preserve the internal order of the country, and to protect her own interests there. Russia, on the other hand, pursuing

¹ *Dip Cor. between Japan and Russia*, no. 17.

her own strategical objects, wished to restrict Japanese military measures, and to secure the defence of Manchuria against foreign invasion by establishing a neutral zone at the cost of Korea, as well as to assure, by forbidding fortifications on the Korean strait, undisturbed communication between her two great naval ports, Port Arthur and Vladivostok. Although Japan might have accepted, to a certain extent, the Russian proposal as to Korea, she could not abandon in silence the question of Manchuria, where she had vast commercial interests, as well as political interests, essentially connected with her position in Korea. In conferences with Baron Rosen, the Russian minister at Tokyo, Viscount Komura, then minister of foreign affairs, therefore demanded that Russia should agree to respect the territorial integrity of China, and proposed, as to the neutral zone, that, if one should be created it should be established on both sides of the boundary between Korea and Manchuria, with a width on either side of, say, fifty kilometers.¹ This amended proposal was sent to St. Petersburg on October 30, and Japan requested an early response. The Russian answer was not received till December 11.² It entirely rejected the Japanese amendments, and, apart from consenting to "the connection of the Korean and East China Railway," struck out all clauses relating to Manchuria and reaffirmed the original Russian counter-proposal. As the absolute exclusion of the Manchurian question was incompatible with the professed object of the negotiation, Japan, in a note of December 21, requested Russia to reconsider her position, and proposed the entire suppression of the neutral zone, in case Russia should be unwilling to admit one

¹ *Dip. Cor. between Japan and Russia*, nos. 19, 22.

² *Ibid.*, no. 34.

in Manchuria.¹ Japan, besides, offered to make substantial concessions in Korea—to limit her right of advice to matters of civil administration, to strike out the words “military assistance,” and to admit a mutual engagement not to undertake on the Korean coast any military work capable of menacing the freedom of navigation of the straits of Korea. In her reply, which was made on January 6, 1904, Russia modified her previous proposals by offering to recognize the rights and privilege of the treaty powers in Manchuria, on condition that the neutral zone should be established in northern Korea only, and that Japan should not use any Korean territory for strategic purposes; but she still refused to agree to respect the territorial integrity of the Chinese Empire.² A few days later, on January 13, Japan submitted another note, in which she insisted on the entire abolition of the neutral zone, as well as on the integrity of the Chinese territory, without which the treaty rights of other powers in Manchuria could not be secure, and, while proposing these important amendments “in a spirit of conciliation” requested Russia to receive them in the same spirit.³ To this conciliatory request Russia did not reply. Mr. Kurino repeatedly requested an answer, pointing out that “further prolongation” would be to the “serious disadvantage of the two governments,” but, in an interview as late as February 1, Count Lamsdorff still failed to say when the Russian reply might be expected.

Meanwhile the Russian troops were massing on the Korean frontier along the Yalu River, and the formidable squadron of Admiral Wirenius, in the Mediterranean Sea,

¹ *Dip. Cor. between Japan and Russia*, no. 35.

² *Ibid.*, no. 38.

³ *Ibid.*, no. 39.

was proceeding to the Far East. On February 1 the Japanese commercial agent at Vladivostok was formally notified that the port might be put in a state of siege, and was requested to prepare for the withdrawal of the Japanese residents. Japan, interpreting these actions to mean that the Russian government had no faith in an amicable settlement and intended to dictate its own terms by force if necessary, came to the conclusion that further delay would be dangerous to her interests. A *Gosen-Kaigi* was held on February 3, and the Japanese government, on February 5, addressed to Russia a note terminating the pending "futile negotiations," and reserving "the right to take such independent action as they may deem best to consolidate and defend their menaced position, as well as to protect their established rights and legitimate interests."¹ At the same time Mr. Kurino was instructed to withdraw, with his staff and students, from St. Petersburg. Diplomatic relations were thus severed, but hostilities did not take place until the torpedo squadron of Admiral Togo attacked the Russian fleet in the mouth of Port Arthur harbor on February 9. Declarations of war were formally made, respectively, by Russia on the 9th and by Japan on the following day.²

The Anglo-Japanese alliance operates more effectively than ever. It was concluded mainly as a guarantee of peace. "Should peace unfortunately be broken," declared Lord Lansdowne, at the time when the treaty was made, "it [the alliance] will have the effect of restricting the area of hostilities,"³ since England would use her efforts to prevent France from combining with her ally, Russia. If France should become entangled in the Russo-Japanese war,

¹ *Dip. Cor. between Japan and Russia*, no. 48. V

² *London Times*, Feb. 11 and 12, 1904.

³ *Parl. Papers, Japan no. 1* (1902). W

England would come to the aid of Japan, and this might induce a universal conflict, spreading at least throughout the eastern hemisphere. In the course of an expedition to the Far East by the "Baltic fleet," or the "second Pacific fleet," under Vice-Admiral Rojestvensky, their prolonged stay at Madagascar, a French colony, in the winter of 1904-5 constituted a grievance of the Japanese against France because of her indulgent attitude as a neutral. The Japanese government, however, paid little attention to it, the distance from Madagascar to the seat of war being great, and the benevolent assistance of France hardly affecting the hostile operations. But the long continuance of the Baltic fleet at Kamranh Bay and Hon-kohe harbor of French Indo-China in the spring of 1905 excited the indignation of the Japanese press, which characterized the French attitude as belligerent rather than neutral, and declared that it constituted "the *casus foederis*" of the Anglo-Japanese alliance. The formal representations to the French government by Dr. Motono, the Japanese minister at Paris, the prompt answer by the French minister of foreign affairs, M. Delcassé, and the enforcement of the neutral rule at Indo-China by the French admiral, De Jonquières, eventually averted the possible entanglement.¹ It was highly desirable that the immediate parties to the war should be left to themselves, without any interference from allies or third powers, just as in the case of the Austro-Prussian and Franco-Prussian wars. On the other hand, mediation, in order to terminate the war in a manner honorable to both parties, at the earliest possible moment, was equally desirable.

So far as the campaigns of the belligerents were con-

¹ London *Times*, April 21 and May 4, 6, 8, 9, 10, 11, 12, 13 and 18, 1905.

cerned, Japan, for about a year and a half after the outbreak of hostilities, maintained an unbroken series of victories on land and sea. The strong fortress of Port Arthur, "the Gibraltar of the Far East," fell into Japanese hands and the "first Pacific fleet" in the harbor was destroyed. The great battle of Mukden, which Russia hoped might be the turning-point of the war, brought nothing but fresh disaster to the czar's army in Manchuria. The "invincible armada" of Admiral Rojestvensky, combined with the "third Pacific fleet" of Admiral Nebogatoff, which promised to recover the czar's maritime prestige in the Pacific, was utterly annihilated by Admiral Togo, "the Nelson of Japan," on the Sea of Japan. The land communications of Vladivostok were at the mercy of Field Marshal Oyama and its harbor was indirectly blockaded by the Japanese fleets at the northern straits of Japan and the Korean straits. Furthermore, the war policy of the autocratic government was threatened from time to time by internal dissensions. The successive defeats of Russia made it more difficult for her to raise war loans in foreign markets. On the contrary, Japan did not, in a year and a half's experience in carrying on hostilities on a gigantic scale, receive any check, financial or military.

The Peace of Portsmouth.—As the result of the exercise of President Roosevelt's offices, the belligerents appointed peace commissioners to meet at Washington.¹ Baron Jutara Komura, minister of foreign affairs, and Mr. Kogoro Takahira, Japanese minister to the United States, were designated to represent Japan, while M. Sergius Witte, president of the imperial council, and Baron Romanovitch

¹ On June 7, 1905, President Roosevelt addressed an identical message to the Japanese and Russian governments, suggesting the termination of the war. Both belligerents accepted his overtures.

Rosen, Russian ambassador to the United States, were designated to represent Russia. These plenipotentiaries held their first meeting on August 9, 1905, at the navy yard at Portsmouth, New Hampshire, to which place the seat of the conference was transferred in order to avoid the summer heat of Washington. At the next meeting the plenipotentiaries exchanged their full powers, which were found to be in due form, and Baron Komura then presented in writing the Japanese demands.¹ Although the victories of Japan might have justified her in assuming to dictate terms of peace, the Mikado and his advisers generously considered the interests of other powers which are concerned in the Far Eastern question, especially with regard to the open-door policy, by proposing that China's sovereignty and civil administration should be effectively restored in Manchuria, while order and progress in Korea were to be assured under Japanese protection. Bearing in mind also the dignity of Russia as a great power, Japan asked for "reimbursement" for the cost of the war, instead of "indemnity," which might have seemed to convey a more exacting or punitive meaning. The new conditions which had arisen since the rupture of negotiations with Russia in February, 1904, were, however, to a certain extent necessarily reflected in the Japanese demands for the cession of Sakhalin Island,² the surrender to Japan of the Russian lease of the Kwantung peninsula, including Port Arthur, Dalny and Elliot Island, the transfer to Japan of the Chinese Eastern Railway below Harbin to Port Arthur,

¹ An apparent synopsis of these demands may be found in the *New York Times* of Aug. 19, 1905.

