ADVANCE SHEET – January 21, 2022

President's Letter

All concerned with the Bar Library and the Mitchell Courthouse have special reasons to mourn the death of our late President, Judge Joseph H. H. Kaplan. In addition to being a supporter, user, and for a time a manager of the Library, Judge Kaplan as Administrative Judge of the Circuit Court for Baltimore City, took a serious interest in the upgrading and preservation of the Mitchell Courthouse. Under his regime, lighting throughout was improved, an adequate floor-cleaning service was employed, the Ceremonial Courtroom was rehabilitated, as was the Museum of Legal History, and the second-floor reception area above the Calvert Street entrance was comprehensively improved. It was named Kaplan Court in his honor in 2007.

The Bar Library, from its own funds, has decorated several floors with drawings from its magnificent collection of Beth Otter courthouse scenes, has helped arrange for the installation of a mural in the jury room, and has removed and replaced unsightly signage throughout the building. It is prepared to do more. Modest improvements should not be held hostage for grandiose schemes. Judge Kaplan was an energetic, practical, and impatient judge. We need more like him.

In this issue, we present some essays on constitution-making with some relevance to present controversies.

The first is the discussion of the United States Senate in The Federalist Nos. 62 and 63.

The second are excerpts from the Recollections of Alexis De Tocqueville of the period surrounding the ultimately abortive French revolution of 1848, during which he was a member of a constitutional convention and later briefly Minister of Foreign Affairs, which reflect his abhorrence of excessive centralization.

George W. Liebmann

The Passing Of A Man And An Era

Like any lawyer, and more particularly a long-serving Judge, Joe Kaplan had his staunch admirers; detractors and momentary contacts with a broad spectrum of litigants, colleagues and contending parties or those simply needing some independent guidance in the conduct of their affairs.

Swimming in this Mulligan stew, he both reveled and endured it all with humor and

dignity. He disappointed some, vindicated others and sought to cut-to-the-chase and reach some end consistent with law and simple common sense. He conducted himself with humor, reserve and kindness, despite sometimes encountering great provocation, and he did so without ever a hint of animus.

As the last remnant of the old Supreme Bench, Joe Kaplan leaves those of us who came up in those days, when the practice of law wasn't hyphenated, or a business terrorized by draconian political correctness but was, for better or worse, gradually self-correcting.

His passing is a lingering milestone in what a fast receding few of us might remember as better, more simple times.

- **Rob Ross Hendrickson, Boyd, Benson & Hendrickson**

Remembrances of the Honorable Joseph H. H. Kaplan

In the summer of 1968, I was one of six "summer associates" working at what was then known as Venable, Baetjer and Howard. Joe Kaplan was a "real" associate who had been with the firm for a few years after a stint at the U.S. Attorney's office. He was a pretty serious fellow. Unlike several of his peers, Joe didn't participate in any of our rowdy activities. Although I didn't get to know him well, he seemed like a decent enough guy. I joined Venable as a "real" associate the next year. By then Joe and Ben Civilletti had become partners in the firm. Not long after that, Venable formalized its operations and established separate departments, acknowledging that most of the lawyers were specializing in various areas of law practice. Litigation was one of the new departments. In addition to Joe and Ben, the litigation department included such stars as Frank Murnaghan, John Henry Lewin, Sr. and John Henry Lewin, Jr. When the associates were asked what department they wanted to be assigned to, I jumped at the opportunity to join the litigation group.

Joe was my first supervisor. He assigned work to me and reviewed my work product. I second-chaired a criminal jury case that Joe tried before Judge Northrop in the U.S. District Court. I'm pretty sure Joe would agree that trying a case, especially to a jury, was not his strong suit. I would like to say that my relationship with Joe blossomed during the time I was assigned to him. But that would be untrue. My lack of maturity prevented me from seeing the qualities that made Joe such an exceptional judge later in his career. Despite the rocky start, over time Joe and I settled into a warm friendship. I was later assigned to work with Frank Murnaghan which turned out to be the biggest break of my career. But unfortunately, I missed the fun of working with Joe when he represented Lester Matz, the engineer whose testimony toppled Spiro T. Agnew, the Vice President of the United States.

I became a partner in Venable in 1977, the same year that Joe realized his lifelong ambition when Governor Marvin Mandel appointed him to the Circuit Court for Baltimore City. (It might have still been the Supreme Bench of Baltimore City). Joe quickly established himself as one of the best judges on the court. He was well-prepared, decisive, well-versed in the law, respectful of lawyers and their clients and scrupulously fair. When you had to try a difficult case, you hoped that it was assigned to Judge Kaplan. The judicial powers that be recognized Joe's qualities and he was appointed Administrative Judge, responsible for overall supervision of the Circuit Court.

