T. H. Green, 1880

LECTURE ON LIBERAL LEGISLATION AND FREEDOM OF CONTRACT.

THAT a discussion on this subject is opportune will hardly be disputed by any one who noticed the line of argument by which at least two of the liberal measures of last session[1] were opposed. To the Ground Game Act it was objected that it interfered with freedom of contract between landlord and tenant. It withdrew the sanction of law from any agreement by which the occupier of land should transfer to the owner the exclusive right of killing hares and rabbits on the land in his occupation. The Employers' Liability Act was objected to on similar grounds. It did not indeed go the length of preventing masters and workmen from contracting themselves out of its operation. But it was urged that it went on the wrong principle of encouraging the workman to look to the law for the protection which he ought to secure for himself by voluntary contract. 'The workman,' it was argued, 'should be left to take care of himself by the terms of his agreement with the employer. It is not for the state to step in and say, as by the new act it says, that when a workman is hurt in carrying out the instructions of the employer or his foreman, the employer, in the absence of a special agreement to the contrary, shall be liable for compensation. If the law thus takes to protecting men, whether tenant-farmers, or pitmen, or railway servants, who ought to be able to protect themselves, it tends to weaken their self-reliance, and thus, in unwisely seeking to do them good, it lowers them in the scale of moral beings.'

Such is the language which was everywhere in the air last summer, and which many of us, without being convinced by it, may have found it difficult to answer. The same line

[1] [Summer, 1880.]

of objection is equally applicable to other legislation of recent years, to our factory acts, education acts, and laws relating to public health. They all, in one direction or another, limit a man's power of doing what he will with what he considers his own. They all involve the legal prohibition of certain agreements between man and man, and as there is nothing to force men into these agreements, it might be argued that, supposing them to be mischievous, men would, in their own interest, gradually learn to refuse them. There is other legislation which the liberal party is likely to demand, and which is sure to be objected to on the same ground, with what justice we shall see as we proceed. If it is proposed to give the Irish tenant some security in his holding, to save him from rack-renting and from the confiscation of the results of his labour in the improvement of the soil, it will be objected that in so doing the state goes out of its way to interfere with the contracts, possibly beneficial to both sides, which landlord and tenant would otherwise make with each other. Leave the tenant, it will be said, to secure himself by contract. Meanwhile the demand for greater security of tenure is growing stronger amongst our English farmers, and should it be proposed—as it must before this parliament expires—to give legal effect to it, the proposal will be met by the same cry, that it is an interference with the freedom of contract, unless, indeed, like Lord Beaconsfield's Act of 1875, it undoes with one hand what it professes to do with the other.

There are two other matters with which the liberal leaders have virtually promised to deal, and upon which they are sure to be met by an appeal to the supposed inherent right of every man to do what he will with his own. One is the present system of settling land, the other the liquor traffic. The only effectual reform of the land laws is to put a stop to those settlements or bequests by which at present a landlord may prevent a successor from either converting any part of his land into money or from dividing it among his children. But if it is proposed to take away from the landlord this power of hampering posterity, it will be said to be an interference with his free disposal of his property. As for the liquor traffic, it is obvious that even the present licensing laws, ineffectual as some of us think them, interfere with the free sale of an article in large consumption, and that with the concession of 'local option' the interference would,

to say the least, be probably carried much further. I have said enough to show that the most pressing political questions of our time are questions of which the settlement, I do not say necessarily involves an interference with freedom of contract, but is sure to be resisted in the sacred name of individual liberty, not only by all those who are interested in keeping things as they are, but by others to whom freedom is dear for its own sake, and who do not sufficiently consider the conditions of its maintenance in such a society as ours. In this respect there is a noticeable difference between the present position of political reformers and that in which they stood a generation ago. Then they fought the fight of reform in the name of individual freedom against class privilege. Their opponents could not with any plausibility invoke the same name against them. Now, in appearance—though, as I shall try to show, not in reality—the case is changed. The nature of the genuine political reformer is perhaps always the same. The passion for improving mankind, in its ultimate object, does not vary. But the immediate object of reformers, and the forms of persuasion by which they seek to advance them, vary much in different generations. To a hasty observer they might even seem contradictory, and to justify the notion that nothing better than a desire for change, selfish or perverse, is at the bottom of all reforming movements. Only those who will think a little longer about it can discern the same old cause of social good against class interests, for which, under altered names, liberals are fighting now as they were fifty years ago.