² Gen. Liapnoff, the governor of Sakhalin Island, formally surrendered on July 31 to the commander of the Japanese army; and the whole island was immediately proclaimed to be under the Japanese administration.

the surrender to Japan of the Russian warships interned in neutral ports, and the concession to Japanese subjects of fishing rights on the Russian littoral from Vladivostok north to Bering Sea. The strong desire of Japan for the "permanent peace of the Far East" also prompted a demand for certain restrictions upon Russian activity in Asia, by limiting the naval strength of Russia in the Pacific. M. Witte, on the morning of August 12, presented the counter-statement of Russia, and it was agreed to discuss the Japanese demands clause by clause. This discussion continued from day to day till August 18.

Eight clauses were, after some modification, agreed on, but as to the four remaining clauses, relating to Sakhalin Island, the interned warships, the limitation of Russian naval power, and the payment of an indemnity, there was an absolute disagreement. At this critical juncture, when the public had become exceedingly pessimistic as to the outlook, President Roosevelt is said to have had interviews with Baron Kaneko, "unofficial agent of the Mikado," and Baron Rosen, on the 18th and 19th of August, respectively, with a view to avert a failure of the conference. Meanwhile the cables to Tokio and St. Petersburg were kept busy to learn the imperial wills. At the conference on August 23, Baron Komura announced that Japan would relinquish her demands as to the interned warships and the limitation of naval force, and offered to restore a half of Sakhalin Island to Russia, on condition that she would pay to Japan 1,200,000,000 yen, not as "indemnity," nor yet as "reimbursement," for the cost of the war, but as the price of the territory to be restored.¹ This offer was peremptorily rejected by M. Witte, and the conference adjourned until August 26. President Roosevelt is said again

¹ *New York Times*, Aug. 24, 1905.

to have exerted himself to prevent a deadlock by instructing Mr. Meyer, the American ambassador at St. Petersburg, to obtain an audience with the czar and urge, if possible, some concession on the part of Russia. At the conference on Saturday, August 26, the Russian plenipotentiaries appear to have submitted a proposition in the nature of an imperial ultimatum to pay Japan 100,000,000 rubles on account of her expenses in caring for Russian prisoners of war and to cede half of Sakhalin Island.¹ This proposition was of course not acceptable, but so conciliatory were the Japanese plenipotentiaries that they suggested the holding of another conference, at which they might submit modified terms, in order to satisfy Russian sensibilities, while preserving the principle of the Japanese demands. President Roosevelt is said to have made, on August 28, "a new appeal to the emperor of Japan on behalf of peace." On the same day the *Gosen-Kaigi* (council before the throne, consisting of the elder statesmen and the members of the cabinet) was held, in which the question of peace or war was discussed. By the supreme order of his government, Baron Komura, who is said to have insisted to the last upon reimbursement for the cost of the war, finally waived, on August 29, the three demands for reimbursement, the surrender of the interned warships, and the limitation of Russian naval force, and offered to restore to Russia the northern half of Sakhalin Island without any compensation. "Your modified terms of peace," exclaimed M. Witte, "are accepted." The negotiation at Portsmouth was thus concluded in the brief term of twenty days.²

Japan's sacrifice, for the sake of peace, of her claim for reimbursement for the cost of the war, amounting to more

¹ New York *Times*, Aug. 27, 1905.

² For the text of the treaty of Portsmouth, see Appendix A.

than \$600,000,000, called forth the applause of neutral nations, and even the Russians praised her "magnanimity in diplomacy" and her "moral victory," calling it as "worthy as her heroic victory in the war." For the most part, on the contrary, the Japanese press denounced the treaty, declaring that "the fruits of victory were again nullified by weak diplomacy, and by ill-counsels of the cabinet ministers and the elder statesman who give advice to the emperor." A sudden popular commotion took place at Tokyo, which was placed under martial law. At Kobe the recently erected statue of Marquis Ito, one of the elder statesmen, was thrown down and dragged through the streets. But the fact should be borne in mind that, although Japan was victorious both on land and on sea, her military position was very different from that which she held ten years before in the war with China, when her ability and readiness to make a direct assault on Peking caused the sending of Li Hung Chang to Shimonoseki, or from that held by Germany when Prince Bismarck dictated terms at the gates of Paris, surrounded by the German army. It has been well observed that, as the distance from European Russia to Manchuria has been of great benefit to Japan in the matter of war, so it has been of great advantage to Russia in the matter of indemnity. But as Japan waived three important demands, why, it may be asked, did she not then insist upon the retention of the whole of Sakhalin Island, which was proclaimed to be under Japanese administration? Besides, the occupation by Japan and Russia of different parts of the island is likely to be a source of complications, just as it was prior to 1875. Nevertheless, it may be ungracious to criticize the "magnanimous concessions" of Japan until we are familiar with all the conditions that went to make up the "psychological moment" at which Japan yielded to the Russian ultimatum. After all, Japan gained by the treaty

of peace more than she demanded prior to the war, while Russia not only abandoned to a great extent her material interests in Manchuria, but also lost much of her prestige in Asia by relinquishing Port Arthur, the Gibraltar of the East, and the branch line of her Manchurian railway. It is not improbable, however, that Russia's retention of the Trans-Manchurian line and of Vladivostok, which though icebound for half the year proved during the war to be a valuable arsenal, and her potential re-establishment of her Pacific squadron will powerfully contribute to preserve her prestige in the extreme Orient. It is certain that Russia has not been "wiped out," and that she will still weigh in the balance of power in the Far East as much as any eastern power or as any of the powers of the West. M. Witte ably reported the result of the peace negotiations to his imperial master thus: "Russia will remain in the Far East the great power which she hitherto has been and will be forever." In spite of the successive defeats of the czar's army and navy, his plenipotentiaries preserved the "dignity and honor" of Russia by their able manœuvering in diplomacy.

Finally, the fact should be emphasized that, while the "strenuous" but impartial efforts of President Roosevelt were from time to time exerted to avert the deadlock which often threatened to break up the negotiations, the conciliatory and magnanimous attitude of Japan was the vital and dominant influence that brought about the peace of Portsmouth.

The Status of Manchuria and Korea.—During the war the status of Manchuria and Korea, whose territories formed the theatre of the war, was somewhat complicated. Had China and Korea not been made the scene of hostilities their entire territories would, at least theoretically, have been neutral. Although Russia held a lease of the

Kwantung district, including Port Arthur and Dalny, and although she possessed railways in Manchuria, the titular sovereignty and legal ownership belong to the Chinese government.¹ Nevertheless, so long as Russia's military forces occupied Manchuria, she assumed the rôle of *de facto* sovereignty and was liable to attack there by her foe.² Immediately on the breaking out of the war Japan, on February 9, 1904, called the attention of the several neutral powers to the desirability of preserving China's neutrality, in order to restrict hostile operations in that country. She pointed out that China, if she should become entangled in the war, would be unable to make the stipulated payments on the indemnity; that her foreign trade would be hampered; and that anti-foreign movements might again arise as in 1900.³ On the following day Secretary Hay, following a suggestion from Germany, addressed a note to the governments of Russia, Japan and China, in which he asked that Japan and Russia should respect "the neutrality of China" and "her administrative entity," and that "the area of hostilities shall be localized" as far as possible, so as to prevent uprisings of the Chinese people and the undue disturbance of foreign trade.⁴ At the same time a copy of the note was transmitted to "all the powers signatory to the protocol of Peking, requesting each of them to make similar representations to Russia and Japan." On February 13, China formally announced her neutrality, but observed that "in

¹ Art. I of the convention, regarding the lease of Port Arthur, expressly reserves China's sovereignty over the leased territories.

² As to the position of Manchuria, see Lawrence, *War and Neutrality in the Far East*, pp. 219 *et seq.* Manchuria furnishes an analogy to what Hall terms "places under double or ambiguous sovereignty." Hall, *Int. Law*, 4th ed., pp. 530, 532.

³ The *Kwampo* (*Official Gazette*), Feb. 19, 1904, p. 387.

⁴ MSS. Dept. of State; also *New York Times*, Feb. 10, 1904.