Fast forward to 1995, I was asked to represent the Maryland Institute College of Art (now MICA) in a long-simmering dispute with the Baltimore Museum of Art and the Walters Art Gallery over the ownership of a huge collection of works on paper and other objects known as the Lucas Collection. Andy Graham represented the BMA and Mel Sykes represented the Walters. We met with Joe to ask him to assign the case to an individual judge. Without hesitating, Joe said, "I'll take it." With most of Baltimore's upper crust on one of the institutions' boards, the case generated a lot of emotion and publicity. Joe managed those forces effortlessly. After a particularly tense hearing, Joe looked down from the bench and said, "I want to see counsel in my chambers." We all trooped in and sat down after Joe took his seat at the head of the table. He looked around and asked, "Where are the Mayor and the Governor?" Thinking the judge may not have understood that the museums and MICA were private entities, I took it upon myself to let him know that the Mayor and the Governor were not involved in this matter. A twinkle appeared in Joe's eye and he responded,

"Well, they need to be involved. You guys can't settle this case without them." Sure enough, several months later, the State of Maryland contributed millions of dollars which, along with matching funds raised by the museums, permitted the BMA to purchase the Lucas Collection from MICA. It was a classic win-win for the parties and a classic Joe Kaplan.

Rest in peace, Your Honor. People like you don't come around very often.

- **Benjamin Rosenberg, Chairman, Rosenberg Martin Greenberg, LLP**

Remembering A Good Man

The Honorable Joseph H. H. Kaplan joined the Board of Directors of the Library Company in 1977 serving in the capacity of President from 1979 until 1983. He would resign from the Board in 1995. He let us know that even though no longer on the Board, if he could ever be of help to let him know.

My most prominent memories of Judge Kaplan are the manner in which he comported himself and, on a very personal level, the way that he treated me.

As to the first memory, Judge Kaplan was very much an old school gentleman. He carried himself with a great deal of dignity. There was a definite aura about him. It was not an act, it was him.

The second memory I have of the Judge, is the way that he treated me. As the Administrative Judge of the Circuit Court for Baltimore City he was at the top of the pyramid of the judicial structure in Baltimore City. During the time that he was working his way through the savings and loan crisis he was the most well known judge in the State. Yet, when he would encounter a little known librarian on the street it was not just a nod and a smile, it was "Joe, how are you." He would stand there and listen as I told him, never a look of impatience, always it was a look of real interest.

One of my favorite photographs in the Library is of a very young Judge James F. Schneider and an equally young looking Judge Joseph H. H. Kaplan, standing together in the Library. It is kept on the reference desk and I invite you to come take a look at these two wonderful individuals. If you knew them it will most certainly bring a smile to your face. It is hard to think of a world without them, but we were lucky to have had them with us and I look forward to seeing them again.

Take care.

Joe Bennett

Federalist No. 62

The Senate

For the *Independent Journal*.

Author: **Alexander Hamilton** or **James Madison**

To the People of the State of New York:

HAVING examined the constitution of the House of Representatives, and answered such of the objections against it as seemed to merit notice, I enter next on the examination of the Senate.

The heads into which this member of the government may be considered are: I. The qualification of senators; II. The appointment of them by the State legislatures; III. The equality of representation in the Senate; IV. The number of senators, and the term for which they are to be elected; V. The powers vested in the Senate.

I. The qualifications proposed for senators, as distinguished from those of representatives, consist in a more advanced age and a longer period of citizenship. A senator must be thirty years of age at least; as a representative must be twenty-five. And the former must have been a citizen nine years; as seven years are required for the latter. The propriety of these distinctions is explained by the nature of the senatorial trust, which, requiring greater extent of information and stability of character, requires at the same time that the senator should have reached a period of life most likely to supply these advantages; and which, participating immediately in transactions with foreign nations, ought to be exercised by none who are not thoroughly weaned from the prepossessions and habits incident to foreign birth and education. The term of nine years appears to be a prudent mediocrity between a total exclusion of adopted citizens, whose merits and talents may claim a share in the public confidence, and an indiscriminate and hasty admission of them, which might create a channel for foreign influence on the national councils.

II. It is equally unnecessary to dilate on the appointment of senators by the State legislatures. Among the various modes which might have been devised for constituting this branch of the government, that which has been proposed by the convention is probably the most congenial with the public opinion. It is recommended by the double advantage of favoring a select appointment, and of giving to the State governments such an agency in the formation of the federal government as must secure the authority

of the former, and may form a convenient link between the two systems.

III. The equality of representation in the Senate is another point, which, being evidently the result of compromise between the opposite pretensions of the large and the small States, does not call for much discussion. If indeed it be right, that among a people thoroughly incorporated into one nation, every district ought to have a PROPORTIONAL share in the government, and that among independent and sovereign States, bound together by a simple league, the parties, however unequal in size, ought to have an EQUAL share in the common councils, it does not appear to be without some reason that in a compound republic, partaking both of the national and federal character, the government ought to be founded on a mixture of the principles of proportional and equal representation. But it is superfluous to try, by the standard of theory, a part of the Constitution which is allowed on all hands to be the result, not of theory, but "of a spirit of amity, and that mutual deference and concession which the peculiarity of our political situation rendered indispensable." A common government, with powers equal to its objects, is called for by the voice, and still more loudly by the political situation, of America. A government founded on principles more consonant to the wishes of the larger States, is not likely to be obtained from the smaller States. The only option, then, for the former, lies between the proposed government and a government still more objectionable. Under this alternative, the advice of prudence must be to embrace the lesser evil; and, instead of indulging a fruitless anticipation of the possible mischiefs which may ensue, to contemplate rather the advantageous consequences which may qualify the sacrifice.

