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Political Economy.

FROM THE EDINBURGH REVIEW.

I have long intended to present the following article, which I think must go far to remove any prejudices which may exist in the minds of readers from the laws against usury. One argument alone, which exists against these laws, will be held by statesmen sufficient to induce their repeal: that is, the impossibility of their execution. They remain dead letters on the statute-book, and ought to be so.

Best against Law Taxes. By JEREMY BENTHAM, Esq. of Lincoln's-Inn. pp. 275. London. Payne, 1819.

THE Parliamentary discussion which took place incidentally in the course of last Session, with reference to the Usury Laws, induced Mr. Bentham to permit the publication of this edition, the work having for many years been out of print. We gladly seize the occasion of bringing the subject before our readers, and of recommending the perusal of this volume to all who may either have any doubts upon the questions,—or who may only desire to enjoy the pleasure of following two chains of political reasoning, as close and as beautiful as any which the severest of the sciences presents. In this respect, indeed, these tracts are unrivalled; and that nothing might be wanting to their perfection, the style in which they are written (especially the second) is a model of composition.

It is curious to consider by what accidents the prejudices that gave rise to the Usury Laws have maintained their ground, amidst the ruins of the mercantile system to which they naturally belong. Long after every thinking man had been convinced, that the most entire freedom in commercial matters was both the right of the subject and the interest of the community, and that every interference with the private trade of individuals, was not only a grievous restraint upon natural liberty but positively detrimental to public prosperity, all reasoners seemed to agree in excepting from the sentence of condemnation thus passed upon such laws, the very class of enactments which most plainly aimed against the principles both of civil liberty and true policy. This anomaly is only to be accounted for, by the peculiar nature of the prejudices in which the Usury laws had their foundation; but an unlucky opinion in their favour, delivered by Dr. Smith, in the work which operated so powerfully towards dispelling the other errors of the mercantile theory, had a very remarkable effect in keeping alive those prejudices; and it is certain that Mr. Bentham was the first writer who openly and systematically attacked them. It is equally true, that he completed the work which he began; for, since the publication of his tract, no one has ever been hardy enough to deny, that he had conclusively demonstrated the proposition which forms its subject. To endeavour to add anything to his reasonings, would be a vain attempt; but we shall exhibit the substance of them in a form somewhat abridged, rather in the hope of their meeting the eyes of many who might not possess the original work, than with the least doubt as to its superior efficacy in producing speedy conviction in all who may peruse it.

It is a just observation of Lord Coke, that to trace the source of an error is to refute it; and fortunately there seems no difficulty in accounting for the origin of those prejudices in which the Usury Laws have their foundation. Mr. Bentham ascribes, we think, rather too much to religious bigotry, in treating this part of the subject. He observes, that the practice of self-denial came very early to be substituted for active virtue; and as the greater temptation the greater the merit, much virtue was held to lie in refusing to one's self the means of making money,—at all times the favourite pursuit of mankind. Hence, he says, the obvious method of making wealth productive, by lending it for a profit, was proscribed as an illegal gratification; and besides, as the Jews dealt largely in this practice, the Christians, ever anxious to avoid their customs, deemed it peculiarly sinful. The authority of Aristotle, who reprobates usury on the ground that "money is in its nature barren," was a strong support of these views, in an age which bowed to the dictum of that philosopher in every thing, save matters immediately connected with Pagan faith. Our author also remarks, that the natural antipathy of the spendthrift towards the saving man, arising from the envy with which he regards him, must have operated in the same direction. That all these causes have contributed materially to produce the prevailing