Manchuria, however, there are localities still in occupation by foreign powers where the enforcement of such rules of neutrality, it is feared, will be impossible.”¹ Japan, on February 13 and 17 gave assurances to the United States and China, respectively, that she would “respect the neutrality of China so long as it is respected by Russia,” excepting the region occupied by Russia.² On February 19 Russia accepted the American proposal, subject to the reservation that “neutralization in no case can be extended to Manchuria, the territory of which, by the force of events, will serve as the field of military operations.”³ Even within Manchuria, Japan further limited the war-zone to the territories actually occupied by Russia, *i. e.*, to the territory east of the Liao river. On the other hand, she engaged to respect the Chinese neutrality only so far as Russia respected it. The case of the “*Ryeshitelni*,” a Russian torpedo-boat destroyer, which took refuge at Chefu, compelled Japan temporarily to regard that harbor as belligerent.⁴ After the fall of Port Arthur, Russia, early in January, 1905, revived the question of the Chinese neutrality. Count Cassini, the Russian ambassador at Washington, made a representation to the department of state against the violation of Chinese neutrality by Japan and China,

¹ *London Times* (Weekly), Feb. 26, 1904, p. 133.

² *Ibid.*; also *MSS.* Dept. of State.

³ *MSS.* Dept. of State.

⁴ On August 10, 1904, two Japanese torpedo-boat destroyers entered the harbor of Chefu and cut out the Russian destroyer “*Ryeshitelni*,” which had taken refuge there, and which had, as the Russians alleged, assented to a Chinese demand for disarmament. The Russian government formally protested to the powers against the action of the Japanese as a gross violation of international law. Japan defended her action on the ground of the alleged violation of China’s neutrality by Russia and the inability of China to enforce it. See *London Times* (Weekly), Aug. 19 and 22, 1904; and *New York Times*, Aug. 20, 1904.

categorically pointing out: the Japanese capture of the "Ryeshitelni;" the alleged enlistment of Chinese bandits by the Japanese officers; the use of Miao-Dao Island as a base for naval operation by the Japanese fleet; the exportation of contraband from Chefu into Dalny (occupied by the Japanese force since May, 1904); the furnishing of cast-iron to the Japanese army by the government shops of China at Hanyang.¹ The governments of China and Japan not only promptly defended their conduct, but respectively made their counter-complaints against the Russian violation of the Chinese neutrality; submitting evidences of the sending of troops to Mongolia by Russia for the purposes of imposing military requisitions and of appropriating horses and provisions; of the Russian attempt in December last to smuggle ammunition at Kalgan for Port Arthur; of the establishment of wireless telegraphic apparatus at the Russian consulate at Chefu, which maintained communication with the fortress of Port Arthur; the military use of territory west of the Liao river by Russia; the forcing of the Chinese at Sinmintun to sell contraband to the Russian troops; and the escape of the Russian captain at Wasung while under escort from Chefu to Shanghai.²

More complex is the position of Korea. Its independence has been declared from time to time not only by Japan and Russia, but also by Great Britain, France and China. Prior to the Russo-Japanese war, Korea, on January 25, 1904, declared her intention of maintaining neutrality in the event of war.³ But as north Korea was occupied by Cossacks and several other places by the Japanese, it became

¹ MSS. Dept. of State.

² *Ibid.*

³ The Korean government telegraphed to the foreign powers, through the French consul at Chefu, announcing its neutrality in the event of war between Japan and Russia. *New York Herald*, Jan. 25, 1904.

the scene of military operations. Count Lamsdorff, in a circular note of February 11, pointing out that, "before the opening of hostilities against Russia," Japanese troops were landed in Korea, and that Admiral Uriu had attacked Russian men-of-war in "the neutral port of Chemulpo," accused Japan of a flagrant breach of neutrality.¹ In reply, the Japanese government sent to the powers, on March 9, a circular note in which it defended its action on the ground that its troops were despatched, with "the distinct consent of the Korean government," to "the menaced territory," in order to maintain "the independence and territorial integrity of Korea."² Japan further maintained that "a state of war" already existed when the Russian war vessels were attacked at Chemulpo, and that, Korea having consented to the landing of Japanese troops at Chemulpo, that harbor had already "ceased to be a neutral port, at least as between the belligerents." Professor Lawrence ably justifies the course of Japan, when he declares that "the power which struck the first blow within Korean borders violated no neutrality existing in actual fact, though a state-paper neutrality was rudely interfered with."³ He observes that, although "Korea enjoyed a state-paper neutrality," she was in reality "prize of war."⁴ In view of the grant by Korea to Japan of the right to land troops, and her failure to protest against the Japanese attack on the Russian vessels at Chemulpo, Dr. Nakamura regards her as a *de-facto* ally of Japan.⁵

Japan, through the efforts of Mr. Gonsuke Hayashi, her minister at Seoul, concluded on February 23, 1904, with

¹ London *Times* (Weekly), Feb. 27, 1904, p. 132.

² *Ibid.*, March 11, 1904, p. 164.

³ Lawrence, *War and Neutrality in the Far East*, p. 216.

⁴ *Ibid.*, p. 81.

⁵ *Gaiko-Jiho*, 1904, no. 81, pp. 545 *et seq.*

the Korean government, a protocol defining her relations with that country.¹ By this instrument Japan once more "guaranteed the independence and the territorial integrity of the Korean empire," and further "insured the safety and repose of the imperial house of Korea." Korea agreed to accept faithfully Japanese advice concerning the improvement of the administration, to grant to Japan the right to take all necessary measures and to occupy any places necessary from a strategic point of view, "in case the welfare of the imperial house of Korea, or the territorial integrity of Korea is endangered by the aggression of a third power, or by internal disturbances." But, while Japan guarantees Korean independence, she has, by virtue of her interference in administrative and military measures in the peninsula, established a *de-facto* protectorate over Korea. Here, again, Professor Lawrence well defines the Japanese relation to Korea when he says, "Susceptibilities are soothed, and possibly diplomatic difficulties turned, by calling it independent, but in reality it is as much under Japanese protection as Egypt is under ours [British], all state-paper descriptions to the contrary notwithstanding."² Japan further advanced her position as protector of Korea by the agreement made on August 22, 1904,³ by which the Korean government cannot conclude treaties or conventions with foreign powers, or grant their subjects concessions, without previously having consulted the government of Japan. In April, 1905, the imperial government of Korea agreed to "transfer and assign the control and administration of the post, telegraph and telephone services in Korea (except the

¹ The text of the protocol is given in Rockhill, *Treaties and Conventions with or concerning China and Korea*, p. 441.

² Lawrence, *op. cit.*, p. 219.

³ The text of agreement of August 22 is found in the *London Times*.

telephone service exclusively pertaining to the department of the imperial household) to the imperial Japanese government.”¹

When Korea, however, in May, 1904, denounced all her treaties with Russia and all concessions granted to Russian subjects, the Russian government declared that it would “regard as null and void all acts of the Korean government while under Japanese tutelage.”² So long as Korea and Manchuria remained in the war-zone their status and destiny must have continued to be uncertain and conjectural. But by the Treaty of Portsmouth, Russia has recognized the Japanese protectorate over Korea, the open-door principle and the administrative entity of the Chinese government in Manchuria with the exception of the Liao-tung peninsula, re-released to the Japanese.³ The renewed Anglo-Japanese alliance emphasizes that the Treaty of Portsmouth recognized, but also further secures, the open-door policy in Korea, notwithstanding the Japanese protectorate.

¹ *The Kwanpo*, April 28, 1905, published the text of the agreement.

² Lawrence, *op. cit.*, p. 217.

³ See arts. ii-iv of the treaty of Portsmouth.

CHAPTER X

CONCLUSION

Résumé.—From the foregoing chapters it may justly be assumed that certain nations of eastern Asia, though their rulers each claimed to be the lineal descendent of God, and exercised supreme authority in their own dominions, formed nevertheless, from very ancient times, “a family of nations,” or international society, whose members acknowledged and observed certain usages, customs or rules in their intercourse in peace and war. In the international politics of Asia, the islanders of Japan, prior to the first century of the Christian era, inaugurated the system of interference in Korean affairs. During the time when Korea was composed of several kingdoms, the Mikado, his ministers and generals often exerted themselves to help the friendly kingdoms of Korea against neighboring aggressors. Even the Empress Zhingō invaded the Korean peninsula in person when the peace of Japan was menaced in the beginning of the third century. But, after the defeat in the naval war with the Emperor Tang of China, which resulted in the union of the several kingdoms of Korea and by which the Liao Tung peninsula became a Chinese possession, the Emperor Tenchi, in the middle of the seventh century, renounced the traditional policy of interference, and wisely concluded to maintain peaceful intercourse with both China and Korea. This august sovereign also, when he was crown prince, accomplished the Taika reformation, by which the imperial

sovereignty, usurped by the vassal Soga, was restored. Under the new peaceful régime of the imperial administration, Japan healthily assimilated the Indian, Chinese and Korean civilizations, which had been introduced during the previous centuries. Buddhism, Confucianism, the fine arts, literature, political and judicial institutions, reached the climax of their developments in the eighth century, a period known in Japanese history as "the enlightened eras of Nara and Haian."

