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Letters from New England – No. 5

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Scholars in Virginia are not generally aware, that the classical Greek pronunciation is thought to exist still in Greece; and that (connecting this fact with the close resemblance of the ancient, to some of the modern dialects as written) that rich and elegant language is no longer to be regarded as dead. Thus confidently think two intelligent and accomplished natives of Greece, now in Connecticut, who are reputed (no doubt deservedly) to be thorough masters of both the ancient and the modern tongue. In a gratifying interview with one of them (Mr. Perdicaris, at New Haven), being curious to hear Homer in his native melody, I prevailed on Mr. P. to read me a few lines of the Iliad. They were by no means musical to my ear—vitiated, doubtless, by the faulty pronunciation to which I had been accustomed, and destitute of those associated ideas, which conduce so largely to the beauty of poetry. He sounds in dipthongs, like ci, as if in "sick; i; like "oh. The word '*oLpOftOZaOy (νομοθέτης) so expressively sonorous to our ears when pronounced with the full, swelling roll of the dipthong, he would attenuate into "pohCpelCoi—too much more like the whistling of the wind through a key-hole, than the hoarse, tumultuous roar of an agitated ocean. I spare you, here, a speculation that is passing in my mind, as to how far this diversity between different ears, proves the notion of the sound's "echoing to the sense to be merely fanciful; and as to the influence of previous association upon our relish of poetical, and of other beauty—how much, for example, of the native Greek's rapture at Homer, is owing to "love of country, and how much of an American's enthusiasm to classical enthusiasm, the pride of learning, or the influence of names. Yes, I spare you—partly, because I have not much that is new to say upon the subject; and partly because, if I had, it would be wholly out of season. By special invitation, I attended a lecture (one of a series) delivered by Mr. Perdicaris, upon the literary and political history of modern Greece. It was marked by a rich yet chaste imagination, a generous glow of patriotic enthusiasm, and the eloquence which they naturally inspire. You may feel a curiosity, as I did,
nor. He does not make much ado about the trivialities of diction. The supreme court sits once a year to give judgment, taste, feeling, and eloquence, very high honors to the persons of the best years of age: and have both law and chancery jurisdiction annually: and in larger causes, by superior courts. But its crowning merits, are the Editor's English Preliminary, if, by the precarious tenure of her judicial offices, she must, for more than ten years, has made Kent employ her in all business not to my acting on Young Raphae's maxims—

*sink the ship, Dad!*—or to my being clowned at courts at home, and so, baffling them amid the constant attentions of my journey. Neither, neither:—be assured. "Though last, not least"—they have formed a leading subject of my inquiries: and to judge speculatively, as well as from what is told me of their practical operations (which I have had no opportunity to witness) they have some points worth considering, if not elevating.

The judiciary power of Rhode Island is vested in a supreme court, consisting of a chief and two associate justices; and a court of common pleas (composed of five judges) for each of the five counties. All the judges are appointed annually by the legislature. This feature alone suffices to stamp the whole system with insignificance: for what skill in jurisprudence—what independence of popular excitements and party influences—could be expected from judges whom the breath of a party leader can make and unmake, at each year's end? When to this we add, that the chief justice of the supreme court receives a salary of $650, and each associate $550, we need not wonder that no decision of the Rhode Island bench is ever quoted in other states. The governor's salary is $400; the lieutenant governor's, $300. But if, in scantiness of territory and a corresponding scantiness of means, this state is organized by nature to be the Sun Marino of America, yet it is purely her own fault if, by the precarious tenure of her judicial offices, she reduces one of the most important departments of mind to the same diminutive scale, and goes for to make herself morally and intellectually also, the insignificant minister of a commonplace.

