

SENATORIAL REFORM.

BY MONCURE D. CONWAY.

It is a curious sign of our time that just as an able political writer was pointing out in *The Open Court* the anomaly of our Senate, an eminent English writer should propose to import it, partly, as a substitute for the House of Lords. Dr. Alfred Russell Wallace, to whose article in the *Contemporary Review* (January 1894) I refer, calls himself an "extreme radical," and, if he be such, supplies another example of the mental confusion which has often led extreme radicalism to change king log for king stork. His scheme bears all the marks of having been rapped out on his table by the "spirits" with whom he is so familiar, but the spirits might have made a different revelation had they consulted the shades of Franklin, Randolph, Mason, Madison, and other constitutional fathers as to their impressions of the Senate after its hundred years. Though Dr. Wallace is credited with the discovery of the principle of natural selection, simultaneously with Darwin, his reputation is not enhanced by this venture in political selection. The constitution of the United States Senate historically represents a concentration of "survivals" in America of the basest characteristics of the reactionary reign of George III, which the American Revolution had resisted. The thirteen colonies claimed, as a result of the Revolution, a several sovereignty more despotic over their subjects than had been claimed by the royalism they had unitedly overthrown. These thirteen sovereigns were so jealous of their autocracy that it was only under the continued menace of England, which still held six military posts in the North West, its ships commanding our coasts, that they could be induced to form any union at all. It was really a military union, the president being a half-civil, half-military chieftain (which accounts for the unrepudiated majesty of that officer). The constitution of 1787 was really a treaty between thirteen sovereigns, the smaller empires refusing to unite unless their inherited supremacies were secured the power to overrule the voice of the nation. This was the real foundation of the Senate. But in the discussions of the Convention (1787) that doctrine of sovereignty, discredited even in England, was veiled, though the veil was as discreditable as the motive concealed. The necessity being first of all to get the second Legislature established in the Constitution, it was done with an innocent air, and without discussion, on the mere statement that England had two Houses, and that two Houses had always proved favorable to Liberty. Both were untrue: England had only one

House, so far as the powers given to the Senate were concerned; and even her two unequal Houses were at that time unfavorable to Liberty. But worse remained. When the subject of disproportionate representation in the Senate came before the Convention, it was supported as a principle only on the ground that in the British Parliament small places with little population were represented equally with the largest constituencies. Thus, the infamous "rotten borough" system of England, long discarded, now a proverb of governmental absurdity, was avowedly imitated in our American Constitution. And to crown the dishonorable proceeding, the Convention, laying aside the fundamental principle of the Revolution, gave our peerage of States as much hereditary perpetuity as it could, by excepting from the normal powers of constitutional amendment the right of each State to equal representation in the Senate. Should the population of Rhode Island be reduced to the one family that used to elect the two Commons for Old Sarum, that State would still equal New York in Congress.

It will therefore be seen, that in our Senate are historically embodied the most antiquated principle of State sovereignty (to which we owe the civil war, and State repudiations), the "rotten borough" principle, the peerage principle, and the base attempt to fetter posterity to these unrepresentative and irrational principles; by all of which the United States is held far behind Western Europe in constitutional civilisation. It should be said that even Dr. Wallace does not propose to invade our monopoly of the "rotten borough" feature of the Senate.

The perpetuity which, as one of your correspondents has pointed out, the Convention of 1787 gave to the representation of each State in the Senate, would not prevent the nation from abolishing the Senate altogether. The Convention did not venture to control the future so far as that, though no doubt many of the members would have been willing to do so. The law is that, so long as the Senate lasts, no State can be deprived of its equal representation in it, without that State's consent. The constitutional reformer, therefore, has first to consider whether the entire abolition of the State comes within the range of practical politics. I think not. The Senate has gradually taken deep root in American snobbery, it offers a number of lordly offices for eminent office seekers, and it represents provincial pride. Furthermore, besides being "in the European fashion" (superficially, for in no other country is there a second chamber so constituted), it has been as a fashion repeated in all the States. Had the substance as well as the form of the national Senate been reproduced in the several States the whole system must have long ago broken down, like the "rotten borough" anomaly in England. But as in the States there is no

