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HISTORICAL MAXIMS  
FOR TROUBLED TIMES.

AN ADDRESS

BEFORE THE

LAW DEPARTMENT OF YALE COLLEGE,

AT COMMENCEMENT, JUNE 27, 1877.

BY  
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## *HISTORICAL MAXIMS FOR TROUBLED TIMES.*

When the late war was just ended, and we were turning our thoughts to the question of building a restored nationality upon the fields of our great struggle, I remember being struck by a remark of one of our countrymen abroad, in a letter to a leading newspaper at home. He said the thing he most desired to do was to commend his fellow citizens to a prayerful study of history. His words pithily expressed the feeling which sagacious men must very commonly have had, that the test of our political wisdom was upon us; that the great danger was that we should be too much ruled by the passions and prejudices engendered by strife, failing to remember the lessons which past events might teach, and so should fall into wrongs or blunders that would bring a train of evils from which we could only redeem ourselves at great cost and with great suffering.

It was evident to all who would think, that the work of pacification and of adjusting the constitution of the country to the new circumstances of the nation, was one of great difficulty and delicacy, but it was very far from being evident whether wisdom would be listened to and the fundamental laws of human nature and human society be regarded in the legal settlement we were to make.

The solicitude of our countryman abroad was therefore most natural, and was doubtless shared by the true friends of civil liberty and of progress throughout christendom. How have these hopes been justified, and their fears happily disappointed? We are just closing the first great epoch of our reconstruction, and it seems to me not inappropriate to compare some points in our experience with those of other nations, and to inquire whether our history has confirmed the general maxims which wise historians have drawn as conclusions from the conduct of other peoples in times of revolution and convulsion. I propose further to ask your attention to the tendency of even the most enlightened societies to forget these lessons of experience at the very time when they may be most useful, that is to say, at the time when they are passing through events similar or at least analogous to those of other times.

In doing this I shall of necessity limit myself to matters which may fairly be treated as already settled by the course of events, and shall avoid those which may either be still the subjects of partizan political discussion, or which like the great problem of the ultimate relations of the diverse races of men among us, are either too vast or are yet too far from ultimate settlement.

We must beware also that we do not mistake the spirit in which history should be questioned, and look only for a superficial similarity of events, where we ought to seek principles of action which may be trusted to indicate probable results in human conduct when like circumstances exist. We must avoid taking the record of the past in what a modern master of his-



torical writing calls "the vulgar sense"—merely trying to collect from its leaves "the symptoms for a political diagnosis and the specifics for a prescription."<sup>2</sup>

Modern literature contains the inestimable treasure of a large body of historical books written by men who have had the true philosophic character, and who have often united judicial solidity of judgment with a greediness of work which has made them delight in the laborious and minute investigations of facts necessary to lay the firm foundation for broad and just generalizations. Not a few of these writers have had the still further advantage of being themselves actors, and actors of no mean rank, in the theatre of great public affairs, and their judgments and opinions come to us with the authority at once of philosophers and statesmen. When a Guizot discourses of the great English revolution, we are not merely receiving the encouragements to faith in popular progress and the warnings against passionate popular impulses which a clever theorist might draw from the story; but we listen to the oracles of a wisdom matured in an experience extending through the period of most startling revolutions in his own country,—a wisdom sobered by the disappointments of more than half a century of effort to lead France to a practical faith in constitutional government. In listening to such a teacher we are privileged to combine the practical advice of a most able minister of a great government with the wise observations of the ripe and sagacious scholar analysing events of prime importance to all mankind. How happy do we think a people which may call to aid the

<sup>2</sup>Mommsen's *Rome*, 4, 550.

counsels of statesmen at once able and honest ! In a great crisis the need of such guidance is multiplied at the very time when it is most difficult to obtain it. The men whose judgment would be calm enough to make it valuable, are too often regarded with disfavor because they do not echo the full stress of popular excitement. The hero of the day is the man who in word or act most completely embodies the popular impulse. A statesman at such a time may have the sagacity of Neckar at the beginning of the French Revolution of 1789, but he only makes more strikingly true the conclusion which Mignet draws from the career of Neckar, that "a man is of small account in a revolution which deeply moves the masses ; the swell carries him along or leaves him ; he must keep in advance or be trampled upon."<sup>\*</sup>