In Connecticut, justice is administered in causes of small amount by county courts, whose judges are chosen annually: and in larger causes, by superior courts. The latter are held semi-annually in each county by one of five judges, who also form the supreme court. They hold office during good behavior, or until seventy years of age: and have both law and chancery jurisdiction. The supreme court sits once a year in each county. I do not know what actual loss of valuable services Connecticut has suffered, by her rule which drives judges from the bench just at the juncture when their faculties are in many instances the most happily ripe for its functions: but, that she has lost and will lose, no one can doubt who remembers, that thirteen of the best years of Mansfield's judicial life, and fourteen or fifteen of Wyllys and Pendleton's, were after the age of seventy; and that such a rule would have deprived the United States' judiciary, ten years ago, of its present gigantic Coryphaeae—confessionally one of the purest and most powerful minds that ever filled any judgment seat. But what heightened or adequate terms of censure can be found for the New York rule, which displaces every judge at sixty? A rule which prematurely discarded Spencer and Lansing; and which, for more than ten years, has made Kent employ the full vigor and 'naturality of his intellect in writing abstract treatises, and setting chamber opinions, instead of going on as he had begun, to build up for his state a system of jurisprudence hardly inferior to that which Mansfield reared for England?

In Massachusetts, are some very striking peculiari ties. The supreme court, consisting of four judges, sits...
once a year in each county, to decide questions of law, in the last resort. Some one of these judges, besides, holds annually a "New Prior" term in each county, to try appeals from an inferior grade called "courts of common pleas," original suits in chancery, and upon the boards of executors and administrators. The appeals to them from the common pleas, are as to both law and fact; a jury being empanelled, witnesses examined, &c., as if it were an original proceeding. The latter courts are held twice a year in each county, by some one of four judges; who hold office (like those of the supreme court) during good behavior. They have cognizance of all causes, except what I shall designate as vested elsewhere.

Presentments and indictments for all offenses, are found only in the common pleas; whereas, they are tried—except in capital cases. These, after the indictment is found, are certified and removed from the common pleas to the supreme court; at whose bar the culprit is tried by a jury: a special term being held on purpose, in any county where the judges are notified that a prisoner awaits trial for life or death. En passant—though eight crimes are, by the laws of Massachusetts, punishable with death, only twenty-six persons in the whole state have been actually convicted, in thirty years! These are all capital trials; I do not exactly know, but I fear it bears an immense disproportion to the number of convictions: so immense, as to prove that either an undue severity in the laws, or the unreasonable and too common lenity of juries, aided by the overwhelming superiority of defending advocates—or (what is most probable) all three causes together—have well nigh made those laws a dead letter. Prosecutions are conducted by district attorneys, of whom there are four in the state; each prosecuting within his allotted district. In the supreme court, however, the attorney-general is counsel for the commonwealth.

Chancery, or equitable relief, is rarely sought in the Massachusetts courts. Indeed it was unknown, until, within a comparatively recent period, two or three statutes empowered the supreme court to administer it, in a very few specified cases—mortgages, trusts, accounts between partners and co-executors, waste, nuisance, and two or three others: omitting the fruitful subjects of fraud, accident, divorce, or defamation—and especially the sweeping power to relieve wherever there is no remedy at law. The multiplication of cases, the multiplicity of juries, all these, have made our chancery, like that of England, the dormitory if not the grave of justice. And even as to the few specified subjects of jurisdiction, those statutes rigidly restrict the relief to cases in which there is not a plain and complete remedy at law. Before these restrictions (and since, too, in cases without their scope,) the rigor of the law was mitigated only by the sense of justice in juries; and by sundry expedients—curious enough, to Virginian eyes—which seem to have left few wrongs unremedied. For instance—if I am unjustly cast in a trial at law, by accident or surprise, or for want of testimony which I did not know of till the term was over; not a bill of injunction, but a petition to the judge in vacation, within a limited time, will procure me a new trial. If my debtor fraudulently dispose of his property; instead of a bill in chancery to set forth the fraud, I may have, along with my execution (if I have obtained judgment) a summons to the concluding purchaser as garnishee, to disclose orally on oath, in open court, what effects he has, of the debtor.

Roads are laid off by a board of commissioners, established for that purpose in each county; and invested with judicial powers, in controversies on the subject.