notions against usury, there can be no doubt. But we think he has, contrary to the usual accuracy of his analysis, overlooked one of the most powerful,—we mean, the feeling excited against a rich man, as the lender must always be compared with the borrower,—and in favour of a poor one, by the very circumstance of the former making the latter pay for help, according to his necessities, and reaping a profit without any labour or even trouble of his own. It is true, that many other classes are exactly in the same situation, as far as the circumstance of gaining by another's working goes; but in no case does the contest between distress and avarice, or, let us only say, a calculating and money-getting spirit, so frequently become apparent) and besides, other lenders, as land-owners, have always formed such a powerful body, that no universal prejudice could easily take root against them. Nor is it any answer to this view of the subject to say, that a person in no distressed state may borrow, upon a calculation of gain, from another, upon the whole no richer than himself; for the prejudice in question took its rise, when almost all loans were from the rich to the poor, to relieve their distresses; and the prevalence of hard bargains, driven under circumstances, obtained for the lenders in money a bad name that they never yet have lost. Perhaps the way in which religious bigotry has chiefly influenced the reputation of this class of men, in modern times, has been from the circumstance of the money-trade being principally in the hands of the Jews; although undoubtedly, this monopoly has been secured to them, as it was originally acquired, by the prevalence of the prejudices themselves. But the natural question is, How the laws against usury, that is, the restraints upon the terms of money bargains, can be justified? We shall shortly advert to the reasons which have been adduced with this view.

The first reason given for the interference, is the prevention of prodigality. It is well observed by Mr. Bentham, in the outset of this part of his argument, that although the preventing men from injuring one another, is a most legitimate object of the lawgiver, it may well be doubted, whether he is as much called upon to interpose between a man and himself, supposing the person so meant to be protected has attained the years of discretion. If this is a good work at all, he thinks at least it is a work of supererogation. But, in truth, such is not the real operation of the restraints under consideration. Why should a man, because he is prodigal, be also insane? And yet no one of sound mind would think of giving six per cent. for the use of money, how pressing ever his wants, if he could get it for five. Again—Can a man, however prodigal, be prevented from selling all he can get rid of by sale, and pledging all that won't sell? Those who have security of any kind to offer the lender, are not protected by the law; for the lender never makes his bargain upon a view of the borrower's character and habits, but of his security—so that the law is not likely to prevent him in cases where he was disposed to lend; and the prodigality of the borrower, whose property is mortgaged may be an inducement, in itself, to such as look towards obtaining possession of it. If, on the other hand, the spendthrift has no security to offer, how is he more likely to get money at a high than at a low rate? A friend is the only person likely to accommodate him, and he won't take more than the ordinary rate. Prodigals, in truth, are not the persons who borrow large sums at exorbitant interest;—they much more frequently borrow moderate sums, at the usual rate, in various quarters;—and when they can find a lender disposed to speculate, and obtain a compensation for the great risk of trusting them in the high profits of the transaction, such an one will also neglect the prohibitions of the Usury Laws, and make the poor man pay so much more for the additional risk they make him run. But it is decisive of this argument, that the most certain road to ruin for all prodigals, is to obtain goods upon credit, as long as their credit lasts; and that no law interferes with this,—unless, indeed, we have recourse to the interdiction of the Roman jurisprudence. Mr. Bentham clearly shows, that tradesmen make raw customers pay a great deal more than money-lenders would do; and he asks, where is the sense of stopping the expenditure of the prodigal at the faucet, while there are so many ways of letting it out at the bung-hole?

The protection of indigence forms another reason urged in behalf of these restraints. But it is plain, that no one rate of interest can be adapted to every man's situation. To some it may be profitable to borrow, though they should pay ten per cent., while others may find six per cent. too high, compared with the gain they can derive. The Usury Laws, however, fix the amount of the interest, and consequently determine one standard of exigency for all. How does this arrangement operate?—not in protecting, but in crushing the indigent, whose protection forms its pretext! No man will of himself give a far-

thing more for money than the lowest at which any one will lend it; but he may be in such a situation that nobody will lend him that of which he stands in the greatest need, except he pays higher than the general average rate adopted by the law. To give more than this maximum, would be for his advantage;—it would be profitable to him, otherwise he would not desire to borrow on such terms. The law says, he shall not benefit himself, perhaps save himself by giving what by the supposition he is able to give—and this, says our author, out of prudence and loving-kindness towards the poor man: "There may," he adds, "be worse cruelty; but can there be greater nonsense?" It is evident, that if the protection of indigence were really the object of these laws, they stop short of their mark—they prevent a poor man, no doubt, from borrowing at a high rate; but they take no means of compelling the rich to lend him at a lower rate.