disproportionate representation in the second chamber, nor any really different origin of the two Houses, the bicameral system is substantially the division of one representative body into two. The fairly smooth working of the double-legislatures of the States has been accepted by many people as a warrant for the soundness in principle of the national Senate, though there is no analogy between the two. The normal State Senate represents the somewhat delocalised interests of each district, a larger community and a more constant popular sentiment, but the constituencies of both Houses being the same people, there is little danger of one body obstructing the other. The national Senate represents local interests, antiquarian pride, sectional sentiment, traditional notions of sovereignty as superior to justice, and the power of a minority to weigh equally with a majority without being superior to it. Instead of its being the conservative, calm, mature wisdom of the nation, the Senate has been the centre of disintegrating elements. It may, I think, be proved that had there been no Senate there had been no civil war. Yet I remember a conversation with Charles Sumner, after he had been felled in the Senate, in which, when I stated these objections to such an unrepresentative body, he—even he, scarred monument as he was of its provincial violence—urged in reply the smooth working of the senatorial system in the States!

The raising of this question in *The Open Court* revives in me an old hope that there may be formed in America "Constitutional Associations," like those founded in England a hundred years ago, for the study of the science of government. And I do not know any place where such a society might better be founded than in the most American of our cities—Chicago. It is not only the Senate that should be dealt with, but other institutions, more especially the presidency. Concerning this unrepresentative office I shall have something to say in a future paper, but will now confine myself to some reflexions about the Senate.

The argument which has recommended the bicameral system to political philosophers, is the liability of a single House to impulsive and precipitate action. This liability finds apparent illustrations in the history of the French Revolution. In the first constitution of Pennsylvania, framed mainly by Franklin and Paine, there was but one legislative chamber; but very early in the French Revolution Paine came to the conclusion that, though there should be one representation only, the elected representatives should be divided, by lot, into two chambers,—No. 1 and No. 2, or A and B. Measures should be introduced into one or the other chamber (alternately). While the measure was debated in No. 1, No. 2 should listen. Then when it passed to debate in No. 2, the representatives in the

latter would come to the subject without being committed, and with the advantage of knowing most of what could be said for and against it. The joint vote of the two chambers would decide the matter. This plan it will be seen, is not inharmonious with that adopted in the majority of American States.

But beyond this lies another question, one which the enfranchisement of vast masses of ignorant people renders of increasing importance. A legislature should be the collected wisdom and knowledge of a nation, not a mere reflexion of its prejudices and errors; and how is this to be selected from masses of people who are not wise, nor learned in the principles of government? It is notorious that in democratic countries the ablest and best men shrink from vulgar competition for the popular vote and do not generally enter public life. The enlargement of the franchise in England has been accompanied by a marked decline in the character of Parliament. It is not easy to see how high statesmanship can be developed in any country where the representative is more and more expected to be a mere messenger to carry to the legislature the programme of his constituency, and may be cashiered for any independence of thought. Nor can congressional eloquence be developed when the orator is dealing with a foregone conclusion, formed at the polls. This kind of mere delegation might as well be intrusted to post-men or telegraph-boys. In England, the House of Lords is sometimes wrongly obstructive where its class interests are involved, but on general questions it exercises an independence above that of the Commons, whom the next election holds in awe. Thus, it is known that a large majority of the Commons are in favor of opening the museums and galleries on Sunday, yet they regularly defeat that measure, through fear of their remote Scotch and Welsh constituencies; whereas the Lords have passed the measure which the Commons invariably reject. I have no doubt that the people generally would vote for the ablest man; ignorance does not love ignorance; but the advantages of his ability should be secured from their prejudices, and he should be secured from his own timidity.

This, I believe, could be secured by the introduction of the (secret) ballot into Congress. The people would then have to choose the wisest and best man, with more care than at present, knowing that they could have no control over his vote. On the other hand, the representative would be unable to play the demagogue by parading his votes in favor of popular prejudices. The representative might thus also be withdrawn from the pressure of party leaders and "whips," as well as from liability to bribery. Men will not pay for votes they can never be certain of obtaining.