Our political history since the first reform act naturally falls into three divisions. The first, beginning with the reform of parliament, and extending to Sir R. Peel's administration, is marked by the struggle of free society against close privileged corporations. Its greatest achievement was the establishment of representative municipal governments in place of the close bodies which had previously administered the affairs of our cities and boroughs; a work which after an interval of nearly half a century we hope shortly to see extended to the rural districts. Another important work was the overhauling the immense charities of the country, and the placing them under something like adequate public control. And the natural complement of this was the removal of the grosser abuses in the administration of the church,

the abolition of pluralities and sinecures, and the reform of cathedral chapters. In all this, while there was much that contributed to the freedom of our civil life, there was nothing that could possibly be construed as an interference with the rights of the individual. No one was disturbed in doing what he would with his own. Even those who had fattened on abuses had their vested interests duly respected, for the house of commons then as now had 'quite a passion for compensation.' With the ministry of Sir R. Peel began the struggle of society against monopolies; in other words, the liberation of trade. Some years later Mr. Gladstone, in his famous budgets, was able to complete the work which his master began, and it is now some twenty years since the last vestige of protection for any class of traders or producers disappeared. The taxes on knowledge, as they were called, followed the taxes on food, and since most of us grew up there has been no exchangeable commodity in England except land—no doubt a large exception—of which the exchange has not been perfectly free.

The realisation of complete freedom of contract was the special object of this reforming work. It was to set men at liberty to dispose of what they had made their own that the free-trader worked. He only interfered to prevent interference. He would put restraint on no man in doing anything that did not directly check the free dealing of some one in something else. But of late reforming legislation has taken, as I have pointed out, a seemingly different direction. It has not at any rate been so readily identifiable with the work of liberation. In certain respects it has put restraints on the individual in doing what he will with his own. And it is noticeable that this altered tendency begins, in the main, with the more democratic parliament of 1868. It is true that the earlier factory acts, limiting as they do by law the conditions under which certain kinds of labour may be bought and sold, had been passed some time before. The first approach to an effectual factory act dates as far back as the time of the first reform act, but it only applied to the cotton industry, and was very imperfectly put in force. It aimed at limiting the hours of labour for children and young persons. Gradually the limitation of hours came to be enforced, other industries were brought under the operation of the restraining laws, and the same protection extended to women as to young

persons. But it was only alongside of the second reform act in 1867 that an attempt was made by parliament to apply the same rule to every kind of factory and workshop; only later still, in the first parliament elected partly by household suffrage, that efficient measures were taken for enforcing the restraints which previous legislation had in principle required. Improvements and extensions in detail have since been introduced, largely through the influence of Mr. Mundella, and now we have a system of law by which, in all our chief industries except the agricultural, the employment of children except as half-timers is effectually prevented, the employment of women and young persons is effectually restricted to ten hours a day, and in all places of employment health and bodily safety have all the protection which rules can give them.

If factory regulation had been attempted, though only in a piecemeal way, some time before we had a democratic house of commons, the same cannot be said of educational law. It was the parliament elected by a more popular suffrage in 1868 that passed, as we know, the first great education act. That act introduced compulsory schooling. It left the compulsion, indeed, optional with local school-boards, but compulsion is the same in principle, is just as much compulsion by the state, whether exercised by the central government or delegated by that government to provincial authorities. The education act of 1870 was a wholly new departure in English legislation, though Mr. Forster was wise enough to proceed tentatively, and leave the adoption of compulsory bye-laws to the discretion of school-boards. It was so just as much as if he had attempted at once to enforce compulsory attendance through the action of the central government. The principle was established once for all that parents were not to be allowed to do as they willed with their children, if they willed either to set them to work or to let them run wild without elementary education. Freedom of contract in respect of all dealings with the labour of children was so far limited.

I need not trouble you with recalling the steps by which the principle of the act of 1870 has since been further applied and enforced. It is evident that in the body of school and factory legislation which I have noticed we have a great system of interference with freedom of contract. The hirer of labour is prevented from hiring it on terms to which the

person of whom he hires it could for the most part have been readily brought to agree. If children and young persons and women were not ready in many cases, either from their own wish, or under the influence of parents and husbands, to accept employment of the kind which the law prohibits, there would have been no occasion for the prohibition. It is true that adult men are not placed directly under the same restriction. The law does not forbid them from working as long hours as they please. But I need not point out here[1] that in effect the prevention of the employment of juvenile labour beyond certain hours, amounts, at least in the textile industries, to the prevention of the working of machinery beyond those hours. It thus indirectly puts a limit on the number of hours during which the manufacturer can employ his men. And if it is only accidentally, so to speak, that the hiring of men's labour is interfered with by the half-time and ten hours' system, the interference on grounds of health and safety is as direct as possible. The most mature man is prohibited by law from contracting to labour in factories, or pits, or workshops, unless certain rules for the protection of health and limb are complied with. In like manner he is prohibited from living in a house which the sanitary inspector pronounces unwholesome. The free sale or letting of a certain kind of commodity is thereby prevented. Here, then, is a great system of restriction, which yet hardly any impartial person wishes to see reversed; which many of us wish to see made more complete. Perhaps, however, we have never thoroughly considered the principles on which we approve it. It may be well, therefore, to spend a short time in ascertaining those principles. We shall then be on surer ground in approaching those more difficult questions of legislation which must shortly be dealt with, and of which the settlement is sure to be resisted in the name of individual liberty.