For several hundred years after the close of the ninth century foreign intercourse, especially diplomatic intercourse, hardly existed among Asiatic nations. Military anarchy and civil war prevailed in Japan as well as in China, and piracy reigned on the high seas. The military anarchy in China developed into the universal militarism of the Mongol Tartar, which threatened the national states of the East and the West. Japan successfully defended her national existence against the universalism of Ghingis Khan in the thirteenth century. Three centuries later, at the end of the sixteenth century, the Japanese hero, Taiko Hideyoshi, tried to subjugate the Asiatic continent after the fashion of the Mongol Tartar, much as the Teutonic Frank had tried to unify Europe after the Roman fashion. But the "Napoleon of Japan," encountering disasters at home and abroad, learned the impossibility of realizing the dream of universalism.

As has heretofore been stated, the Japanese originally welcomed all European peoples. When the Portuguese and Spaniards, as the result of their discoveries of sea routes to the East, came to Japan in the sixteenth century, and when the English and Dutch followed them in the beginning of the next century, the government and people freely and cordially received them, giving these Europeans freedom of religion and of commerce and the privilege of

extraterritoriality. Under these auspicious circumstances occidental and oriental nations should have been united into one international society. The Portuguese and Spanish missions to Asia, however, paid little or no respect to the sovereign rights of oriental nations. They undertook to divide all the world except the Christian countries between them, according to their construction of the Papal Bull. The abuses of the Catholic propaganda made it necessary for the Shogun government of Japan, in 1638, to exclude all foreigners except a few Dutch and Chinese at Nagasaki. For two centuries and a quarter thereafter Japan held a position of international isolation. Differing from the Japanese, the Koreans and the Chinese hated the Europeans from the beginning. Even the faithful Dutch traders were not admitted to Korea.¹ The first Portuguese embassy to China was imprisoned at Nanking. The Chinese did not grant to Europeans the privilege of extraterritoriality, as the Japanese had done. It is true that China did not totally close her ports, as did Japan and Korea, but she limited her intercourse with foreigners to Canton. The smuggling of opium by the English, who enjoyed a monopoly of the trade in that article with China, caused the Celestial empire, in 1840, to declare foreign trade to be forever at an end.² On the other hand, the nations of the East and the West, having widely different civilizations, could not be easily united unless one surrendered to the other. In the enlightened days of commerce and navigation the non-intercourse policy of the Asiatic nations infringed human necessity, and it was, therefore, against the "law of nations." Beginning with the opium war, Great Britain, France, the Netherlands, Russia and the United States exhibited a de-

¹ Griffis, *Corea, the Hermit Nation*, pp. 166 *et seq.*

² Boulger, *History of China*, vol. iii, p. 138. See also Douglas, *Europe and the Far East*, p. 67.

termination to establish intercourse with Asia even by an appeal to arms. After the bloody contest of the English and French with China, and the milder efforts of the Americans in Japan, western powers finally established commercial and diplomatic relations with Asiatic nations in the middle of the nineteenth century. Thus Japan and China were formally introduced into modern international society. They were not, however, members in the full sense of the word, as they had to recognize the extraterritorial privileges of the western nations, whose citizens did not feel safe under the local administration of justice.¹

If a state be not internally organized according to the principles of the national consciousness, civil war or anarchy will predominate at home, and the national activity towards other nations will be hindered, and *vice versa*. The key to the political and social psychology of the Japanese is the fact that all Japanese subjects, official or individual, have absolute reverence for the imperial power as displayed in an unbroken line of illustrious Mikados. So long as this national consciousness is preserved, the country enjoys "tranquillity" at home and maintains the national glory abroad. This is witnessed by the history of ancient and modern Japan. In the middle ages, when the imperial power declined, the Shogun and daimios sprang up, and military anarchy became prevalent throughout the empire. Although the Shogun controlled the feudal daimios and ruled the empire, one Shogun after another was overthrown by a rival and there was no permanent peace. Naturally, steady intercourse with foreign countries was not maintained during the régime of the Shoguns. The best of the

¹ As to the inequality of members of the international society, owing to the different grades of civilization, see Westlake, *International Law*, pp. 101 *et seq.*

Shogun dynasties, that of the Tokugawa family, maintained the peace of the country for two centuries and a half, but it avoided the difficulties and responsibilities of foreign intercourse by maintaining a policy of seclusion. By the revolution of 1868 the imperial sovereignty was restored, and the state and government were again established on the fundamental idea of the Japanese—the national reverence for the Mikado. Ever since a marked evolution has been and still is in progress in the internal and external history of the empire. The feudal system has been replaced by the national régime. The national institutions have been equipped and improved by contact with western civilization, which has been freely adopted by the imperial government and adapted to the national needs. The military despotism and political tyranny of feudal Japan have been replaced by a constitutional system with parliamentary legislation, local self-government and courts of justice. Provincial loyalty to the feudal daimios succumbed to national patriotism and universal devotion to the emperor. The activities of the Japanese, which hitherto had been dissipated in the civil struggles of the feudal lords, came to be, under the auspices of internal peace, national activities reaching out toward external politics.

Japan's healthy assimilation of western civilization and her strenuous efforts for the revision of the old treaties induced the western powers to recognize her judicial autonomy. In 1899 she was admitted into the comity of nations on an equal footing with western states. In her intercourse with Asiatic powers modern Japan led the way in bringing her sister states into treaty relations and in providing for trade regulations and resident ministers, both of which had been utterly unknown in the international society of old Asia. Japan, however, to-day enjoys consular jurisdiction in the territories of China, Korea and Siam, because her

civilization is superior to theirs. In the domain of purely political questions among oriental nations, China and Japan were concerned in the solution of the Loochooan, the Formosan (1874-1875) and the Korean problems, in which Japan struggled to bring semi-civilized peoples to the light of modern civilization. The two empires of China and Japan had for twenty-five years, up to the Chinese-Japanese war, exercised a dominant influence upon oriental politics, just as the great powers of Europe maintained their supremacy in European diplomacy.

After the Chinese war of 1894-1895, Japan entered into world-politics with the great powers of Europe and America. China was not only excluded from the rank of the Asiatic great powers, but became the "sick man" of the East, a companion of the "Korean invalid." Since that time the Far East has become a centre of the ambitions chiefly of France, Great Britain, Germany, Japan, Russia and the United States, in their efforts to satisfy the wants of "imperial expansion," commercial and political. As the result of Russia's efforts to obtain an ice-free port on the Pacific, Japan was not only "advised" to renounce her possession of the Liao Tung peninsula, "the legitimate fruit of victory," but was soon confronted with Russian rivalry in Korea. The continental powers of Europe claimed exclusive concessions in China, on the principle of "spheres of interest," while Great Britain, Japan and the United States maintained the principle of equality of opportunity for all nations in the commerce of the Far East. Among the continental powers, Germany, however, divides her preferences between the policy of "spheres of influence" and that of the "open door," while England and Japan, though they stand for the open-door policy, claim certain spheres of interest as an unavoidable necessity, in order to counterbalance the continental exclusiveness and

secure the balance of power. But the United States, by reason of its detached position, was able freely, frankly and independently to espouse the open-door policy without claiming any sphere of interest, and to secure from the powers their pledge to maintain in China equality of commercial opportunity.

At the time of the Boxer complication in 1900 the powers sent forces to North China for the relief of their representatives and citizens in Peking. But Russia afterwards failed to evacuate Manchuria and to restore to the Chinese government the temporarily assumed administration of Newchwang, a treaty port. Russia repeatedly excused her occupation of Manchuria as a temporary measure for railway protection. Nevertheless, more than once Russia attempted to induce China to conclude a treaty tending to impair China's sovereignty and to destroy the treaty rights of other powers. Great Britain, Germany, Japan and the United States warned China, while Great Britain, Japan and the United States from time to time protested directly to Russia. And as the latter country did not modify her evident designs in Manchuria, the Anglo-Japanese alliance was, in the beginning of 1902, entered into as a precautionary measure. Influenced by this alliance and the independent representation of the United States, Russia concluded a convention with China, in April, 1902, by which Manchuria was to be restored to China. In accordance with the stipulations of this convention, Russia began, in October, 1902, to evacuate Manchuria. But, in the spring of 1903, she suddenly changed her attitude, not only suspending the withdrawal of her troops, but also increasing her forces in Manchuria as well as on the Korean frontier. Then, as a condition of evacuation, she made demands on China, the granting of which would practically have brought Manchuria under a Russian protectorate and excluded the commercial interests

of all other powers. Great Britain, Japan and the United States again hastened to protest against the execution of the Russian designs.