A third reason alleged, is the protection of simplicity. Now, it is plain, that nothing short of the utmost simplicity can ever induce a man to make so improvident a bargain, as the giving more than he knows, or may easily learn to be necessary, for the use of money. There is nothing so easily ascertained as the market rate of interest. It does not vary from day to day, like the prices of goods; and, when it shifts, it is only in a very small proportion. Moreover, it is the same all over the community. A simple man, or a man without being very simple, may be deceived in other bargains; but here the legislator does not, indeed he cannot, render the least assistance. If a person unwarily pays too dear for goods or land, a case of daily occurrence, he must stand by his bargain, how speedily soever he may be undeceived; and indeed, here the law could not, in all cases, aid the unwary purchaser, however carefully contrived for his assistance, because the seller having pocketed the price, may have decamped with it, or spent it. But in the case of loans, the unwary borrower, whom the legislator pretends to assist, has always the security in his own hands; and if he has been really overreached, there is no possible difficulty in obtaining redress. Nor should it be forgotten, that if we are to suppose the case of persons so simple as to stand in need of protection in their money bargains, the same defect of prudence or sagacity exposes them to fully as great danger in all their other transactions. Nay, they may be overreached in the demand of the rate of interest fixed by law; for the market rate may, and often does, fall much below the legal maximum,—not to mention the injury a person of weak judgment may do himself, by borrowing even at the lowest market rate, and injudiciously employing the sums so obtained. Yet in these cases no lawgiver ever dreamt of affording protection to simplicity; and indeed the attempt would be obviously hopeless.

It is urged as a fourth reason in favour of these restraints, that a free access to the money market tends to encourage projects. Dr. Smith has greatly contributed to the prevalence of this notion. He classifies projectors with prodigals; stigmatizes both as persons like to waste the capital of the community; and approves of the maximum, from its tendency to keep a portion of that capital out of their hands. In no part of Mr. Bentham's tract is he more conspicuously successful, than in his elaborate refutation of this dogma, and his exposition of the prejudices upon which it is founded. The restraint, as he justly remarks, professing to fall upon rash, imprudent, useless schemers, does in fact fall upon such persons as, in the pursuit of wealth, or even of any other object, endeavour, by the assistance of wealth, to strike into any channel of invention. It falls upon all such persons as, in the cultivation of any of those arts which have been by way of eminence termed useful, direct their endeavours to any of those departments in which their utility shines most conspicuous and indubitable; upon all such persons as in the line of any of their pursuits, aim at any thing that can be called improvement; whether it consist in the production of any new article adapted to man's use, or in the meliorating the quality, or diminishing the expense, of any of those which are already known to us. It falls, in short, upon every application of the human powers, in which ingenuity stands in need of wealth for its assistant.

It is indeed manifest, that, in this view, the Usury Laws are absurd, unless it be possible to distinguish before trial good from bad, that is, successful from losing projects;—in which case, the law ought to fix a maximum for the loans to the one, and leave the other free access to the market,—which is plainly impossible. Those who are too prudent to risk their money upon an unproving scheme, will risk it upon no scheme at all, but will lend only to established concerns. The temptation of higher profit than usual, is absolutely necessary to prevail upon capitalists to embark in new trades. The Usury Laws prevent, therefore, any capital from finding its way into those channels by way of loan and directly discourage projects, that is, invention and improve-