We shall probably all agree that freedom, rightly understood, is the greatest of blessings; that its attainment is the true end of all our effort as citizens. But when we thus speak of freedom, we should consider carefully what we mean by it. We do not mean merely freedom from restraint or compulsion. We do not mean merely freedom to do as we like irrespectively of what it is that we like. We do not mean a freedom that can be enjoyed by one man or one set of men

[1] [At Leicester.]

at the cost of a loss of freedom to others. When we speak of freedom as something to be so highly prized, we mean a positive power or capacity of doing or enjoying something worth doing or enjoying, and that, too, something that we do or enjoy in common with others. We mean by it a power which each man exercises through the help or security given him by his fellow-men, and which he in turn helps to secure for them. When we measure the progress of a society by its growth in freedom, we measure it by the increasing development and exercise on the whole of those powers of contributing to social good with which we believe the members of the society to be endowed; in short, by the greater power on the part of the citizens as a body to make the most and best of themselves. Thus, though of course there can be no freedom among men who act not willingly but under compulsion, yet on the other hand the mere removal of compulsion, the mere enabling a man to do as he likes, is in itself no contribution to true freedom. In one sense no man is so well able to do as he likes as the wandering savage. He has no master. There is no one to say him nay. Yet we do not count him really free, because the freedom of savagery is not strength, but weakness. The actual powers of the noblest savage do not admit of comparison with those of the humblest citizen of a law-abiding state. He is not the slave of man, but he is the slave of nature. Of compulsion by natural necessity he has plenty of experience, though of restraint by society none at all. Nor can he deliver himself from that compulsion except by submitting to this restraint. So to submit is the first step in true freedom, because the first step towards the full exercise of the faculties with which man is endowed. But we rightly refuse to recognise the highest development on the part of an exceptional individual or exceptional class, as an advance towards the true freedom of man, if it is founded on a refusal of the same opportunity to other men. The powers of the human mind have probably never attained such force and keenness, the proof of what society can do for the individual has never been so strikingly exhibited, as among the small groups of men who possessed civil privileges in the small republics of antiquity. The whole framework of our political ideas, to say nothing of our philosophy, is derived from them. But in them this extraordinary efflorescence of the privileged class was accompanied by the

slavery of the multitude. That slavery was the condition on which it depended, and for that reason it was doomed to decay. There is no clearer ordinance of that supreme reason, often dark to us, which governs the course of man's affairs, than that no body of men should in the long run be able to strengthen itself at the cost of others' weakness. The civilisation and freedom of the ancient world were shortlived because they were partial and exceptional. If the ideal of true freedom is the maximum of power for all members of human society alike to make the best of themselves, we are right in refusing to ascribe the glory of freedom to a state in which the apparent elevation of the few is founded on the degradation of the many, and in ranking modern society, founded as it is on free industry, with all its confusion and ignorant licence and waste of effort, above the most splendid of ancient republics.

If I have given a true account of that freedom which forms the goal of social effort, we shall see that freedom of contract, freedom in all the forms of doing what one will with one's own, is valuable only as a means to an end. That end is what I call freedom in the positive sense: in other words, the liberation of the powers of all men equally for contributions to a common good. No one has a right to do what he will with his own in such a way as to contravene this end. It is only through the guarantee which society gives him that he has property at all, or, strictly speaking, any right to his possessions. This guarantee is founded on a sense of common interest. Every one has an interest in securing to every one else the free use and enjoyment and disposal of his possessions, so long as that freedom on the part of one does not interfere with a like freedom on the part of others, because such freedom contributes to that equal development of the faculties of all which is the highest good for all. This is the true and the only justification of rights of property. Rights of property, however, have been and are claimed which cannot be thus justified. We are all now agreed that men cannot rightly be the property of men. The institution of property being only justifiable as a means to the free exercise of the social capabilities of all, there can be no true right to property of a kind which debars one class of men from such free exercise altogether. We condemn slavery no less when it arises out of a voluntary agreement on the part of the enslaved

person. A contract by which any one agreed for a certain consideration to become the slave of another we should reckon a void contract. Here, then, is a limitation upon freedom of contract which we all recognise as rightful. No contract is valid in which human persons, willingly or unwillingly, are dealt with as commodities, because such contracts of necessity defeat the end for which alone society enforces contracts at all.