It may appear that it is of little use to argue the value of the lessons of history, if they will not be listened to at the time they are most needed ; but the objection is only valid in part. The people that is well instructed in past experience, is by virtue of this education less likely to be swept away by mere excitement. It is one of the blessings of a wide diffusion of intelligence and cultivation, that it makes a whole nation as self-restrained and moderate in conduct as the chosen few would be in a community less instructed. The France of 1870 was a different thing from the France of 1793, because the people had profited by the terrible experience of their fathers, and though the Gallic

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<sup>\*</sup> "Un homme est bien peu de chose pendant une révolution qui remue les masses ; le mouvement l'entraîne ou l'abandonne ; il faut qu'il précède ou succombe." Mignet, *Hist. de la Rev. Française*, v. 1. p. 96.

blood may be supposed to course the veins as impetuously now as in the last century, better knowledge has begotten self-control, and the people who we used to fear were incapable of a wise use of freedom, seem to have learned in one generation the lessons of political tolerance and of faith in reason more than in violence. The way of legislative reform and peaceful, constitutional progress seems fully open to them, and we may point to them as a convincing proof that the study of past mistakes is fruitful in present wisdom.

Fully admitting, therefore, that in the very gust and whirl of passion one can no more reason with an angry people than with an angry man, it still holds true that when the tempest passes it is good to reflect upon the sins of omission and of commission that every troubled time is full of, for thus only can we get reasonable assurance that we may grow into wise self-control, and make our future conduct worthy of a better age.

When the Reign of Terror was beginning, Camille Desmoulins made appeals to his countrymen for moderation, so eloquent, so full of truth and of honest fervour, and so replete with argument from history, that it seems incredible he was not listened to. His famous picture of the times of Nero, might, one would think, have made Marat himself pause, when he saw the consequences of the breaking down of private faith and neighborly confidence and of letting remorseless fanaticism make a war of extermination upon all who did not shout the popular shibboleth. The very word "suspected" ought to have been a potent warning from that day when the vivid scene was drawn of the time in Rome when every public and private virtue, wealth

or poverty, public activity or studious retirement, levity or melancholy, were in turn made the occasion of a tyrant's suspicions and the pretext for a citizen's destruction.\*

But the belief that the annihilation of aristocrats was the means of establishing popular liberty had become the insane 'fixed idea' of the populace, and they were deaf to all appeals. Yet those very horrors against which Desmoulins warned in vain, have given such point to the lesson he would have taught, that to-day France in common with the civilized world shudders at the word which was then so fatal to her best citizens, and has learned the moderation she then contemned.

One of the first lessons, therefore, which history gives in response to our questioning, is that there is little use in referring an excited people to the experience of other nations in similar circumstances, unless the habit of respecting and weighing such examples has already been found; but this rather depressing view of the case is pretty well counter balanced by the encouraging statement that just in proportion as this habit of intelligent study of the past is cultivated, shall we increase the safe-guards against extravagant and merely passionate conduct in critical times. Though we cannot undo any follies we may have committed, we can learn by our errors, and lessen the chances of future ones.

Another general proposition drawn from the history of revolutionary periods is, that the motives publicly professed as ruling ones, are apt to be very much nobler than those which actually control.

\*Mignet's Fr. Rev., 2. 31.

This need not mean that there is conscious hypocrisy, for few things in this world are so earnest and sincere as the beginnings of great popular movements. The first step is hardly taken, however, before the cool observer will see the generous self-forgetfulness of first impulses tempered and warped by all sorts of selfish considerations and personal or party ambitions.