Japan was far more directly concerned in the Far Eastern question than any other power, not only from the commercial point of view, but from the political as well. The permanent occupation of Manchuria by Russia and her activities in North Korea would be followed by the absorption of the whole of Korea, and this would menace the well-being of Japan. The imperial government of Japan, therefore, invited Russia to come to a thorough understanding by diplomatic means for assuring the integrity of the two "sick" nations of the Far East, and equal commercial opportunities therein for all nations, while recognizing the "predominant interest" of Russia in Manchuria and of Japan in Korea. Unfortunately, owing to the insincere attitude of the Russian government toward Japan, the latter was compelled to abandon measures of diplomacy and to take up arms to safeguard her interests. Notwithstanding the successive victories of Japan over Russia, Russia has not been "wiped out," but still remains a great power in Asia. What will be the ultimate result of the late great struggle between these two nations is a question that belongs to the future. Time will show whether the Far Eastern question will be solved by the supremacy of Russia, with her "policy of exclusiveness" and her "tradition of irresponsible authority," or by the leadership of Japan, who has, on the one hand, consciously adopted the Anglo-Saxon principle of national freedom and equality of opportunity, but who has, on the other hand, kindred sympathies and traditional relations with the backward nations of Asia.

The Mission of Japan.—It is the desire of Japan to preserve in the Orient the national status of those of her sister Asiatic nations which are not yet subjugated by foreign

powers, and to lead them to that light of western civilization which she is now enjoying, without having abandoned her national individualism. It is often said that the territorial integrity of the Chinese Empire is maintained by western powers largely because of the commercial interests involved. Japan not only has a dominant commercial interest, but she has also a political interest which far transcends that of any other power concerned in the Far Eastern question. As has often been observed, the Mikado and his statesmen have from time immemorial regarded the peace of the Korean peninsula as an object of vital importance to the welfare of Japan, and the preservation of Korean integrity has become the traditional policy of the Island Empire. For the attainment of this end Japan fought with China in 1894, with Russia in 1904, and will fight at any cost in the future with any power. From ancient times the Japanese have believed the extension of succor to weak Korea to be an "unshakable responsibility" of the empire. The recent protective measures adopted by Japan in Korea are, however, rather to be regarded as unavoidable aids to humanity and civilization. The *Yamato-damashi*, the "chivalrous spirit of the Japanese," which is derived from the *Bushido* (knighthood)—the readiness to help the weak victim as against the wicked aggressor—is particularly characteristic of the Japanese feeling toward Korea. ✓

Though Japan had often been at enmity with China prior to the war of 1894, yet, when the latter's territorial integrity was threatened by foreign powers, she at once manifested her interest in the preservation of the Celestial empire. Japan's classical relation to Chinese civilization and her commercial growth in China further strengthen her political sympathy with that country. The new conditions that arose in Manchuria, under Russian influence, having direct connection with Korea, added greatly to the respon-

sibilities of Japan. So long as China is incapable of maintaining single-handed an independent existence and of withstanding the external pressure of aggressive powers, Japan will not shirk her responsibility, even if called upon for armed assistance, as was demonstrated by the recent war. Mr. Colquhoun several years ago suggested the importance of preserving Chinese independence "under the tutelage of Japan, by the concert of commercial powers of Europe and America."¹ The civilized nations of the West should have faith in Japan's leadership in helping China, because Japan has not only pledged herself to maintain Chinese territorial integrity and the open-door policy in public documents, but has also ever fulfilled this pledge in practice.

Although Japan is politically not so much concerned with Siam as is either Great Britain or France, the modern Siamese cannot have forgotten the chivalrous assistance rendered them by the brave Yamada Masanaka on the eve of their national crisis in the seventeenth century.² Ever since the first treaty engagement of 1887, cordial relations between Japan and Siam have been maintained, and they have been more closely cemented by the recent visit of the Siamese crown prince to Tokio. Before any other power, Japan formally manifested her willingness to recognize Siam's entrance into the "comity of nations." The Japanese trade with Siam has developed to a significant degree during several years past, and there is also a marked possibility of further expansion. In case of territorial danger to Siam, Japan would not keep silence.

On the other hand, Japan would educate the backward

¹ Colquhoun, *The Mastery of the Pacific*, p. 426.

² For an interesting account of Yamada in Siam, see a paper by Captain James, *Transactions of the Asiatic Society of Japan*, vol. vii, pp. 194-199.

nations of Asia in western civilization. She has from time to time advised both Korea and China to reform their corrupt administration, which does not sufficiently guarantee the safety of person and property, and which tends to create foreign complications; but she has acquired, as the result of the failure of radical reforms in Korea in 1895, and in China in 1898, a preference for gradual measures. A number of Japanese legal counselors, administrative advisers, military instructors and college professors have already been employed by the Chinese, Korean and Siamese governments. Young men of these nations are also flocking to Tokio for professional education. By reason of kindred ideas and a kindred literature, the Japanese, as Dr. Hirth has remarked, are more capable than Europeans and Americans of so educating the Chinese as not to destroy "the old knowledge while familiarizing the students with the advantages of the new." ¹

Meanwhile Japan's activity in the Far East, particularly with reference to the potential awakening of China, with its extensive territories and vast population, has aroused the jealousy of rival powers. An attempt is made to create antagonism to her mission in China by invoking the apparition of the "yellow peril," which is supposed to endanger western civilization. From the economic point of view, the "yellow peril" is interpreted to signify that all western trade would be excluded from China should the Chinese, awakened by Japan, develop their industrial resources with "cheap labor" and thus supply themselves. The argument is superficial and erroneous. Many eminent economists now hold that a low scale of wages and of living succumbs in the long run to a higher scale of wages and of

¹ *The World's Work*, May, 1903.

living in modern industrial competition.¹ The introduction of modern industries into Japan, moreover, made the Japanese "far better customers in European and American markets," because of their new wants. The commercial history of Japan is instructive as to the future demands of the Chinese on western markets. "The richer the Chinese get, the more they will buy."²

Then, from the military point of view, it is suggested that the Japanese will drill the Chinese into efficiency by means of modern discipline, and that the combination of Japan with an empire of four hundred million people will endanger the western nations just as the Mongol hordes threatened Europe in the thirteenth century. Count Cassini, the Russian ambassador at Washington, openly deprecated the success of the Japanese in the late war, on the ground that it "would make the Japanese dominant in Asia and result in an Asiatic league," which "would imperil the interests not only of Europe, but of America also."³ This argument Baron Kaneko has ably refuted.⁴ "We are," he declares, "not fighting that we may be regarded as a 'peril' to western civilization, but to maintain the progress and humanity of Asiatic peoples." The Japanese are teaching the Chinese nationalism, how to defend their empire and to win the respect of other nations, in opposition to the universal anarchy of the Mongol hordes. So long as China is unable to defend herself, Japan is dis-

¹ Schoenhof, *The Economy of High Wages*, chaps. iii, iv and v. Marshall says that "low-wage labor is generally dear, if working with expensive machinery." See his *Principles of Economics*, 4th ed., bk. vi, chap. iii, p. 631.

² Leroy-Beaulieu, *The Awakening of the East*, p. 239. See also Reinsch, *World Politics*, p. 250.

³ *New York World*, March 20, 1904.

⁴ *International Economist*, May 21, 1904.

posed to sympathize with and encourage her, and, if necessary, to act in alliance with her. But, if the Chinese should pursue a course offensive to western civilization, the Japanese would co-operate with Christendom, hand in hand, against them, just as they did in 1900, when the Boxers treacherously offended against civilization and international law. Living authorities on the Far Eastern question, like Colquhoun, Stevens and Reinsch, have clearly exposed the absurdity of the cry as to the "yellow peril," and have demonstrated the absence of any ground for apprehension in Japan's attitude towards China.¹

Western civilization may, on the contrary, have something to fear from the "Slavic peril." Professor Burgess, an authority of world-wide reputation on public law and western history, has affirmed that the position of Russia constitutes "a perpetual and fearful menace to Germany, Austria and Sweden-Norway;" and he has further ventured to prophesy that "Russia will prove herself, in the next twenty-five years, almost as hostile to the United States as she is now to Great Britain."² Several years ago, when Russia occupied Port Arthur, and when the rumor of a Russo-Chinese alliance prevailed, Professor Giddings,³ an eminent sociologist, declared that the English-speaking nations would "lose commercial opportunities," would "sink to a position of secondary influence," and would "presently find themselves obliged to conform in all their politics to a power that will dominate international relations as remorselessly as did Cæsar or Napo-

¹ Colquhoun in *The Independent*, April 14, 1904; Stevens in *The Forum*, vol. 30, pp. 76-85; Reinsch in *The North American Review* (1905), no. 1.

² *Political Science Quarterly*, vol. xix, pp. 16-18.

³ *Ibid.*, vol. xiii, p. 605.

leon," unless Great Britain and the United States should abandon their "selfish and short-sighted" antagonism and act together against the Russo-Chinese combination, with its "policy of exclusiveness" and its "tradition of irresponsible authority." It is a historical fact that the commerce of Japan, and of other commercial nations, in North China and in Korea has from time to time been menaced by Russian activities. The cry of "peril" is, however, often the utterance of a jealousy of the temporarily dominant influence of some particular power. The greater the surplus produced by the United States for export, the louder the outcry of the continental powers against the "Yankee peril." The great powers and their material forces are to-day widely distributed over the earth, and they are watching with keen jealousy to see that no high-handed measure of any particular power endangers the rest of the world. The peril may be Yellow, Slavic, or Yankee, but its realization is not in the near future.

