CYCLOPÆDIA

OF

POLITICAL SCIENCE,

POLITICAL ECONOMY,

AND OF THE

POLITICAL HISTORY OF THE UNITED STATES.

BY THE BEST AMERICAN AND EUROPEAN WRITERS.

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lessons on record of useless and mischievous legislation. It is true that we must make some distinction between the laws of Licinius and the Gracchi, and such as those proposed by Rullus and Flavius: but all these legislative measures had the vice either of interfering with things that a state should not interfere with, or the folly of trying to remedy by partial measures those evils which grew out of the organization of the state and the nature of the social system. — The nature of the agrarian laws, particularly those of Licinius and the Gracchi, has often been misunderstood in modern times; but it is a mistake to suppose that all scholars were equally in error as to this subject. The statement of Freinsheim, in his "Supplement to Livy," of the nature of the legislation of the Gracchi, is clear and exact. But Heyne ("Opuscula," iv., 351) had the merit of putting the matter in a clear light at a time, during the violence of the French revolution, when the nature of the agrarian laws of Rome was generally misunderstood. Niebuhr, in his "Roman History," gave the subject a more complete examination, though he has not escaped error, and his economical views are sometimes absurd. Savigny (*Das Recht des Besitzes*, p. 172, 5th ed.) also has greatly contributed to elucidate the nature of possession of the public land, though the main object of his admirable treatise is the Roman law of possession as relates to private property. BOHN.

LAWS, Sumptuary, laws designed to repress or moderate the expenditures of private citizens. Such laws existed in almost all the ancient republics and in most of the modern states. — The ancient republics were based, as we know, on equality of conditions.* As soon as that equality was in a certain measure changed, the very existence of the state was in peril. Legislators, then, to avert the danger, had recourse to agrarian laws, sumptuary laws, laws to favor marriages, and laws ordering the employment of free men in field labor. All these laws, so diverse in the nature of the subjects to which they applied, were inspired by one single idea and tended to the same end, to prevent the extinction of the free population, from which the national armies were recruited. These laws, which to-day seem strange to us, show how the ideas of the ancients on liberty differed from ours, and how different was their social condition from that which exists among us. — "The Romans," says Plutarch, "thought the liberty ought not to be left to each private citizen to marry at will, to have children, to choose his manner of life, to make feasts; in short, to follow his desires and his tastes, without being subject to the judgment and supervision of any one. Convinced that the deeds of men are manifest in these private actions, rather than in public and political conduct, they had created two magistrates charged with keeping guard over morals, and reforming and correcting them, so that no one should allow himself to be enticed from the path of virtue into that of voluptuousness, or should abandon the ancient institutions and established usages" — But the censure instituted at Rome was only one particular form given to the exercise of a right which all antiquity recognized in the state. They thought that by prohibiting the use of articles of luxury, they would repress the avidity of the great and diminish the general consumption of society, that impoverishment would be retarded; that men of the middle class would be prevented from falling into indigence, from which they could emerge only by labor; for we must remember the fundamental principle of the military republics, that labor was dishonorable. Public opinion excused the Roman patrician for having poisoned and assassinated; it would not have pardoned him for engaging in commerce or working at a trade: hence a whole economic system that was artificial and against nature. — At Rome, we find sumptuary tendencies in even the law of the Twelve Tables. "Do not carve the wood which is to serve for a funeral pile. Have no weeping women who tear their cheeks, no gold, no coronets." People never regarded these prohibitions. The *Oppian law*, passed almost immediately after the establishment of the tribunate, forbade matrons to have more than a half ounce of gold, to wear clothing of diversified colors, or to use carriages in Rome. Soon, in the year 195 before our era, the abrogation of that law was demanded, and the demand supported by a revolt of women, as described by Titus Livy. In spite of the opposition of Cato, who, in his speech, showed the intimate relation of that law to the agrarian laws, its abrogation was decreed. — Fourteen years later, under the inspiration of the same Cato, the *Orchian law*, limiting table expenses, was promulgated. Twenty years later the *Fannian law* was passed for the same end. It fixed the expense of the table at about ten cents for each individual on ordinary days, and at less than thirty-one cents for the days of festivals and games. It was prohibited to admit to one's table more than three outside guests, except three times a month, on fair and market days; prohibited to serve at repasts any bird, were it merely a fatted chicken; prohibited to consume more than fifteen pounds of smoked meat per year, etc. Soon the luxury of the table passed these narrow bounds, and Sylla, Crassus, Cæsar and Antony, in succession, caused new decrees to be issued against gluttony. — It is true that, by a singular coincidence, most of these men who made laws against luxury at the table, were conspicuous in history for their excesses. The infamy of the feasts of Sylla, Crassus and Antony has come down to us through all these centuries; and if Cæsar was less addicted to gluttony than these famous personages, he introduced no less luxury at his repasts. This circumstance likewise proves clearly