The love of power and dominion itself grows so rapidly in the use of it, that a party or a dominant faction often passes unconsciously from devotion to a principle over to a struggle for continued ascendancy. So constant is this tendency of human nature that it may be broadly declared that no popular struggle ever occurred in which examples of its action were lacking. Burke refers to it in his celebrated Bristol letter, once a sort of political creed for Americans but now-a-days seldom referred to. He says, "contending for an imaginary power we begin to acquire the spirit of dominion, and to *lose the relish for honest equality.*" \* \* the least resistance to power appears more inexcusable in our eyes than the greatest abuses of authority. \* \* We are taught to believe that a desire of domineering over our countrymen is love to our country!" These words ought certainly to have no less weight with us, because they were written in our defence at the opening of the first great controversy with the mother country.

An acute French writer whom I have already quoted, (Mignet) applies the same principle to his own countrymen, saying, "In France, love of liberty is, *a little*, the liking for power," and again, more didactically if less wittily, "It must never be forgotten that in rev-

‘olutions men are moved by two tendencies; love of  
 ‘their ideas and a taste for domination. The members  
 ‘of the Committee (of public safety) at first exerted  
 ‘themselves for the triumph of their democratic theo-  
 ‘ries; they ended by struggling for the possession of  
 ‘power.’”\*

It would be vain to hope that pure and unmixed justice, reason and moderation should always rule even the ordinary affairs of men, much less the great convulsions of human society; but we may rightly ask, when the first violence of the storm has passed, that sound principles should again be heard, and that we should bring our conduct to the test of honest self-examination. We may find both moral and mental advantage and satisfaction in the effort to compare what we have done and are doing with those immutable principles of right which are glibly at our tongue’s end when we have no need to use them. A people’s conscience, like a man’s, is a thing that may be cultivated and enlightened, and the means and occasion for doing it are practically the same.

Even when the community as a whole means to do the right and noble thing, the personal ambitions of leaders or would-be leaders, too often make use of the popular earnestness of purpose to turn the current to their own advantage and make the noisy and hollow profes-

\* “En France, l’amour de la liberté est, un peu, le goût de pouvoir.” Hist. de la Rev. Française, vol. 1, p. 118. “Il ne faut jamais oublier qu’en révolution les hommes sont mue par deux penchants, l’amour de leurs idées et le goût de commandement. Les membres du Comité, au commencement, s’étendirent pour le triomphe de leurs idées démocratiques; a la fin il se combattirent pour la possession du pouvoir.” Id. 2, 60.

sion of high moral principle serve merely selfish ends, from the vulgar putting of money in their purses up to the grasping of governmental control. Here again we should clearly recognize the fact that we can create no Utopias, nor can we look very closely into the personal motives men have for supporting a good cause. We can, however, cultivate a prudent cautiousness of committal to any leadership of a merely partizan character, remembering that the maxim "the King can do no wrong" is as much in vogue in free governments as in any other; parties and party leaders being substituted for the king. No road to power is so easy as lusty shouting for what is supposed to be the popular purpose of the moment, and it is only too notorious that demagogues are peculiarly strong in the lungs, and the less of principle they have the more reckless they are in striving to out-herod Herod; being free from the caution or the solicitude for ultimate results which in critical times often weighs heavily upon the truest friends and original champions of a great cause. Sooner or later the reaction comes and with it the process of disillusion. The danger then is, that in the disgust people feel at the hypocrisy which has deceived them, they will go too far in their skepticism of all good, and listen too much to those who preach a cynical contempt for all principle, because the names "patriot," "reformer" or "christian statesman" have been disgraced by knaves who have used them as the cloak for rascality. Thoughtful study of human nature as illustrated by history would moderate the hero-worship and save the need of unhappy reaction. It would have the effect disciplined intelligence always has, of cultivating

self-restraint and sound judgment, and of saving nations as it saves individuals from the humiliating deceptions of "confidence men" upon the street or in politics.— Even here, however, history warns us to qualify our expectations, and to remember that when we have done our best to reach sound judgments upon current affairs, those who witness them will still fail to free themselves entirely from the passions of the moment, and in their close proximity to great events will somewhat misjudge their proportions and their perspective.