As to the attitude of Japan toward the western nations, it may be observed that she has welcomed and appreciated their appearance in the East, without which she recognizes the fact that Asia could not have been awakened. The political, commercial and religious agencies of the West, equipped with adequate capital, modern machinery and an organized church, are important factors in the exploitation of undeveloped Asia and its education in modern ideas. Japan therefore will co-operate with the western nations in the great work of civilization in Asia. Though opposed to the exclusive exploitation and permanent occupation of Manchuria by Russia, she was once ready to recognize Russia's dominant interest there, both commercial and political, especially in the matter of railways. Count Katsura, prime minister, declared, in the House of Representatives, in April, 1904, that it was "the policy of this empire to

cement close relations with the treaty powers, to respect the rights due to other nations, and thus to promote the maintenance of permanent peace in the Far East, as well as to strengthen the position of the country.”¹ In these days, when the oriental and the occidental civilizations meet face to face, the function of Japan is indispensable, since she is familiar with the characteristics of both. During his tour of the world, in 1901, Marquis Ito gave an interesting explanation of Japan’s mission in a speech at the Metropolitan Club in New York City. “We are,” said he, “the only people in the Orient who can fully understand the importance and significance of two civilizations, and I consider it a noble mission of our country to try to play the part of international broker in the further maintenance of the peace of the Orient.”² The national aspiration of the Japanese is, in a word, to maintain permanent international peace and peaceful intercourse, commercial and political, among all nations of the East and the West, preserving the territorial integrity of the weaker nations of Asia by co-operation with the great powers, while respecting the legitimate rights of other nations and defending its own proper rights and dignity. In the foreign affairs of the empire, the ruling emperor, the most gracious and august sovereign of Japan, has sedulously taught his people and government “to develop a cordial and amicable understanding with the treaty nations as the basis of enduring peace.” During the deadlock at Portsmouth, which threatened to break up the negotiations for the termination of the great war, the emperor, sacrificing the claim for a large indemnity, commanded his plenipotentiaries to concede the Russian conditions simply “for the sake of humanity and civilization”

¹ *The Japan Weekly Mail*, March 26, 1904.

² *New York Times*, October 25, 1901.

and "in the interest of both countries [Japan and Russia] and the world."

The peace of the world conceivably might be maintained by a universal sovereignty over all nations.¹ The institution of universalism, like Roman imperialism, dominating all the nations, may theoretically solve international conflicts. Universal authority would, however, necessarily destroy national peculiarity and ultimately bring about "stagnation and despotism."² Modern nations really struggle against universalism in order to preserve their own consciousness. So long as nations have no world-language or world-literature and no universal consciousness of right and wrong, and so long as national patriotism is not converted into world cosmopolitanism, the world peace of universalism cannot come into existence. The present emperor of Russia, has, out of the benevolence of his disposition, proposed to maintain international peace as well as to lighten national burdens by limiting the military forces of nations.³ But the history of the world does not justify the assumption that such a policy would necessarily have that practical result. The national wealth—public and private—of the leading powers is steadily increasing, in spite of their progressive armaments. No progressive nation desires to reduce her armament or her independent activities in days in which arms are still the best guarantee of peace and prosperity and

¹ Seligman, *The Economic Interpretation of History*, p. 129.

² Burgess, *Political Science and Comparative Constitutional Law*, vol. i, p. 38.

³ See the rescript of Czar, dated August 24, 1898, and the circular note of Count Muravieff, dated Jan. 11, 1899, in Holls, *The Peace Conference at the Hague*, pp. 8-10, 24-27. For the objection to disarmed peace, see the speech of General von Schwarzhoff, the German delegate to the Peace Conference, *ibid.*, pp. 76-78. See also a paper of Capt. Mahan, the American delegate, *North American Review*, vol. 169.

of the maintenance of national dignity. The principle of "arms against arms" is still true and practical. Since Prince Bismarck established the condition of "armed peace," the progressive armaments of the powers composing the Triple Alliance and the Dual Alliance, the steady development of the powerful navy of Great Britain, and the increased preparation of the Americans to help their sister republics with formidable ironclads, are but the tokens of international peace in Europe and America. Prior to the outbreak of the Russo-Japanese war, the Anglo-Japanese alliance, concluded in 1902, was regarded as at least a precautionary measure in securing the open-door policy and the peace of the Far East. The renewed Anglo-Japanese alliance concluded on August 12, 1905, which has extended the territorial operation of the compact so as to cover eastern Asia and India, should insure the general peace of Asia as against attempts at revenge by the rival power.¹

Armed peace is particularly necessary in the case of international trade. Commerce is often described as a peace-maker, since it is mutually beneficial to all nations. This statement is but an exaggeration of the idea of free trade. Should the industries and the transportation of nations develop in an equal degree, should nations have equal productive power and international exchange take place on an equal footing, then mutual benefit would be enjoyed by all nations and there would be no colonial struggles and no commercial jealousies. But, until nations shall attain this ideal commercial peace as the result of freedom of exchange, they must heed historical precedents. Speaking historically, commerce and war have a significant relation. "Even when the two are distinct," says Professor Cunningham, "they are closely connected; for war may open up new

¹ See Appendix B.

points for commerce, as was done by the Crusades, and a successful war may give securities for peaceful commerce; on the other hand, commercial rivalries have often occasioned the outbreak of hostilities between nations.”¹ During the seventeenth and eighteenth centuries, the international trade of European nations was characterized by mercantilism, “the national economy of self-interest.” Most of the wars were waged for economic objects; the alliances were often formed against the monopolistic measures of the dominant powers.² The victory of Great Britain over Napoleonic France for a long time secured peaceful commerce. Meanwhile, the economic theories of Quesnay and Adam Smith, translating “natural law” into international trade, caused nations to modify the restrictions of selfish mercantilism. Their adherents advocated “free trade,” and in the middle of the nineteenth century western nations were influenced by cosmopolitanism in their foreign commercial policy. German economists, notably Friedrich List,³ however, clearly demonstrated, with characteristic thoroughness, that free trade might be favorable to countries where industries were developed to a high degree, such as Great Britain, but not to such countries as Germany or the United States, which were in transition from the agricultural to the manufacturing stage, and that protective measures were preferable for the latter in order to foster “infant industries.” In the latter part of the nineteenth century, the United States, the German Empire, France, Austria-Hungary, Italy and Russia, established highly protective tariffs.⁴

¹ Cunningham, *Western Civilization (Ancient Times)*, p. 3.

² Schmoller, *The Mercantile System*, pp. 50-68.

³ Bastable, *The Commerce of Nations*, pp. 123 *et seq.*; Ingram, *A History of Political Economy*, pp. 193 *et seq.*

⁴ Bliss, *The Encyclopedia of Social Reform*. See also Seager, *Introduction to Economics*, pp. 370 *et seq.* Ashley, *Modern Tariff History*.

Even in England, where the free-trade doctrine has remained dominant, the cry of "protection against protection" has grown louder in the beginning of the twentieth century.¹ Although Japan was obliged to establish liberal rates in her conventional tariff, her statutory tariff is based upon the protective principle.² Protective measures have in their progress come to embrace subsidies on shipping and railway transportation, bounties on exports, the federation of colonies, the expansion of "spheres of interest," and the acquisition of leases and concessions in the territories of inferior nations. The economic activity of the great powers has assumed the form of "imperialism," which signifies the ambition of the great powers to control, for economic or political purposes, "as large a portion of the earth's surface as their energy and opportunities may permit." The struggle of the great powers in China is strikingly imperialistic.³ Should Russia maintain exclusive control in her imperial expansion in China and should the other great powers be indulgent toward her policy, their commercial opportunity in that quarter would be lost. The open-door policy in China can be maintained only by arms, so long as diplomacy fails to make Russia recognize the rights of other powers. The commercial and colonial policy of the Dutch in the eighteenth century is very instructive. Their avoidance of political responsibility in the pursuit of commerce led to the downfall of their colonial empire.⁴ It is

¹ See Mr. Chamberlain's speech, May 15, 1903, at Birmingham, London *Times*, May 16, 1903.

² The statutory tariff of 1899 was amended in 1901 and again in 1904, and the rates of duty were increased. See the *Kwampo*, March 30, 1901, and January 1, 1905.

³ Reinsch, *World Politics*, parts ii, iii. See also Hobson, *Imperialism*, chap. v, "Imperialism in Asia."