Are there no other contracts which, less obviously perhaps but really, are open to the same objection? In the first place, let us consider contracts affecting labour. Labour, the economist tells us, is a commodity exchangeable like other commodities. This is in a certain sense true, but it is a commodity which attaches in a peculiar manner to the person of man. Hence restrictions may need to be placed on the sale of this commodity which would be unnecessary in other cases, in order to prevent labour from being sold under conditions which make it impossible for the person selling it ever to become a free contributor to social good in any form. This is most plainly the case when a man bargains to work under conditions fatal to health, *e.g.* in an unventilated factory. Every injury to the health of the individual is, so far as it goes, a public injury. It is an impediment to the general freedom; so much deduction from our power, as members of society, to make the best of ourselves. Society is, therefore, plainly within its right when it limits freedom of contract for the sale of labour, so far as is done by our laws for the sanitary regulations of factories, workshops, and mines. It is equally within its right in prohibiting the labour of women and young persons beyond certain hours. If they work beyond those hours, the result is demonstrably physical deterioration; which, as demonstrably, carries with it a lowering of the moral forces of society. For the sake of that general freedom of its members to make the best of themselves, which it is the object of civil society to secure, a prohibition should be put by law, which is the deliberate voice of society, on all such contracts of service as in a general way yield such a result. The purchase or hire of unwholesome dwellings is properly forbidden on the same principle. Its application to compulsory education may not be quite so obvious, but it will appear on a little reflection. Without a command of certain elementary arts and knowledge, the individual in modern society is as effectually crippled as by the loss of a

limb or a broken constitution. He is not free to develop his faculties. With a view to securing such freedom among its members it is as certainly within the province of the state to prevent children from growing up in that kind of ignorance which practically excludes them from a free career in life, as it is within its province to require the sort of building and drainage necessary for public health.

Our modern legislation then with reference to labour, and education, and health, involving as it does manifold interference with freedom of contract, is justified on the ground that it is the business of the state, not indeed directly to promote moral goodness, for that, from the very nature of moral goodness, it cannot do, but to maintain the conditions without which a free exercise of the human faculties is impossible. It does not indeed follow that it is advisable for the state to do all which it is justified in doing. We are often warned nowadays against the danger of over-legislation; or, as I heard it put in a speech of the present home[1] secretary in days when he was sowing his political wild oats, of 'grandmotherly government.' There may be good ground for the warning, but at any rate we should be quite clear what we mean by it. The outcry against state interference is often raised by men whose real objection is not to state interference but to centralisation, to the constant aggression of the central executive upon local authorities. As I have already pointed out, compulsion at the discretion of some elected municipal board proceeds just as much from the state as does compulsion exercised by a government office in London. No doubt, much needless friction is avoided, much is gained in the way of elasticity and adjustment to circumstances, by the independent local administration of general laws; and most of us would agree that of late there has been a dangerous tendency to override municipal discretion by the hard and fast rules of London 'departments.' But centralisation is one thing: over-legislation, or the improper exercise of the power of the state, quite another. It is one question whether of late the central government has been unduly trenching on local government, and another question whether the law of the state, either as administered by central or by provincial authorities, has been unduly interfering with the discretion of individuals. We may object most strongly to

[1] [Sir William Vernon-Harcourt.]

advancing centralisation, and yet wish that the law should put rather more than less restraint on those liberties of the individual which are a social nuisance. But there are some political speculators whose objection is not merely to centralisation, but to the extended action of law altogether. They think that the individual ought to be left much more to himself than has of late been the case. Might not our people, they ask, have been trusted to learn in time for themselves to eschew unhealthy dwellings, to refuse dangerous and degrading employment, to get their children the schooling necessary for making their way in the world? Would they not for their own comfort, if not from more chivalrous feeling, keep their wives and daughters from overwork? Or, failing this, ought not women, like men, to learn to protect themselves? Might not all the rules, in short, which legislation of the kind we have been discussing is intended to attain, have been attained without it; not so quickly, perhaps, but without tampering so dangerously with the independence and self-reliance of the people?

Now, we shall probably all agree that a society in which the public health was duly protected, and necessary education duly provided for, by the spontaneous action of individuals, was in a higher condition than one in which the compulsion of law was needed to secure these ends. But we must take men as we find them. Until such a condition of society is reached, it is the business of the state to take the best security it can for the young citizens' growing up in such health and with so much knowledge as is necessary for their real freedom. In so doing it need not at all interfere with the independence and self-reliance of those whom it requires to do what they would otherwise do for themselves. The man who, of his own right feeling, saves his wife from overwork and sends his children to school, suffers no moral degradation from a law which, if he did not do this for himself, would seek to make him do it. Such a man does not feel the law as constraint at all. To him it is simply a powerful friend. It gives him security for that being done efficiently which, with the best wishes, he might have much trouble in getting done efficiently if left to himself. No doubt it relieves him from some of the responsibility which would otherwise fall to him as head of a family, but, if he is what we are supposing him to be, in proportion as he is relieved of responsibilities in one