Guizot has well stated this, in his *History of the Cromwellian Revolution*, discussing the manner in which Monk deceived the republicans of his day, and secured the restoration of the Stuarts while the popular party believed him still true to them. He says "There are no deceptions so gross nor inconsistencies so striking that cotemporaries are not easily misled by them ; for events and men are only clearly viewed from a distance, and the current time, is, for those who live in it, full of uncertainties and of shadows."\*

Another direction in which we need to be on our guard against mistaken and dangerous tendencies, is found in the disposition to confound the essential character of political and common crimes. It is hard, especially for the unreflecting, to understand how an offense which we claim the right to punish even with death, can differ in moral character from theft, murder, or arson. The disposition in human nature to note

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\* " Il n'y a point de mensonges si grossiers ni de contradictions si choquantes que les contemporains ne s'y laissent aisément tromper ; car les événements et les hommes ne sont clair que vus de loin, et le temps présent est, pour ceux qui y vivent, plein d'incertitudes et de ténèbres." *Hist. Rev. Angleterre*, vol. 6, p. 151.



only broad and coarse distinctions constantly leads to the conclusion that we ought either to inflict no punishment for a political offense, or we should regard the offender as fallen into the same moral degradation and turpitude as the commonest felon and outcast. During the heat of a revolutionary conflict, the necessity of the stimulus of strong feeling and of fervid enthusiasm to make possible the great deeds or the great sacrifices upon which success depends, produces an unwillingness, even in the most temperate of men, to think of those things which would rob his will of more than half its force. We decline to consider what may be the motives of those who, on the one hand, are trying to overthrow institutions upon which we think the happiness and progress of mankind depend, or on the other hand, are seeking to fasten upon us what we regard as the chains of tyranny.

It would never do for the soldier going into battle to think upon the desolate homes, the heart broken wives and children for whom the whole light of life is to be blotted out by the struggle of the day. His arm would lose its nerve, his heart would prove cowardly if these immediate consequences of his acts were too vividly before him. He must look away to the greater results, the really noble purposes for which he is combating, if he would rouse the heroic enthusiasm which makes him ready not only to do but to suffer for a good cause.

In a less degree the same influences operate upon the private citizen, who must determine what party and what measures to support in such times of public peril and excitement, and upon the statesman who bears a

large part of the responsibility for the decision which may put armies in motion or prolong the terrible destruction of war.

In the scriptural assignment of a time for all things, we may justly say there is a time when men may be deaf to appeals to sympathy, to the arguments that rebellion is begun with plausible if not praiseworthy motives, to everything in short which would weaken the resolve to drive inexorably onward to the triumph of the right as we see and know it.

But there are also times when it becomes a sacred duty to calm the passions of strife, and to give full weight and force to all considerations which would disarm vengeance and even seek with earnest solicitude to revive all the sweet influences of peace and concord. By the common consent of all generous and enlightened minds the victory of either party to a great civil conflict should sound the hour for this return to the exercise of the milder and more grateful forms of human action.

Men have always praised the clemency of conquerors, not only because it showed the virtues of amiability and moderation, but because they have recognized the sound policy of it, and have seen that it is in a vast majority of cases the way to reach a desired result with least cost. In the case of civil convulsions, where the temptation is greatest to continue the sufferings of war under the name of punishment for treason, it has come to be an axiom among the nations of christendom, that severe penalties have no virtue if they are extended beyond a very few persons who may justly be made examples of. Even in these cases the object is less to

retaliate for the specific acts they have committed than to make public exhibition of the judicial condemnation of the cause which has been lost. The public sentiment of any civilized community would revolt at wholesale executions or imprisonings at such a time. The most philanthropic of philosophers would say that treason is justly punished by death; but only a monster would draw the conclusion that the penalty may be visited upon millions at once. It is not only that humanity revolts; logic also recognizes an element of fallacy in the reasoning itself, and demands that we shall take cognizance of the fact that the concurrence of a whole community in a course of action proves that there is something in it which appeals to the higher class of human motives and is consistent with their ideas of morality and duty.