Finally, there remains to be considered the peril

of the tyranny of majorities. To this danger I have recently called the attention of your readers (in my treatise on "Liberty"),* and have little to add on the general subject. I am writing this in Paris, not far from where Condorcet, Brissot, Paine, and some others labored on a constitution which was to harmonise universal suffrage with individual liberty. They believed that this could be done by a Declaration of Rights. Around the individual was to be drawn a sacred circle, including his personal, natural, inalienable rights, which no majority could invade, and which could never be subjects of governmental control. This was Paine's Republic, as distinguished from a democracy. In America (1786), when the States were making preparations for a Constitutional Convention, he sounded his warning about majorities:

"When a people agree to form themselves into a republic (for the word *republic* means the *public good*, or the good of the whole, in contradistinction to the despotic form, which makes the good of the sovereign, or of one man, the only object of the government), when, I say, they agree to do this, it is to be understood that they mutually resolve and pledge themselves to each other, rich and poor alike, to support and maintain the rule of equal justice among them. They therefore renounce not only the despotic form, but the despotic principle, as well of governing as of being governed by mere will and power, and substitute in its place a government of justice. By this mutual compact the citizens of a republic put it out of their power, that is, they renounce, as detestable, the power of exercising, at any future time, any species of despotism over each other, or doing a thing not right in itself, because a majority of them may have strength of numbers sufficient to accomplish it. In this pledge and compact lies the foundation of the republic: and the security to the rich and the consolation to the poor is, that what each man has is his own; that no despotic sovereign can take it from him, and that the common cementing principle which holds all the parts of a republic together, secures him likewise from the despotism of numbers: for despotism may be more effectually acted by many over a few, than by one man over all."

With this principle Paine indoctrinated the real statesmen of France; and the Declaration of Rights prepared by him and Condorcet (translated in my "Life of Paine," II, p. 39) is by far the most perfect instrument of the kind ever written. Whether such a constitutional compact would have proved adequate cannot be known. The statesmen who endeavored to substitute it for the revolutionary despotism of Robespierre and his staff were guillotined, and a really republican constitution remains yet to be tried. But American experiences seem to show that popular prejudices and passions cannot be effectually prevented from overriding constitutional guarantees of individual rights, by legislative and legal quibbles, unless restrained by some such power as that represented by our executive veto, though sometimes in a mere partisan way.

Could not our Senate, since there is little prospect

* *The Open Court*, Nos. 327, 329, 331.

of abolishing it, be developed into such a restraining power? Might not its power as an equal legislature be taken away, its basis modified, and a function assigned it of useful revision? One of the two Senators of each State might be chosen by the alumni of its colleges and learned societies, placing in the revising council a compact force representing a common interest,—the Republic of Letters. The other Senator might perhaps be left as now to selection by the Legislature. These men, though liable to impeachment, should be chosen for terms long enough to save them from the temptation to cater to popular prejudices. They should not be eligible for other offices,—certainly not for the Presidency or the Cabinet. Their function should be to discuss and revise measures passed by the House of Representatives, this function being altogether withdrawn from the President (so long as that dress-coat monarch shall continue). This Senate would have a suspending veto. It might return a measure to the Congress twice (say), after which, if passed a third time, the measure to become law without any further action on it by the Senate. Experience might at some time suggest the necessity of requiring a somewhat larger majority of representatives than that which originally passed the measure, to overcome the objections of the Senators. For this body, so removed from the *aura popularis* and from corrupting ambitions, would thus represent the simple force of reason, of right, and argument. The mere cock-pit spirit which often arises between two equal houses, in a competition of mere force, could not be evoked when one side conceded in advance the superiority of the other in mere strength, and used no other weapon than argument.

POSTSCRIPT. Today (February 9), when the proof of this article reached me, it is announced that on Tuesday next the French Chamber of Deputies will begin their discussion of proposed changes in the Constitution. The first alteration proposed is to make the senatorial veto suspensive instead of absolute. The French bicameral system was avowedly borrowed from America, but the Senate is afraid to assert its equal powers against the representatives of the people, and is becoming a nullity. Probably, if it shall be turned into a revising and restraining body, it may become one worthy of being imitated in the country from which it was,—as a bicameral feature, though not with our “rotten borough” basis,—imported.