The preamble of wills, the granting of administrations, the appointment of guardians, and the supervision of the accounts and conduct of guardians, executors, and administrators, are confided to an officer, called the Judge of Probate, appointed in each county for those purposes only; and holding his court monthly, in several convenient places of the county, to hear motions and decide disputes on those subjects. His records and proceedings are kept by a distinct clerk, called the Register of Probate; and an appeal lies from his decisions immediately to the supreme court. We, in Virginia, sorely need some tribunal like this; specially charged with the interests of widows and orphans.

Equally worthy to be copied, is the Massachusetts mode of constituting juries. Lists of all persons qualified to serve, are kept by the town-clerks; from which, just before a court, the town quota of jurors is drawn by lot: and no one is compellable to serve oftener than once in three years. They are paid for their service. Against juries thus formed, I heard no complaints, of partiality, corruption, or undue ignorance. The litigants receive a compensation, which at least defrays their reasonable expenses; and if there be still some burden, it is borne equally by all, and returns at such long intervals, as to be absolutely unfelt. How different is our plan, of sending out the sheriff just before a trial, to gather in the sweepings of the court-yard! Suitors and witnesses, attending perhaps for the tenth time, in hopes of having their causes determined—strangers from other counties, may, travellers from other states—tipplers from the tavern porch—the nearest merchants, mechanics, and farmers, torn suddenly and criminally from their employments—such is the medley, produced by a system as oppressive to most of the jurors themselves, as it is subversive of the important ends for which they are summoned. One is really tempted to believe, that in adhering so pertinaciously to a system so obviously defective and so easily remedied, our statesmen have been governed by a fixed design to bring jury-trial itself into disrepute.

Wiser in another respect also than we, those "Bay State" lawyers have courts to accept for cases of twenty dollars or less, held by men who have not themselves studied the science they are to expound: no parallel to our county courts—those creek tribunals of some great men, whose administration arises either from the want of intimate knowledge—they having ranged generally in a higher sphere—or from their enjoying over that bench an influence, flattering to their vanity, and blinding to their judgments. How long will the public attention sleep—how long will the hand of reform be palsied—when we see attempts to cure the unfitness of these courts for the weighty, multifarious, and difficult functions entrusted to them?—the ludicrous, if it were a less ridiculous, uncertainty of their decisions, owing to their ignorance of any fixed rules by which to decide;—the delays, so fatal to justice, that attend their unsteady administration?—the vexatious accumulation of costs, besides harassment and loss of time in dancing attendance upon them through years of litigation?
The Massachusetts and Connecticut plan, of an ille­
crant supreme court, cannot be commended to imitation. The common arguments, of bringing justice home to the people, and enabling suitors to see in person to their causes, are not pertinent, where the whole case is contained in the record; where no witnesses are to be summoned or examined; no matter to be instructed in the cause. Then, the loss of time in travelling, and the want of so extensive a library and so able a bar, as would be formed if the court sat always in one place, must essentially impair the correctness of its decisions, and lower the superiority of its intellect.

The common-law of England is made the basis of Massachusetts law, not, as in Virginia, by a legislative declaration that it shall be so, but by adjudications of the courts, recognizing and adopting it as such. By a still bolder stretch, the courts have acknowledged as generally binding, English statutes made in amendment of the common-law—not only before, but since the foundation of the colony: may, the terms of the decision do not exclude English statutes subsequent to the American revolution. This comprehensive body of a foreign code upon the domestic, not by professors and authorized law-givers, but by mere judges, is perhaps one of the most remarkable instances of judicial legislation, any where to be found: and must have arisen from a licentious spirit of construction, which, when it acts upon written laws, may naturally be expected to make them mean almost any thing that the interpreters choose. The admirers of an unwritten law, repelled in the breasts of judges and to be sought only in precedents and decisions, may vaunt, if they will, its happy elasticity, dilating and contracting to fit every conceivable emergency: but I doubt if (among other evils) it does not nurture habits of latioadious interpretation, destined to be well nigh fatal to one of the great boasts of the common-law, 1.e., the right of enjoying their lives and liberties, &c. On this, and pleaded, that the plaintiff, being a slave, had no right to sue him. The court held, that slavery was contrary to the first article of the Bill of Rights; and that therefore the plea was bad, and the plaintiff was free. This decision virtually abolished slavery in Massachusetts, without any legislative act for doing so. Some other states were brought; but in most cases, masters yielded.