Every law student recognizes malicious purpose as an essential element of crime. He also learns from his elementary books to distinguish between the wrongs which shock the common conscience of men, and those which are violations of conventional rules based on expediency;—between the *mala in se* and the *mala prohibita*. Misdeeds of the latter class are justly treated as crimes because the wanton challenge of the right of a State to fix within reasonable limits its own system of order, implies a purpose hurtful to others, and which falls properly under the legal definition of malice. But when the numbers of those who seek to change the government are so great as to give the movement the character of a serious attempt at revolution, they appeal to a right which all republicans recognize as fundamental, and which, therefore, in a proper case ab-

rogates and overrides the law which would fix the criminality of one or a few persons who should alone attempt the same thing. The line which marks the 'proper case' in which this fundamental right may be invoked is necessarily vague. Each case must be settled by a sagacious judgment upon its own circumstances; for as it must be exceptional in its nature, the hypothesis excludes it from the application of any strictly defined rule. It is an appeal from the statutes of nations to the reserved rights of humanity, and those who make the appeal must see to it at their peril that their cause is one which will justify them before God and men.

Consistently with this view of the character of men's actions, we find the great and acknowledged authorities drawing broadly the distinction between political and common offenders in their character and treatment.

Burke tersely combines his own and Lord Coke's opinions in that striking passage of his plea for America when he says, "The general sense of mankind tells me that those offenses which may possibly arise from 'mistaken virtue, are not in the class of infamous actions. Lord Coke, the oracle of the English law, conforms to that general sense when he says that 'those things which are of the highest criminality may be of the least disgrace.'"<sup>\*</sup>

Mr. Freeman, the English historian of the Norman conquest, and whom the intellectual world has already recognized as a master in his department, writing during the progress of our own recent struggle, in his

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<sup>\*</sup>Burke's Bristol letter.

'History of Federal Governments,' reiterates the lesson, "a historical student, he says, soon learns that a man is not morally the worse for being Whig or Tory, Catholic or Protestant, Aristocrat or Democrat, Unionist or Confederate. He soon learns to sympathize with individuals among all parties, but to decline to throw in his lot unreservedly with any party. But he will not carry his political toleration so far as to confound political differences and moral crimes."\*

The ground on which this writer would determine the practical mode of treating political offenses seems to be solid. We should never forget the distinction between the common enemy of society whose degraded selfishness may show itself in any of the forms of low vice from lying to murder, and the man who may really believe he is doing good service to God and his country in committing a purely political violation of our laws, even to the extent of treason. But we should with equal clearness recognize the duty laid upon us to uphold what seems to us the right, even to the destruction and death, if need be, of him who attacks it. Yet if this vigor of combat or unflinching firmness of judicial sentence be ruled by the principles I have endeavored to state, it will be wholly free from the elements of personal rancour or vengeance, as well as from the mingled horror and detestation which is rightly visited upon the robber or assassin.

Upon this subordinate topic, the folly as well as wrong of letting vengeance be heard in conflicts growing out of political questions, it were easy to multiply authorities; but I have only time to quote the words of

Guizot in his introductory chapter of the History of the great English revolution, where, after nobly declaring that the great movement was twice successful, once in giving constitutional government to England, and again in indirectly establishing republicanism upon this western continent, he still has to pass judgment upon some extreme and unjustifiable excesses of passion, enouncing the general truth that "vengeance not only disfigures 'but destroys the essential character of justice; and 'passion, arrogantly asserting its right, goes beyond 'any show of right, and even beyond its own purpose."\*

Another maxim constantly recurring in History and almost as constantly forgotten in troubled times, is that under institutions at all free, solid peace can only be built upon the *general* consent of the governed, and especially upon the assent and support of the classes which include the intelligence, the energy and the capital of the community in a preponderating degree.