⁴ Cunningham, *Western Civilization*, vol. ii, pp. 204 *et seq.*

still true that "the flag follows trade," and *vice versa*. Struggles of the nations will not cease until "economic equality" is secured among them.¹ The armed protection of commerce is also indispensable for neutral countries in time of war. For the enforcement of the rule "free ships, free goods," Catherine II initiated the so-called armed neutrality against the discriminative capture of neutral ships by belligerent powers.² In short, the peaceful and defensive measure of arms is based on experience and human necessity. In their contemporary speeches, Emperor William, King Edward, President Roosevelt, and Marquis Ito frankly admit the necessity of armaments in maintaining the peace of nations.³

Armed peace is, however, likely to be misused or to be abused by passionate statesmen or by selfish nations. It is, therefore, much to be desired that, while nations maintain armaments as a safeguard, their differences should be settled, for the advancement of international peace, by "the subtler

¹ Seligman, *The Economic Interpretation of History*, p. 130.

² As to the armed neutrality, see Wheaton, *History of the Law of Nations*, par. 14.

³ During the imperial regatta at Kiel, on June 25, 1904, the German emperor, responding to a toast to King Edward, spoke as follows of the German navy: "It is intended for the protection of trade and of territory, and it also serves, like the German army, for the maintenance of peace which the German Empire has kept more than thirty years, and which Europe has preserved with it." King Edward responded: "May our two flags float side by side to the remote ages, even as to-day, for the maintenance of peace and welfare not only of our own countries, but also of all other nations." *New York Herald*, June 26, 1904.

"We desire," President Roosevelt, referring to the navy, declared in his annual message of 1901, "the peace which comes as of right to the just man; not the peace granted on terms of ignominy to the craven and the weakling."

Marquis Ito said two years ago: "We are arming ourselves only to insure the fulfilment of the mission of peace and the progress we have made thus far." See his speech at the Metropolitan Club.

movement" of diplomacy. The Peace Conference at the Hague certainly marks a great step towards general peace, so far as civilized countries have pledged themselves to submit their differences to impartial investigation, or to mediation or arbitration. The English-speaking nations, which have an extensive commerce throughout the globe, have long since manifested their sincere disposition to settle their disputes by arbitration. The United States during the last century was a party to "fifty-three executed arbitral agreements;" and its "president, or some one appointed or approved by him," acted as "arbitrator or umpire" in "twelve cases."¹ Great Britain was a party to twenty arbitrations with the United States and to thirty-three with other countries.² The recent course of some of the great powers, particularly Great Britain, France, Germany, Italy and Spain, in agreeing to refer to the Hague tribunal differences which do not affect "the vital interests, the independence or the honor" of the state, has tended to rescue the tribunal from neglect. If this course were generally followed, international friction would be diminished. Japan and Russia, now that the war is ended, should return to the support of this humane movement.

In 1902 Japan consented to the submission to the Hague tribunal of the question of the application of the house tax to buildings of foreign residents on land held under lease in perpetuity.³ Even while the war was still in progress the negotiation of an arbitration treaty between Japan and the United States was reported. Russia also concluded a similar treaty with Denmark.

¹ Moore, *A Hundred Years of American Diplomacy*, Rep. of Am. Bar Asso., vol. 27, pp. 347 *et seq.*

² *Ibid.*, p. 351.

³ *Parl. Papers, Japan no. 1* (1905). On May 22, 1905, the tribunal decided against the Japanese claim.

It is no doubt true that the commercial and colonial jealousies attending the imperial expansion of the great powers would be softened by observing the spirit of cosmopolitanism, as exhibited in the open-door policy.¹ The Anglo-French agreement of April 7, 1904,² which adjusted the differences of the two countries in respect of their colonies, and which liberally adopted the cosmopolitan policy, is suggestive and instructive in its bearing on the imperialistic policy of the great powers. Reciprocity treaties, the liberal application of the "most-favored-nation" clause, and the extension of national treatment to foreigners, would go far towards averting tariff wars and retaliation. Finally it should be remembered that, although an imperialistic policy may be justified, where it is confined to the protection of the legitimate rights of the nation abroad, or where it leads backward nations to the light of civilization, or even where it secures the necessary exercise of an "international police," yet a selfish imperialism is likely to end, as it has so often done, only in failure. The measures of the Anglo-Japanese alliance in China and Korea such as the open-door policy are both humane and statesmanlike.

The peace of the world, the progress of humanity, the prosperity of each individual nation, the reconciliation of the East and West, the union of the "Christian" and the "Pagan," all the elements that go to make up the great conception of the world's civilization, would be advanced by the co-operation of all nations which are capable of such

¹ "In so far as any country finds that she is able, without detriment to herself, to modify or reconstruct her commercial policy on cosmopolitan lines, the occasions for international dispute are likely to be considerably diminished." Cunningham, *Western Civilization*, vol. ii, p. 266.

² *Parl. Papers, France no. 1 (1904)*.

a mission. In this all-embracing world-movement, Japan will continue to play a significant part, as she has done heretofore, in harmony with her own interests and with those of Christendom, and in the same chivalrous spirit in which she is now leading her sister nations of Asia to a higher plane of political, social, and moral responsibility.

APPENDIX

A

THE TREATY OF PORTSMOUTH, 1905

The Emperor of Japan, on one part, and the Emperor of All the Russias, on the other part, animated by a desire to restore the blessings of peace to their countries, have resolved to conclude a treaty of peace and have for this purpose named plenipotentiaries, that is to say, for his Majesty, the Emperor of Japan, Baron Komura Jutaro Jusami, Grand Cordon of the Imperial Order of the Rising Sun, his Minister for Foreign Affairs, and his Excellency Takahira Kogoro, Imperial Order of the Sacred Treasure, his Minister to the United States, and for his Majesty the Emperor of All the Russias, his Excellency Sergius Witte, his Secretary of State and President of the Committee of Ministers of the Empire of Russia, and his Excellency Baron Roman Rosen, Master of the Imperial Court of Russia, his Majesty's Ambassador to the United States, who, after having exchanged their full powers, which were found to be in good and due form, have concluded the following articles :

Article One.—There shall henceforth be peace and amity between their Majesties the Emperor of Japan and the Emperor of All the Russias and between their respective States and subjects.

Article Two.—The Imperial Russian Government, acknowledging that Japan possesses in Korea paramount political, military, and economical interests, engage neither to obstruct nor interfere with measures for the guidance, protection, and control which the Imperial Government of Japan may find it necessary to take in Korea.

It is understood that Russian subjects in Korea shall be treated in exactly the same manner as the subjects and citizens of other foreign powers; that is to say, they shall be placed on the same footing as the subjects and citizens of the most favored nation.

It is also agreed that in order to avoid causes of misunderstanding the two high contracting parties will abstain on the Russian-Korean frontier from taking any military measures which may menace the security of Russian or Korean territory.

Article Three.—Japan and Russia mutually engage:

First—To evacuate completely and simultaneously Manchuria except the territory affected by the lease of the Liaotung Peninsula in conformity with the provisions of the additional Article I annexed to this treaty, and

Second—To restore entirely and completely to the exclusive administration of China all the portions of Manchuria now in occupation or under the control of the Japanese or Russian troops with the exception of the territory above mentioned.

The Imperial Government of Russia declare that they have not in Manchuria any territorial advantages or preferential or exclusive concessions in the impairment of Chinese sovereignty or inconsistent with the principle of equal opportunity.

Article Four.—Japan and Russia reciprocally engage not to obstruct any general measures common to all countries

which China may take for the development of the commerce or industry of Manchuria.

Article Five.—The Imperial Russian Government transfer and assign to the Imperial Government of Japan, with the consent of the Government of China, the lease of Port Arthur, Ta-Lien, and the adjacent territory and territorial waters and all rights, privileges, and concessions connected with or forming part of such lease, and they also transfer and assign to the Imperial Government of Japan all public works and properties in the territory affected by the above-mentioned lease.

The two contracting parties mutually engage to obtain the consent of the Chinese Government mentioned in the foregoing stipulation.

The Imperial Government of Japan on their part undertake that the proprietary rights of Russian subjects in the territory above referred to shall be perfectly respected.

Article Six.—The Imperial Russian Government engage to transfer and assign to the Imperial Government of Japan without compensation and with the consent of the Chinese Government the railway between Chang-chun-fu and Kuan-chang-tsu and Port Arthur, and all the branches together with all the rights, privileges, and properties appertaining thereto in that region, as well as all the coal mines in said region belonging to or worked for the benefit of the railway. The two high contracting parties mutually engage to obtain the consent of the Government of China mentioned in the foregoing stipulation.

Article Seven.—Japan and Russia engage to exploit their respective railways in Manchuria exclusively for commercial and industrial purposes and nowise for strategic purposes. It is understood that this restriction does not apply to the railway in the territory affected by the lease of the Liao-tung Peninsula.

Article Eight.—The Imperial Governments of Japan and Russia, with the view to promote and facilitate intercourse and traffic, will so soon as possible conclude a separate convention for the regulation of their connecting railway services in Manchuria.