* The error of this statement appears from the writings of Aristotle. *Vide* Blanqui's Hist. of Polit. Econ., chap. ii., p. 10.—E. J. L.

that all these statesmen, whatever course they followed themselves and whatever were their personal tastes, considered sumptuary laws a political remedy in some sort applicable to a people in a bad condition. It was not through regard for morals, for private integrity, that they had recourse to sumptuary laws; it was to preserve, if it was still possible, the Italian race, which was rapidly disappearing under the two-fold action of pauperism and civil wars. But private expenses can not be regulated either by laws disregarded by the very persons who make them, or by physical means; the change must be effected through public opinion, religion and morals. When public opinion is so corrupt as to honor theft and despise labor; when all religion is destroyed; when it is honorable among the great to eat and drink immoderately, and to vomit in order to eat again, laws can have no efficacy. Sumptuous banqueting also, incredible as it may seem, increased under the emperors. The emperors then also made sumptuary laws at the same time that they were presenting the spectacle of the most scandalous excesses. Some of them, however, gave what was better than laws, grand examples of abstinence and sobriety, but without result, without power to arrest society on the declivity down which it was precipitating itself. It is as impossible to regulate the employment of wealth acquired by conquest and robbery as that of wealth acquired by gaming. — The sumptuary laws in all ancient countries were of no avail. Sometimes evaded, sometimes openly despised, they did not arrest the increase of luxury, and did not retard the downfall of the military republics founded upon equality. It seems to us, however, that J. B. Say has treated them with a little too much disdain in the following passage, where he has, however, clearly brought out the difference between the sumptuary laws of antiquity and those of modern states: "Sumptuary laws have been made, to limit the expenditures of private individuals, among ancient and modern peoples, and under republican and monarchical governments. The prosperity of the state was not at all the object in view; for people did not know and could not yet know whether such laws had any influence on the general wealth. * * The pretext given was, public morality, starting with the premise that luxury corrupts morals; but that was scarcely ever the real motive. In the republics the sumptuary laws were enacted to gratify the poorer classes, who did not like to be humiliated by the luxury of the rich. Such was evidently the motive for that law of the Locrians which did not permit a woman to have more than one slave accompany her on the street. Such was also that of the *Orchian law* at Rome, a law demanded by a tribune of the people, and which limited the number of guests one could admit to his table. During the monarchy, on the contrary, sumptuary laws were the work of the great, who were not willing to be eclipsed by the middle classes. Such was, doubtless, the cause of that edict by Henry II., which prohibited garments and shoes of silk to any others than princes and bishops." — There were, in ancient times, other motives for the enactment of sumptuary laws than desire to gratify the poorer classes, and in feudal monarchies the laws originated in other causes than a jealousy of the great. These monarchies were also an artificial creation, founded "on ancient institutions and received usages"; these institutions, these usages, tended to entail property in some families, and to settle rank permanently; and if antiquity had its agrarian laws, which meant equality, feudal society, we must not forget, had its own, which meant inequality and hierarchy. — The advent of movable wealth and of luxury profoundly disturbed feudal society, where all was founded on the pre-eminence of that property considered especially noble, viz., real estate. A system of agriculture which had become fixed by tradition did not allow the nobility to increase their revenues, while the profits of commerce, navigation and the industries, and the possession of movable capital, elevated the middle class. The luxury of this class, who were eager to imitate the style of the great, disturbed the harmony of society: it deranged a hierarchy without which people saw only disorder. Hence arose sumptuary laws, which distinguished classes by their garb, as the grades in an army are distinguished by the uniforms. — The vanity of the great, perhaps, called for the sumptuary laws of modern nations, as the jealousy of the lower classes had welcomed those of the ancient republics. But, in antiquity as in feudal monarchies, the legislator was inspired by state considerations, by a desire to prevent innovations which he considered as fatal. From the time when the plebeians came into competition with the luxury of the nobles, from the moment that they were their rivals, it was evident that, if the way was left open for such competition, wealth would finally gain the victory over birth in the opinion of the people, *i. e.*, over the nobility themselves. Now, as feudal monarchies were founded on the right of race, everything that could diminish the authority of this right, tended to subvert the constitution of the state. Even those who did not clearly perceive the import of the luxury of the bourgeois, and who, bourgeois themselves, could not be wronged by it, nevertheless felt that this luxury disturbed the established order, and they supported the sumptuary laws. — These laws, then, were at all times inspired by the desire of arresting an irresistible movement resulting from the very force of things, from the development, disordered perhaps, but logical, of human activity. They were, moreover, powerless, and were always evaded by a sort of tacit and general conspiracy of all the citizens, without any one daring or being able to find fault with the principle, without any one thinking of contesting the power of the legislator on this point in the very least. In fact, we must remember that in monarchies in modern times, the law-making power was scarcely less extended