direction he will assume them in another. The security which the state gives him for the safe housing and sufficient schooling of his family will only make him the more careful for their well-being in other respects, which he is left to look after for himself. We need have no fear, then, of such legislation having an ill effect on those who, without the law, would have seen to that being done, though probably less efficiently, which the law requires to be done. But it was not their case that the laws we are considering were especially meant to meet. It was the overworked women, the ill-housed and untaught families, for whose benefit they were intended. And the question is whether without these laws the suffering classes could have been delivered quickly or slowly from the condition they were in. Could the enlightened self-interest or benevolence of individuals, working under a system of unlimited freedom of contract, have ever brought them into a state compatible with the free development of the human faculties? No one considering the facts can have any doubt as to the answer to this question. Left to itself, or to the operation of casual benevolence, a degraded population perpetuates and increases itself. Read any of the authorised accounts, given before royal or parliamentary commissions, of the state of the labourers, especially of the women and children, as they were in our great industries before the law was first brought to bear on them, and before freedom of contract was first interfered with in them. Ask yourself what chance there was of a generation, born and bred under such conditions, ever contracting itself out of them. Given a certain standard of moral and material well-being, people may be trusted not to sell their labour, or the labour of their children, on terms which would not allow that standard to be maintained. But with large masses of our population, until the laws we have been considering took effect, there was no such standard. There was nothing on their part, in the way either of self-respect or established demand for comforts, to prevent them from working and living, or from putting their children to work and live, in a way in which no one who is to be a healthy and free citizen can work and live. No doubt there were many high-minded employers who did their best for their workpeople before the days of state-interference, but they could not prevent less scrupulous hirers of labour from hiring it on the cheapest terms. It is

true that cheap labour is in the long run dear labour, but it is so only in the long run, and eager traders do not think of the long run. If labour is to be had under conditions incompatible with the health or decent housing or education of the labourer, there will always be plenty of people to buy it under those conditions, careless of the burden in the shape of rates and taxes which they may be laying up for posterity. Either the standard of well-being on the part of the sellers of labour must prevent them from selling their labour under those conditions, or the law must prevent it. With a population such as ours was forty years ago, and still largely is, the law must prevent it and continue the prevention for some generations, before the sellers will be in a state to prevent it for themselves.

As there is practically no danger of a reversal of our factory and school laws, it may seem needless to dwell at such length on their justification. I do so for two reasons; partly to remind the younger generation of citizens of the great blessing which they inherited in those laws, and of the interest which they still have in their completion and extension; but still more in order to obtain some clear principles for our guidance when we approach those difficult questions of the immediate future, the questions of the land law and the liquor law.

I pointed out just now that, though labour might be reckoned an exchangeable commodity, it differed from all other commodities, inasmuch as it was inseparable from the person of the labourer. Land, too, has its characteristics, which distinguish it from ordinary commodities. It is from the land, or through the land, that the raw material of all wealth is obtained. It is only upon the land that we can live; only across the land that we can move from place to place. The state, therefore, in the interest of that public freedom which it is its business to maintain, cannot allow the individual to deal as he likes with his land to the same extent to which it allows him to deal as he likes with other commodities. It is an established principle, *e.g.* that the sale of land should be enforced by law when public convenience requires it. The land-owner of course gets the full value, often much more than the full value, of the land which he is compelled to sell, but of no ordinary commodity is the sale thus enforced at all. This illustrates the peculiar necessity

in the public interest of putting some restraint on a man's liberty of doing what he will with his own, when it is land that he calls his own. The question is whether in the same interest further restraint does not need to be imposed on the liberty of the land-owner than is at present the case. Should not the state, which for public purposes compels the sale of land, also for public purposes prevent it from being tied up in a manner which prevents its natural distribution and keeps it in the hands of those who cannot make the most of it? At the present the greater part of the land of England is held under settlements which prevent the nominal owner from either dividing his land among his children or from selling any part of it for their benefit. It is so settled that all of it necessarily goes to the owner's eldest son. So far as any sale is allowed it must only be for the benefit of that favoured son. The evil effects of this system are twofold. In the first place it almost entirely prevents the sale of agricultural land in small quantities, and thus hinders the formation of that mainstay of social order and contentment, a class of small proprietors tilling their own land. Secondly it keeps large quantities of land in the hands of men who are too much burdened by debts or family charges to improve it. The landlord in such cases has not the money to improve, the tenant has not the security which would justify him in improving. Thus a great part of the land of England is left in a state in which, according to such eminent and impartial authorities as lord Derby and lord Leicester, it does not yield half of what it might. Now what is the remedy for this evil? Various palliative measures have been suggested. A very elaborate one was introduced by lord Cairns a year ago, but it fell short of the only sufficient remedy. It did not propose to prevent landlords for the future from making settlements of the kind described. It left the old power of settling land untouched, on the ground that to interfere with it would be to prevent the landlord from doing what he would with his own. We urge on the contrary that this particular power on the part of the landlord of dealing with his property, imposing, as it does, the weight of the dead hand on posterity, is against the public interest. On the simple and recognised principle that no man's land is his own for purposes incompatible with the public convenience, we ask that legal sanction should be withheld for the future from settle-

ments which thus interfere with the distribution and improvement of land.