ment in all the arts of life; for without discouraging the useful and the good, they cannot discourage the wild and the bad. Shall we then say, that the danger to the capital of the community, from a failure of certain schemes, is so alarming as to justify us in putting down all manner of schemes, as far as lies in our power? Let it only be remembered, that every thing valuable in civilized life is the fruit of schemes; that all we enjoy above the lot of savages, comes from arts that were once mere projects; and we shall not be disposed to condemn, in one sweeping sentence, every innovation. This is in truth to denounce as rash and ill grounded, (we use the author's forcible illustration), all those projects by which our species has been successively advanced, from feeding upon acorns, and covering themselves with raw hides, to the state in which it at present stands. Whatever (as he says) is now the routine of trade, was, at its commencement, project; whatever is now established, was at one time innovation.—And why such fears, after all, of our being impoverished by failing schemes? Long before the existence of the Usury Laws, the prosperity of our race was running on in an accelerating course;—long before the statutes in this country, its wealth and general improvement was rapidly and constantly advancing. There were every now and then failures, and individual losses in consequence; still their proportion to the bulk of successful projects was trifling; and no one can maintain, that, since the restraints were imposed, the proportion has diminished. Were the law silent on this head, money would still be lent to projectors, by those most deeply interested in the prudent disposal of it. We may safely trust their discretion for its being kept out of desperate risks. No one, indeed, has ridiculed the over-anxiety of such regulations as pretend to save men's capital from injudicious application, more happily than Dr. Smith himself. It is the great text, of which his immortal work is the illustration, almost in all its pages; and in no passage is more severe, than where he reprobates the intermeddling of Government to prevent private imprudence. After remarking, that the number of prudent and successful undertakings is every where much greater than that of injudicious and unsuccessful ones; he administers the following memorable correction to rulers for their love of meddling, and we may observe, that it is quite as well merited by the promoters of the Usury Laws, as by any other class of legislators. "It is the highest impertinence and presumption therefore in kings and ministers to pretend to watch over the economy of private people, and to restrain their expense, either by sumptuary laws, or by prohibiting the importation of foreign luxuries. They are themselves always, and without exception, the greatest spendthrifts in the society. Let them look well after their own expense, and they may safely trust private people with theirs. If their own extravagance does not ruin the State, that of their subjects never will."

To those who love reason, the arguments of this illustrious writer may suffice for removing all fears arising from the prodigality of individuals in wasting the national wealth; and those who prefer allowing the authority of great names to weighing their counsels, will require nothing more to make them reject, with contempt, all interference, on the part of lawyers, with the prudential regulation of private affairs. Yet the application of this conclusion, in which way soever we may reach it, to ordinary prodigality, is by no means more striking than to the squandering of projectors. Indeed we believe no one can read the following admirable and conclusive reflections of Mr. Bentham, without being persuaded, that the fear of schemers is still more chimerical than that of less ingenious spendthrifts.

However presumptuous and impertinent it may be for the Sovereign to attempt in any way to check by legal restraints the prodigality of individuals; to attempt to check their bad management by such restraints, seems abundantly more so. To err in the way of prodigality is the lot, though, as you will observe, not common, in comparison of the whole mass of mankind, yet at least of any man; the stuff fit to make a prodigal of is to be found in every alehouse, and under every hedge. But even to err in the way of projecting is the lot only of the privileged few. Prodigality, though not so common as to make any very material drain from the general mass of wealth, is however too common to be regarded as a mark of distinction or as a singularity. But the stepping aside from any of the beaten paths of traffic, is regarded as a singularity, as serving to distinguish a man from other men. Even where it requires no genius, no peculiarity of talent, as where it consists in nothing more than the finding out a new market to buy or sell in, it requires however at least a degree of courage, which is not to be found in the common herd of men. What shall we say of it, where, in addition to the vulgar quality of courage, it requires the rare endowment of genius, as in the instance of all those successive enterprises by which arts and manufactures have been brought from their original nothing to their present splendour? Think how small a part of the community these must make, in comparison of the race of prodigals; of that very race, which, were it only on account of the smallness of its number, would appear too inconsiderable to you to deserve attention. Yet prodigality is essentially and necessarily hurtful, as far as it goes, to the opul-

* Wealth of Nations, B. II, Chap. 3.