than in antiquity. People did not recognize the right of every man to work, and still less, the right to work when he pleased; and, what was of much more consequence, they professed that the king held a strict control over his kingdom, and would not allow one class to encroach on the rights of another, or to change the rank assigned to it by ancient custom. "The said lord the king," we read in an ordinance of 1577, "being duly informed that the great superfluity of meat at weddings, feasts and banquets, brings about the high price of fowls and game, wills and decrees that the ordinance on this subject be renewed and kept; and for the continuance of the same, that those who make such feasts as well as the stewards who prepare and conduct them, and the cooks who serve them, be punished with the penalties hereunto affixed. That every sort of fowl and game brought to the markets shall be seen and visited by the poulterer-wardens, in the presence of the officers of the police and bourgeois clerks to the aforesaid, who shall be present at the said markets, and shall cause a report to be made to the police by the said wardens, etc. The poulterers shall not be allowed to dress and lard meats, and to expose the same for sale, etc. The public shall be likewise bound to live according to the ordinance of the king, without exceeding the limit, under penalty of such pecuniary fines as are herein set forth against the innkeeper, so that *neither by private understanding nor common consent* shall the ordinance be violated."—The world to-day lives in a different order of ideas, and when we read the ordinances of French kings, we find them no less strange than the ancient laws: they seem to us to apply to a social condition in which each laborer was a civil officer, as in the empire of Constantine. These ordinances are nevertheless the history of but yesterday, the history of the eve of the French revolution, and we are still dragging heavy fragments of the chain under which our fathers groaned. But ideas and sentiments have gone far in advance of facts: we have difficulty in comprehending the intervention of the government in the domestic affairs of families, and in contracts which concern only private individuals. As to luxury, it can not disturb classes, in a society where all are on a level, and it can not do much harm if the law of labor is respected, if rapine can not become a means of acquiring property. — Since the revolution, no sumptuary law has been enacted in France, and yet the luxury of attire which formerly distinguished the nobility has disappeared. A duke dresses like anybody else, and he would be ridiculed if he sought to distinguish himself by a manner of dress different from others. Such is sumptuary law in our time. Any one who should try to make himself singular by particular garments or an exceptional mode of life, would be immediately noted, not as a dangerous citizen, but as a ridiculous fellow. Opinion has undergone an entire revolution. Private expenses are meanwhile increasing, and this increase, too, is pretty rapid. They can not, however, depart far from uniformity: vain prodigalities can not be a title to glory in a society where the law of labor is recognized, and the one who will surrender himself to them, however rich he may be, is forced by public opinion to wear a certain modesty, even in his greatest excesses. Sumptuary laws can no longer be proposed. We need not think the honor of the change is due to our wisdom, to our pretended superiority to the ancients; let us simply recognize, (and it is in this that progress consists), that the essential principle of society has changed: the world moves on another basis. — When the Roman people had, in despite of the observations of Cato, abrogated the Oppian law against the luxury of women, Cato, who had become censor, attempted to have it revived in another form. He included in the census, that is, in the valuation of the wealth of the citizens, jewels, carriages, the ornaments of women and of young slaves, for a sum ten times their cost, and imposed a duty on them of $\frac{3}{1000}$ or $\frac{3}{100}$ of the real price. He substituted a sumptuary tax for a sumptuary law. The moderns have done as did Cato. After the sumptuary laws had become a dead letter, they imposed taxes on the consumption of luxuries. England has taxes on carriages, on servants, on armorial bearings and on toilet powder. So far as political economy is concerned, these taxes are irreproachable; but they bring little into the treasury, and have scarcely any influence on consumption or on morals.

COURCELLE-SENEUIL.

LEGAL TENDER. (See COMPULSORY CIRCULATION.)

LEGISLATION is the exercise of that part of the sovereign power which promulgates new laws; modifies and repeals old laws; gives to ethical convictions their crystallized form by expressing in apt language the conception of society as to what constitutes offenses, and prescribes their punishment; formulates how contracts should be made and observed; and regulates the affairs of men in their relations with the state and with each other. In this concrete form it is the expression of the will of the law-making power of the community, behind which stands its administrative machinery to enforce that expression of will by punishment for its infraction, or by changing relative rights and duties, if the law applies to matters of contract instead of matters of penal law. The legislation need not necessarily emanate from a legislative body. A convention of the people, either directly or through representative bodies other than legislatures, formulates and establishes the highest laws in any given community by the organic distribution of powers in a nation or community in the shape of a constitution. This is fundamental legislation. All other legislation of the community is subsidiary to it. There is a considerable amount of legislation done by judges in their interpretation of statutes,