The chief court of Massachusetts has tasked the judges of law-books, as heavily as our's has done. It's decisions fill twenty-seven or twenty-eight octavo volumes—about our number. The supreme court of New York has issued more than thirty; the supreme court of Pennsylvania has published fifty or sixty; the supreme court of Pennsylvania has published fifty or sixty; and the supreme court of Massachusetts has nearly three hundred. In the latter, the reporters have been the original authors of the decisions, and are as much the editors as the publishers. To give an idea of the bulk of the volumes, the reporter has been compelled to divide them into eight parts, the first containing the decisions of the first, second, and third terms, the second the fourth and fifth terms, the third the sixth and seventh terms, the fourth the eighth and ninth terms, the fifth the tenth and eleventh terms, the sixth the twelfth and thirteenth terms, the seventh the fourteenth and fifteenth terms, and the eighth the sixteenth and seventeenth terms.

Lawyers are very numerous in Massachusetts—somewhere about seven hundred; of whom one hundred and sixty or one hundred and eighty are in Boston. Their intercourse appears to be marked by the same fraternal spirit, which strews the toilsome path of the common-law, but which well-stored minds abound more with the fraternity: and the reporter spreads them all at length in his pages. Lawyers are sometimes large, and well selected. The emotions of practice, except to the very leaders of the profession, seem far inferior to those of practitioners occupying correspondent grades of talent and fame in Virginia: indeed, I doubt whether any but Mr. Webster receives an amount comparable to the incomes of several there, whom I could name. Yet the life of a lawyer is probably more pleasant in Massachusetts. From the pre-requisites to admission, you may infer that well-stored minds abound more with the fraternity: at least it was so, till our university, and our several excellent law-schools, began to give a clearer and more expanded ken to the mental optics of our young lawyers. There, in society at large—certainly in the towns and villages—there is more literature abroad in Massachusetts: amusements are of a more rational cast. Where we have a horse-race, a barbecue, a whist-party, or a pet at back-gammon, our Yankee brethren have a meeting of some lyricum, or other society for mutual pleasure.
as a neatness—a happy fitting of means to ends—a nicety sometimes amusing) pride his children feel at the bare mention of her honored name. I have aimed to draw their attention to some traits of Yankee life and character, which we may advantageously copy—say, the word of which is the main cause of our lagging march; and that the latter term comes from Count Rumford, who invented that improvement. The sides of a New England fire-place often slope at an angle of 130 or 130 degrees with the back; so as to make the width behind, not more than half the width in front. The wood is usually saved, so as the hinder part of the fire-place.

The wood is cut 12, sometimes 16 or 18 months, before it is burned. If cut in the summer, it is allowed to lie out for a few months, and then put away till the second winter, in the wood-house; a constant and close appaenance to every swelling. Southrons have no idea, though Yankees have experimential knowledge, of the saving and comfort there is in using this, instead of green wood—how vastly further any given quantity of the former will go, in producing heat. It has been assentimently shown, that in a cord of green wood, there are about 140 or 120 gallons of new water, all of which must be changed to steam—that is, evaporated—before the part of the wood in which it is lodged can burn and

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and cold light-bread.* Some things, too, they would see, to be shunned: I need only name excessive banking—enormously multiplied corporations, for manufacturing, and other purposes—and, what strikes yet more fatally at the foundation of popular government, the caucus system. But the strongest reason for a more frequent intercourse, is the liberalizing of mind that would result; the unlearning of our long cherished prejudices, from seeing the Yankees at home—that place, where human character may always be the most accurately judged. They too, have some (though fewer and less bitter,) reciprocal prejudices, to be cured by a more intimate acquaintance. No mind but must see the un-speakable importance of weeding away these mutual and groundless dislikes. The perpetuity of our union—and the liberty, the peace, the happiness of its members—in a great degree depend upon the accomplishment of that expurgation. There cannot be a simpler recipe. The North and the South need only know each other better, to love each other more.