Such a change, though it would limit in one direction the power of dealing with land, would extend it in other directions. It would render English land on the whole a much more marketable commodity than it is at present. Its effect would be to restrain the owner of land in any one generation from putting restraints on the disposal of it in succeeding generations. It would, therefore, have the support of those liberals who are most jealous of any interference with freedom of contract. When we come to the relations between landlord and tenant, we are on more difficult ground. It is agreed that as a general rule the more freedom of contract we have the better, with a view to that more positive freedom which consists in an open field for all men to make the best of themselves. But we must not sacrifice the end to the means. If there are certain kinds of contract for the use of land which interfere seriously with the public convenience, but which the parties immediately concerned cannot be trusted to abstain from in their own interest, such contracts should be invalid by law. It is on this ground that we justify the prohibition by the act of last session of agreements between landlord and tenant which reserve the ground game to the landlord. If the farmers only had been concerned in the matter, they might perhaps have been left to take care of themselves. But there were public interests at stake. The country cannot afford the waste of produce and discouragement of good husbandry which result from excessive game-preserving; nor can it rightly allow that widespread temptation to lawless habits which arises from a sort of half and half property being scattered over the country without any possibility of its being sufficiently protected. The agreements in question, therefore, were against the public interest, and as the tenant farmers themselves, from long habits of dependence, could not be trusted to refuse them, there was no alternative but to render them illegal. Perhaps as we become more alive to the evil which the ground game act but partially remedied, we shall demand further legislation in the same direction, and insist that some limit be put, not merely to the landlord's power of reserving the game on land let to farmers, but to his power of keeping land out of

cultivation or turning it into forest for the sake of his amusement.

But while admitting that in this matter of game, from long habit of domination on one side and dependence on the other, landlord and farmer could not safely be left to voluntary agreements, and that a special law was needed to break the back of a mischievous practice, are we to allow that in the public interest the English farmer generally needs to be restrained by law from agreements with his landlord, into which he might be induced to enter if left to himself? Is he not sufficiently enlightened as to his own interest, which is also the interest of the public, and sufficiently free in maintaining it, to refuse to take land except on conditions which will enable him to make the best of it? We may wish that he were, we may hope that some day he will be, but facts show that at present he is not. The great majority of English farmers hold their farms under the liability to be turned out without compensation at six months' or a year's notice. Now it is certain that land cannot be farmed as the public interest requires that it should be, except by an expenditure of capital on the part of the farmers, which will not, as a general rule, be risked so long as he holds his land on these terms. It is true that, under a good landlord, the yearly tenant is as secure as if he held a long lease. But all landlords are not good, nor is a good landlord immortal. He may have a spendthrift eldest son, from whom under his settlement he cannot withhold the estate, and upon whose accession to the estate the temporary security previously enjoyed by yearly tenants will disappear. Whatever the reason, the fact remains that yearly tenancy under the present law is not sufficient to secure a due application of capital to the soil. 'The best agriculture is found on farms where tenants are protected by leases; the next best on farms where tenants are protected by the "Lincolnshire custom"; the worst of all on farms whose tenants are not protected at all, but rely on the honour of their landlords';[1] and this latter class of farms covers the greater part of England. Here, then, is proof that the majority of English farmers have either not been intelligent enough, or not independent enough, to insist on those contracts with their landlords

[1] Quoted from *English Land and English Landlords*, by the Hon. G. C. Brodrick; Cassell and Co., 1881.

which as a rule are necessary for good farming. They may in time become so, but meanwhile, with the daily increasing pressure on the means of subsistence, the country cannot afford to wait. We do not ask for any such change of the law as would hinder or discourage the farmer from making voluntary contracts with the landlord for the protection of both parties. We only wish in the public interest, which is the interest of good farming, to prevent him from taking a farm, as he now generally does, on terms incompatible with security in the outlay of capital. In the absence of leases, we wish a sufficient tenant-right to be guaranteed by law, such tenant-right as would secure to the out-going tenant the full value of unexhausted improvements. It is only thus, we believe, that we can bring about that due cultivation of the soil which is every day becoming of greater importance to our crowded population.