Article Nine.—The Imperial Russian Government cede to the Imperial Government of Japan in perpetuity and full sovereignty the southern portion of the Island of Sakhalin and all the islands adjacent thereto and the public works and properties thereon. The fiftieth degree of north latitude is adopted as the northern boundary of the ceded territory. The exact alignment of such territory shall be determined in accordance with the provisions of the additional Article XI annexed to this treaty.

Japan and Russia mutually agree not to construct in their respective possessions on the island of Sakhalin or the adjacent islands any fortifications or other similar military works. They also respectively engage not to take any military measures which may impede the free navigation of the Strait of La Perouse and the Strait of Tartary.

Article Ten.—It is reserved to Russian subjects, inhabitants of the territory ceded to Japan, to sell their real property and retire to their country, but if they prefer to remain in the ceded territory they will be maintained and protected in the full exercise of their industries and rights of property on condition of submitting to the Japanese laws and jurisdiction. Japan shall have full liberty to withdraw the right of residence in or to deport from such territory any inhabitants who labor under political or administrative disability. She engages, however, that the proprietary rights of such inhabitants shall be fully respected.

Article Eleven.—Russia engages to arrange with Japan for granting to Japanese subjects rights of fishery along the

coasts of the Russian possessions in the Japan, Okhotsk, and Bering Seas.

It is agreed that the foregoing engagement shall not affect rights already belonging to Russian or foreign subjects in those regions.

Article Twelve.—The treaty of commerce and navigation between Japan and Russia having been annulled by the war, the Imperial Governments of Japan and Russia engage to adopt as a basis for their commercial relations, pending the conclusion of a new treaty of commerce and navigation, the basis of the treaty which was in force previous to the present war, the system of reciprocal treatment on the footing of the most favored nation in which are included import and export duties, customs formalities, transit and tonnage dues, and the admission and treatment of agents, subjects, and vessels of one country in the territories of the other.

Article Thirteen.—So soon as possible after the present treaty comes in force all prisoners of war shall be reciprocally restored. The Imperial Governments of Japan and Russia shall each appoint a Special Commissioner to take charge of the prisoners. All prisoners in the hands of one Government shall be delivered to and received by the Commissioner of the other Government or by his duly authorized representative in such convenient numbers and such convenient ports of the delivering State as such delivering State shall notify in advance to the Commissioner of the receiving State.

The Governments of Japan and Russia shall present each other so soon as possible after the delivery of the prisoners is completed with a statement of the direct expenditures respectively incurred by them for the care and maintenance of the prisoners from the date of capture or surrender and up to the time of death or delivery. Russia engages to repay to Japan so soon as possible after the exchange of

statement as above provided the difference between the actual amount so expended by Japan and the actual amount similarly disbursed by Russia.

Article Fourteen.—The present treaty shall be ratified by their Majesties, the Emperor of Japan and the Emperor of All the Russias. Such ratification shall be with as little delay as possible, and in any case no later than fifty days from the date of the signature of the treaty, to be announced to the Imperial Governments of Japan and Russia respectively through the French Minister at Tokio and the Ambassador of the United States at St. Petersburg, and from the date of the later of such announcements this treaty shall in all its parts come into full force. The formal exchange of ratifications shall take place at Washington so soon as possible.

Article Fifteen.—The present treaty shall be signed in duplicate in both the English and French languages. The texts are in absolute conformity, but in case of a discrepancy in the interpretation the French text shall prevail.

In conformity with the provisions of Articles 3 and 9 of the treaty of peace between Japan and Russia of this date the undersigned plenipotentiaries have concluded the following additional articles:

Sub-Article to Article Three.—The Imperial Governments of Japan and Russia mutually engage to commence the withdrawal of their military forces from the territory of Manchuria simultaneously and immediately after the treaty of peace comes into operation, and within a period of eighteen months after that date the armies of the two countries shall be completely withdrawn from Manchuria except from the leased territory of the Liao-tung Peninsula. The forces of the two countries occupying the front positions shall first be withdrawn.

The high contracting parties reserve to themselves the right to maintain guards to protect their respective railway lines in Manchuria. The number of such guards shall not exceed fifteen per kilometer, and within that maximum number the commanders of the Japanese and Russian Armies shall by common accord fix the number of such guards to be employed as small as possible while having in view the actual requirements.

The commanders of the Japanese and Russian forces in Manchuria shall agree upon the details of the evacuation in conformity with the above principles, and shall take by common accord the measures necessary to carry out the evacuation so soon as possible, and in any case no later than the period of eighteen months.

Sub-Article to Article Nine.—So soon as possible after the present treaty comes into force a commission of delimitation, composed of an equal number of members, is to be appointed, respectively, by the two high contracting parties, which shall on the spot mark in a permanent manner the exact boundary between the Japanese and Russian possessions on the island of Sakhalin. The commission shall be bound, so far as topographical considerations permit, to follow the fiftieth parallel of north latitude as the boundary line, and in case any deflections from that line at any points are found to be necessary, compensation will be made by correlative deflections at other points. It shall also be the duty of said commission to prepare a list and a description of the adjacent islands included in the cession, and, finally, the commission shall prepare and sign maps showing the boundaries of the ceded territory. The work of the commission shall be subject to the approval of the high contracting parties.

The foregoing additional articles are to be considered ratified with the ratification of the treaty of peace to which they are annexed.

Portsmouth, the fifth day of the ninth month of the thirty-eighth year of Meiji, corresponding to the twenty-third of August, 1905, (Sept. 5, 1905).

In witness whereof the respective plenipotentiaries have signed and affixed seals to the present treaty of peace.

Done at Portsmouth, New Hampshire, this fifth day of the ninth month of the thirty-eighth year of the Meiji, corresponding to the twenty-third day of August, one thousand nine hundred and five.

B

THE ANGLO-JAPANESE ALLIANCE, 1905

Preamble.—The Governments of Great Britain and Japan, being desirous of replacing the agreement concluded between them on January 30, 1902, by fresh stipulations, have agreed upon the following articles, which have for their object:

A.—Consolidation and the maintenance of general peace in the regions of eastern Asia and India.

B.—The preservation of the common interests of all the Powers in China by insuring the independence and integrity of the Chinese Empire and the principle of equal opportunities for the commerce and industry of all nations in China.

C.—The maintenance of the territorial rights of the high contracting parties in the regions of eastern Asia and of India, and the defense of their special interests in the said regions.

Article I. It is agreed that whenever, in the opinion of either Great Britain or Japan, any of the rights or interests referred to in the preamble are in jeopardy, the two Governments will communicate with one another fully and frankly, and consider in common the measures which should be taken to safeguard those menaced rights and interests.

Article II. If, by reason of an unprovoked attack or aggressive action, wherever arising, on the part of any other Power or Powers, either contractor be involved in war in defense of its territorial rights or special interests men-

tioned in the preamble, the other contractor shall at once come to the assistance of its ally, and both parties will conduct war in common and make peace in mutual agreement with any Power or Powers involved in such war.

Article III. Japan possessing paramount political, military, and economic interests in Korea, Great Britain recognizes the right of Japan to take such measures for the guidance, control, and protection of Korea as it may deem proper and necessary to safeguard and advance those interests, provided always that such measures are not contrary to the principle of equal opportunities for the commerce and industry of all nations.

Article IV. Great Britain having special interests in all that concerns the security of the Indian frontier, Japan recognizes her right to take such measures in the proximity of that frontier as she may find necessary for safeguarding her Indian possessions.

Article V. The high contracting parties agree that neither, without consulting the other, will enter into separate agreements with another Power to the prejudice of the objects described in the preamble of this agreement.

Article VI. In the matter of the present war between Japan and Russia Great Britain will continue to maintain strict neutrality unless another Power or Powers join in hostilities against Japan, in which case Great Britain will come to the assistance of Japan, will conduct war in common, and will make peace in mutual agreement with Japan.

Article VII. The conditions under which armed assistance shall be afforded by either Power to the other in the circumstances mentioned in the present agreement, and the means by which such assistance shall be made available, will be arranged by the naval and military authorities of the contracting parties, who from time to time will consult one another fully and freely on all questions of mutual interest.

Article VIII. The present agreement shall, subject to the provisions of Article VII, come into effect immediately after the date of signature and remain in force for ten years from that date. In case neither of the high contracting parties shall have been notified twelve months before the expiration of the said ten years of the intention of terminating the agreement, it shall remain binding until the expiration of one year from the day on which either of the contracting parties shall have denounced it; but if, when the date fixed for its expiration arrives, either ally is actually engaged in war, the alliance, *ipso facto*, shall continue until peace shall have been concluded.

In faith whereof the undersigned, duly authorized by their respective Governments, have signed this agreement and affixed their seals. Done in duplicate at London, August 12, 1905.

LANSDOWNE.

HAYASHI.

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