At the close of a war resulting in the suppression of a great revolt, history plainly teaches that but one alternative is open to the successful government: either frankly to ignore all rights of the conquered community to self-government, and impose upon it a despotic foreign rule supported by arms, or at once to settle upon the best plan of adjustment which can obtain the active co-operation and support of the classes I have named. This does not mean that the advantages of success shall be thrown away; for a people which acknowledges that it is conquered, and knows that the victor

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\*"La vengeance non-seulement défigure, mais altère, au foud, la justice: et la passion, fière de son droit, va plus loin qu'elle n'en a le droit, et même le dessein." Hist. Rev. Angleterre, vol. 1, p. 6.

may act upon the first part of the alternative I have stated, is at least open to reason and considerations of prudence. Experience shows that men generally understand the essential questions at issue in such a strife and yield to the forcible decision of them; while it shows also with equal clearness that only what is thus acquiesced in is permanently gained. Here again I must recur to Guizot for the most philosophic and compact statement of the doctrine I am presenting: "So 'long,' says he, "as the ruling power is not acknowledged and supported by the men whose position, whose interests, and whose customs make them its 'natural allies, nothing is completely settled nor solidly based.'"\* He gives to Cromwell the credit of understanding and acting upon this with the instinct of a great statesman. Indeed, rulers of positive ability and strong character are less likely to err in this matter than mediocre men; for their confidence in their own resources and their faith in their own strength makes them estimate the danger of opposition less than weaker men would do. In such cases courage is true wisdom.

I shall have time to notice but one more maxim, namely, that of all means which governments adopt for their security none have proven more worthless and more vicious than the exaction of Test Oaths of whatever description. It would be almost impossible to find an instance in which they have been of the slightest use, or in which they have not directly and power-

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\*"Tant que le pouvoir n'est pas accepté et soutenu par les hommes que leurs position, leurs intérêts, leurs habitudes rendent ses alliés naturels, rien n'est complètement ordonné, ni solidement fondé." *Hist. Rev. Ang.*, vol. 1, p. 52.

fully tended to produce the very dissatisfaction they were meant to quiet. The evidence of history has been so explicit and conclusive in this respect that the most cursory reading of its pages makes us wonder how so plain a truth could by any possibility be overlooked. The examples, ancient and modern, are so numerous and so striking, and many of them so connected with the most familiar and attractive passages of human experience, that it would seem as if no person of the most rudimentary knowledge of the subject could fail to find them trooping up in his memory the moment the subject is broached.

It would be a curious and attractive problem in ethics to inquire how it is that men seem impelled by some irresistible fatuity to bind the consciences of others by tests and sanctions of whose folly they cannot be ignorant and whose mischievous tendency is so overwhelmingly proven. I have sometimes thought we must attribute it to a remnant of some feline trait in our nature, that delights in torture of victims and finds some sort of sport in it. The old barbaric methods of rack and boot are out of date, but apparently the "old Adam" is not so wholly dead but that we find some satisfaction in useless pains inflicted upon the mind and conscience.

One cannot help sympathizing with the naive distress of old Lord Wharton, a soldier of the Long Parliament, who near the end of a very long life, in William and Mary's time, found himself obliged to oppose a new iteration of the old folly in the form of another abjuration bill against the Stuarts. He said "that he 'was a very old man, that he had lived through troubled



‘times, that he had taken a great many oaths in his  
‘day, and was afraid he had not kept them all. He  
‘prayed that the sin might not be laid to his charge;  
‘and he declared that he could not consent to lay any  
‘more snares for his own soul and the souls of his  
‘neighbors.’\*

Macauley puts the general principle tersely in summing up the arguments against the bill just referred to, saying, “that among the many lessons which the troubles  
‘of the last generation have left us, none is more plain  
‘than this, that no form of words, however precise, no  
‘imprecation, however awful, ever saved or ever will  
‘save a government from destruction.”†

Guizot uses very similar language, classing test oaths and confiscations among “those means of safety  
‘which are intrinsically vicious, and which, if they save  
‘a cause for a few days, do so only to lose it a little  
‘later.”‡

From the election of the Long Parliament to the last effort for the restoration of the Stuarts in 1745, there was a constant succession of test oaths which did not test; jurations and abjurations that bound nobody’s conscience. Each party in turn forgot its own perjuries and became in turn as fierce to impose an oath upon others as if it had no personal consciousness of its failure to bind. The men who overthrew the monarchy had sworn that they proposed no change in the government, and only four months before Charles 2d was acknowledged King they wanted a fresh abjuration of his title.