This protection, which is all that can reasonably be asked for the English farmer, falls far short of that which the most impartial judges believe to be necessary for the peasant farmers in Ireland. The difference between the farmers of the Irish counties may be briefly stated thus. In Ireland, far more frequently than in England, the tenant is practically not a free agent in the contract he makes with his landlord. In England, during the last two or three years, the landlord has often been more afraid of losing the tenant than the tenant of losing his farm. It is comparatively easy for a man who does not succeed in getting a farm on terms under which he can make it pay, to get a living in other ways. Thus in England a farmer is seldom under such pressure as to be unable to make a bargain with a landlord which shall be reasonably to his own advantage. In Ireland it is otherwise. The farmers there are relatively far more numerous, and, as a rule, far poorer. Nearly three-fourths of the Irish farmers (423,000 out of 596,000) hold less than thirty acres apiece; nearly half of them hold under fifteen acres. A tenant on that small scale is in a very different position for bargaining with a landlord from the English farmer, as we commonly know him, with his 200 acres or more. Apart from his little farm the tenant has nothing to turn his hand to. With the exception of the linen-making in the north, Ireland has no industry but agriculture out of which a living can be made. It has been said on good authority that in

many parts of Ireland eviction means starvation to the evicted tenant. This may be a strong statement, but there is no doubt that to an Irishman of the south and west (the districts at present disturbed) the hiring of land to till presents itself as a necessity of life. The only alternative is emigration, and during the recent years of depression in America that alternative was to a great extent closed. Hence an excessive competition for farms, and a readiness on the part of the smaller tenants to put up with any enhancement of rent rather than relinquish their holdings. Under such conditions freedom of contract is little more than a name. The peasant farmer is scarcely more free to contract with his landlord than is a starving labourer to bargain for good wages with a master who offers him work. When many contracts between landlord and tenant are made under such pressure, reverence for contract, which is the safeguard of society, is sure to disappear, and this I believe to be the chief reason why the farmers of southern and western Ireland have been so easily led astray by the agitation of the land league. That agitation strikes at the roots of all contract, and therefore at the very foundation of modern society; but if we would effectually withstand it, we must cease to insist on maintaining the forms of free contract where the reality is impossible. We must in some way give the farmers of Ireland by law that protection which, as a rule, they have been too weak to obtain for themselves singly by contract, protection against the confiscation of the fruits of the labour and money they have spent on the soil, whether that confiscation take the form of actual eviction or of a constant enhancement of rent. To uphold the sanctity of contracts is doubtless a prime business of government, but it is no less its business to provide against contracts being made, which, from the helplessness of one of the parties to them, instead of being a security for freedom, become an instrument of disguised oppression.

I have left myself little time to speak of the principles on which some of us hold that, in the matter of intoxicating drinks, a further limitation of freedom of contract is needed in the interest of general freedom. I say a further limitation, because there is no such thing as a free sale of these drinks at present. Men are not at liberty to buy and sell them when they will, where they will, and as they will.

But our present licensing system, while it creates a class of monopolists especially interested in resisting any effectual restraint of the liquor traffic, does little to lessen the facilities for obtaining strong drink. Indeed the principle upon which licences have been generally given has been avowedly to make it easy to get drink. The restriction of the hours of sale is no doubt a real check so far as it goes, but it remains the case that every one who has a weakness for drink has the temptation staring him in the face during all hours but those when he ought to be in bed. The effect of the present system, in short, is to prevent the drink-shops from coming unpleasantly near the houses of well-to-do people, and to crowd them upon the quarters occupied by the poorer classes, who have practically no power of keeping the nuisance from them. Now it is clear that the only remedy which the law can afford for this state of things must take the form either of more stringent rules of licensing, or of a power entrusted to the householders in each district of excluding the sale of intoxicants altogether from among them.

I do not propose to discuss the comparative merits of these methods of procedure. One does not exclude the other. They may very well be combined. One may be best suited for one kind of population, the other for another kind. But either, to be effectual, must involve a large interference with the liberty of the individual to do as he likes in the matter of buying and selling alcohol. It is the justifiability of that interference that I wish briefly to consider.

We justify it on the simple ground of the recognised right on the part of society to prevent men from doing as they like, if, in the exercise of their peculiar tastes in doing as they like, they create a social nuisance. There is no right to freedom in the purchase and sale of a particular commodity, if the general result of allowing such freedom is to detract from freedom in the higher sense, from the general power of men to make the best of themselves. Now with anyone who looks calmly at the facts, there can be no doubt that the present habits of drinking in England do lay a heavy burden on the free development of man's powers for social good, a heavier burden probably than arises from all other preventible causes put together. It used to be the fashion to look on drunkenness as a vice which was the concern only of the person who fell into it, so long as it did not lead him