\*Macauley—Hist. Eng., 5, 375.

‡*id.*, 5, 375.

†“Ces moyens de nature vicieuse, qui ne sauvent quelques jours une cause, que pour la perdre un peu plus tard.” Hist. Rev. Ang., 1, 30.

At that time the sturdy Puritan, Col. Hutchinson, reminded them that their oaths so often required and taken, had only multiplied the sins of the nation by provoking numerous perjuries. Yet after a century of this sort of experience the perennial faith in such measures is so little weakened that it was resorted to as if it were a sure specific for political disaffection. Onslow, Speaker of the House of Commons, says of it, "it was 'a strange as well as ridiculous sight to see people 'crowding at the Quarter Sessions to give a testimony 'of their allegiance to a government, and cursing it at 'the same time for giving them the trouble of so doing 'and for the fright they were put into by it; and I am 'satisfied more real disaffection to the King and his 'family arose from it than from anything which hap- 'pened in that time.'"\*

Lord Mahon, the historian of the reign of George 2d, says most of the Jacobites took the abjuration oath, "saying they had rather venture themselves in the 'hand of God, than of such men as they had to do 'with." He adds that the oath, "however it might tor- 'ture their consciences, did not influence their conduct. 'Such I fear is the inevitable result of any oath im- 'posed by any government for its security," and from the numerous examples in different countries to which he alludes he draws the conclusion, that "though we 'might reasonably infer from theory that men whom 'we find honorable and high minded in private life, 'and in far more trifling transactions, would be scrupu- 'lously bound by the solemn and public obligation of 'an oath, yet experience, I apprehend, would teach the 'very reverse."†

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\*Mahon Hist., Eng., 2, 41.

†*id.*, 42.

Hallam, in his *Constitutional History of England*, passes the same judgment upon another of these tests, that of 1701, declaring that it wholly failed of its purpose, and with a sentence which should have double weight as coming from a historian at once so liberal and so judicial in temper, speaking of a policy which had been that of his own party, he adds, "I must confess that of all sophistry that weakens moral obligation, that is the most pardonable which men would employ to escape from this species of tyranny."\*

One would naturally suppose that here at least was one of those blunders which had become antiquated, and that such a lesson of history could have no application in our own day. But as if to demonstrate how stubborn the tendencies of human nature are, this very blunder was one of those we most faithfully copied at the close of our own civil war. We must look for the 'progress of the age,' not in the exemption from chronic follies, but in the mild form of the attack and the speed of our recovery. As early as 1867 the Governor of Missouri had discovered and reported to the Legislature that the test oaths had proven "an utter failure as 'a means of protecting the ballot box from the votes of disloyal persons,'" though with tenacious faith in exploded doctrines the imposition of the test had been embodied in the State Constitution adopted only two years before.

As to our national legislation, the remnant of our proscriptive measures which still exists, might make the time-honored intelligent traveller from Japan or Persia believe seriously in our attachment to what a witty

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\*Const. Hist. Eng., Ch. XV.

writer has called the "bouffe" in politics. We have a stringent test oath, but, we administer it only to those who we know can take it without danger to their consciences! We impose the 'iron-clad' oath upon Grant, and Hayes, Burnside and Devens, before they can enter upon the duties of public office, but the intimation that a man had "been out" in *our* "forty-five" immediately secures the privileges of exemption!

We have, however, real and great reasons for congratulation that, considering the magnitude and desperate character of the war of the rebellion, and the remarkable difficulty of the problems it left us, the moderation of our people and their faithfulness to true republicanism have left little to desire. The practical conduct of the people has generally been wiser than their legislation, and we can afford to laugh at some absurdities in our statutes when we remember that there has been no necessity for a strong central government to hold back a conquering and excited populace from cruel revenge or bloody proscriptions.