to commit an assault on his neighbours. No thoughtful man any longer looks on it in this way. We know that, however decently carried on, the excessive drinking of one man means an injury to others in health, purse, and capability, to which no limits can be placed. Drunkenness in the head of a family means, as a rule, the impoverishment and degradation of all members of the family; and the presence of a drink-shop at the corner of a street means, as a rule, the drunkenness of a certain number of heads of families in that street. Remove the drink-shops, and, as the experience of many happy communities sufficiently shows, you almost, perhaps in time altogether, remove the drunkenness. Here, then, is a wide-spreading social evil, of which society may, if it will, by a restraining law, to a great extent, rid itself, to the infinite enhancement of the positive freedom enjoyed by its members. All that is required for the attainment of so blessed a result is so much effort and self-sacrifice on the part of the majority of citizens as is necessary for the enactment and enforcement of the restraining law. The majority of citizens may still be far from prepared for such an effort. That is a point on which I express no opinion. To attempt a restraining law in advance of the social sentiment necessary to give real effect to it, is always a mistake. But to argue that an effectual law in restraint of the drink-traffic would be a wrongful interference with individual liberty, is to ignore the essential condition under which alone every particular liberty can rightly be allowed to the individual, the condition, namely, that the allowance of that liberty is not, as a rule, and on the whole, an impediment to social good.

The more reasonable opponents of the restraint for which I plead, would probably argue not so much that it was necessarily wrong in principle, as that it was one of those short cuts to a good end which ultimately defeat their own object. They would take the same line that has been taken by the opponents of state-interference in all its forms. 'Leave the people to themselves,' they would say; 'as their standard of self-respect rises, as they become better housed and better educated, they will gradually shake off the evil habit. The cure so effected may not be so rapid as that brought by a repressive law, but it will be more lasting. Better that it should come more slowly through the sponta-

neous action of individuals, than more quickly through compulsion.'

But here again we reply that it is dangerous to wait. The slower remedy might be preferable if we were sure that it was a remedy at all, but we have no such assurance. There is strong reason to think the contrary. Every year that the evil is left to itself, it becomes greater. The vested interest in the encouragement of the vice becomes larger, and the persons affected by it more numerous. If any abatement of it has already taken place, we may fairly argue that this is because it has not been altogether left to itself; for the licensing law, as it is, is much more stringent and more stringently administered than it was ten years ago. A drunken population naturally perpetuates and increases itself. Many families, it is true, keep emerging from the conditions which render them specially liable to the evil habit, but on the other hand descent through drunkenness from respectability to squalor is constantly going on. The families of drunkards do not seem to be smaller than those of sober men, though they are shorter-lived; and that the children of a drunkard should escape from drunkenness is what we call almost a miracle. Better education, better housing, more healthy rules of labour, no doubt lessen the temptations to drink for those who have the benefit of these advantages, but meanwhile drunkenness is constantly recruiting the ranks of those who cannot be really educated, who will not be better housed, who make their employments dangerous and unhealthy. An effectual liquor law in short is the necessary complement of our factory acts, our education acts, our public health acts. Without it the full measure of their usefulness will never be attained. They were all opposed in their turn by the same arguments that are now used against a restraint of the facilities for drinking. Sometimes it was the argument that the state had no business to interfere with the liberties of the individual. Sometimes it was the dilatory plea that the better nature of man would in time assert itself, and that meanwhile it would be lowered by compulsion. Happily a sense of the facts and necessities of the case got the better of the delusive cry of liberty. Act after act was passed preventing master and workman, parent and child, house-builder and householder, from doing as they pleased, with the result of a great addition to the real

freedom of society. The spirit of self-reliance and independence was not weakened by those acts. Rather it received a new development. The dead weight of ignorance and unhealthy surroundings, with which it would otherwise have had to struggle, being partially removed by law, it was more free to exert itself for higher objects. When we ask for a stringent liquor law, which should even go to the length of allowing the householders of a district to exclude the drink traffic altogether, we are only asking for a continuation of the same work, a continuation necessary to its complete success. It is a poor sophistry to tell us that it is moral cowardice to seek to remove by law a temptation which every one ought to be able to resist for himself. It is not the part of a considerate self-reliance to remain in presence of a temptation merely for the sake of being tempted. When all temptations are removed which law can remove, there will still be room enough, nay, much more room, for the play of our moral energies. The temptation to excessive drinking is one which upon sufficient evidence we hold that the law can at least greatly diminish. If it can, it ought to do so. This then, along with the effectual liberation of the soil, is the next great conquest which our democracy, on behalf of its own true freedom, has to make. The danger of legislation, either in the interests of a privileged class or for the promotion of particular religious opinions, we may fairly assume to be over. The popular jealousy of law, once justifiable enough, is therefore out of date. The citizens of England now make its law. We ask them by law to put a restraint on themselves in the matter of strong drink. We ask them further to limit, or even altogether to give up, the not very precious liberty of buying and selling alcohol, in order that they may become more free to exercise the faculties and improve the talents which God has given them.