It is no small cause for satisfaction that we are able to say with truth that this last and most terrible test of the strength of republican government has only confirmed the opinion of Stuart Mill, of Grote and of Freeman, that popular government is such an educator of the people themselves, that their rule is milder, more humane and liberal to those in their power, than any other form of rule.

But a full recognition of this comforting fact is consistent also with the desire to learn more perfectly the lessons taught by experience, and with feeling an honest pride in working zealously to make our practices

and our institutions accord more nearly with our idea of what popular government should be.

Although it might seem, therefore, as if it were rather late to sum up the historical lessons which we have neglected or misread, it should be remembered that the time for fixing deeply the practical teachings of experience is generally that period of sober reflection when the blinding and misleading passions of fierce strife are past, and when the wisest and coolest must sadly admit that anger makes fools of men in some way or other.

The maxims I have quoted and commented upon are a mere handful of the pregnant texts which history abounds in. I offer them only as examples of topics of ever-living interest, apposite to our own condition and recent experience, tempting the student on to a wider reading of the events from which great writers have drawn such broad conclusions. Each is a mere *syllabus* of a wise opinion in a world's 'case' behind it; and the ripeness of the judicial wisdom will only be fully felt and understood when we make ourselves familiar with all the intensely absorbing details of the cause itself as history presents it.

I have thought, too, that for those just entering upon the profession of the law, it would not be amiss to be reminded that the history of their people is the history of their constitution; that the fundamental law of the land undergoes changes both of form and of interpretation in such convulsive epochs; and that consequently the intellectual furnishing of a lawyer will be sadly deficient, even in what may be regarded as strictly professional, if he fails to give careful study to the

course of events which fixes the spirit of the laws and determines the line of progress or its opposite that the whole legislation of his country shall take. The higher walks of the profession are only open to those who add to an accurate and ready knowledge of its technicalities, a broad grasp of the principles of government and a deep and earnest sympathy with real human progress.

Nor should we ignore the fact, that however honorable may be the wish to stick closely to professional life, the lawyer, in all representative governments, is almost of necessity the advocate of the political party to which he is attached, and can hardly avoid some responsibility in public affairs even if he would. He is, of all professional men, the one of whom the community most naturally expects familiar knowledge of history as bearing upon the public questions of the day. The bar ought to be, therefore, the repository of sound knowledge in regard to all the lessons of experience, and to it the people should be able at all times to look for such solid advice and guidance as shall save us from the constant repetition of blunders which the civilized world should, before this, have outgrown.

The few examples I have put before you relate only to the maxims which should be admitted as the unwritten law of periods of great convulsions; but it is only repeating a hackneyed truth to say that crudeness in legislation is the peculiar weakness of democratic governments. There is scarce any subject upon which laws are made, in regard to which much knowledge cannot be gained by diligent study of other people's experiments and successes or failures. The student is only more and more deeply impressed with the fewness

of new things under the sun, and with the singular constancy with which men go on repeating each others mistakes. It seems to me, therefore, a thing to congratulate the young lawyer upon, that within the legitimate scope of his professional reading, he may properly rank so fascinating a study as that of general history, and that he may honorably aim at making himself felt in his community as a teacher of those lessons of experience which should prepare and ensure the good result of strengthening all wise and moderating influences, and so preventing in the future the recurrence of those extravagances in governmental action which have been the reproach of all the great movements which have marked the world's progress.

When we add to this the cheering fact to which allusion has already been made, that free peoples progress most rapidly in that self-education which is the best security for good government, the encouragement to assist them in the work is redoubled, and the law student may place before himself the hope of a career most attractive to a generous mind, a large activity in helping the realization of glorious theories of human advancement, joined to a philosophic study of all the most interesting phenomena of human experience in the past.





HISTORICAL MAXIMS  
FOR TROUBLED TIMES.

AN ADDRESS

BEFORE THE

LAW DEPARTMENT OF YALE COLLEGE,

AT COMMENCEMENT, JUNE 27, 1877.

BY

JACOB D. COX.

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