In this spirit it may be remarked, that the equal vote allowed to each State is at once a constitutional recognition of the portion of sovereignty remaining in the individual States, and an instrument for preserving that residuary sovereignty. So far the equality ought to be no less acceptable to the large than to the small States; since they are not less solicitous to guard, by every possible expedient, against an improper consolidation of the States into one simple republic.

Another advantage accruing from this ingredient in the constitution of the Senate is, the additional impediment it must prove against improper acts of legislation. No law or resolution can now be passed without the concurrence, first, of a majority of the people, and then, of a majority of the States. It must be acknowledged that this complicated check on legislation may in some instances be injurious as well as beneficial; and that the peculiar defense which it involves in favor of the smaller States, would be more rational, if any interests common to them, and distinct from those of the other States, would otherwise be exposed to peculiar danger. But as the larger States will always be able, by their power over the supplies, to defeat unreasonable exertions of this prerogative of the lesser States, and as the faculty and excess of law-making seem to be the diseases to which our governments are most liable, it is not impossible that this part of the Constitution may be more convenient in practice than it appears to many in contemplation.

IV. The number of senators, and the duration of their appointment, come next to be considered. In order to form an accurate judgment on both of these points, it will be proper to inquire into the purposes which are to be answered by a senate; and in order to ascertain these, it will be necessary to review the inconveniences which a republic must suffer from the want of such an institution.

First. It is a misfortune incident to republican government, though in a less degree than to other governments, that those who administer it may forget their obligations to their constituents, and prove unfaithful to their important trust. In this point of view, a senate, as a second branch of the legislative assembly, distinct from, and dividing the power with, a first, must be in all cases a salutary check on the government. It doubles the security to the people, by requiring the concurrence of two distinct bodies in schemes of usurpation or perfidy, where the ambition or corruption of one would otherwise be sufficient. This is a precaution founded on such clear principles, and now

so well understood in the United States, that it would be more than superfluous to enlarge on it. I will barely remark, that as the improbability of sinister combinations will be in proportion to the dissimilarity in the genius of the two bodies, it must be politic to distinguish them from each other by every circumstance which will consist with a due harmony in all proper measures, and with the genuine principles of republican government.

Secondly. The necessity of a senate is not less indicated by the propensity of all single and numerous assemblies to yield to the impulse of sudden and violent passions, and to be seduced by factious leaders into intemperate and pernicious resolutions. Examples on this subject might be cited without number; and from proceedings within the United States, as well as from the history of other nations. But a position that will not be contradicted, need not be proved. All that need be remarked is, that a body which is to correct this infirmity ought itself to be free from it, and consequently ought to be less numerous. It ought, moreover, to possess great firmness, and consequently ought to hold its authority by a tenure of considerable duration.

Thirdly. Another defect to be supplied by a senate lies in a want of due acquaintance with the objects and principles of legislation. It is not possible that an assembly of men called for the most part from pursuits of a private nature, continued in appointment for a short time, and led by no permanent motive to devote the intervals of public occupation to a study of the laws, the affairs, and the comprehensive interests of their country, should, if left wholly to themselves, escape a variety of important errors in the exercise of their legislative trust. It may be affirmed, on the best grounds, that no small share of the present embarrassments of America is to be charged on the blunders of our governments; and that these have proceeded from the heads rather than the hearts of most of the authors of them. What indeed are all the repealing, explaining, and amending laws, which fill and disgrace our voluminous codes, but so many monuments of deficient wisdom; so many impeachments exhibited by each succeeding against each preceding session; so many admonitions to the people, of the value of those aids which may be expected from a well-constituted senate?

A good government implies two things: first, fidelity to the object of government, which is the happiness of the people; secondly, a knowledge of the means by which that object can be best attained. Some governments are deficient in both these qualities; most governments are deficient in the first. I scruple not to assert, that in American governments too little attention has been paid to the last. The federal Constitution avoids this error; and what merits particular notice, it provides for the last in a mode which increases the security for the first.

Fourthly. The mutability in the public councils arising from a rapid succession of new members, however qualified they may be, points out, in the strongest manner, the necessity of some stable institution in the government. Every new election in the States is found to change one half of the representatives. From this change of men must proceed a change of opinions; and from a change of opinions, a change of measures. But a continual change even of good measures is inconsistent with every rule of prudence and every prospect of success. The remark is verified in private life, and becomes more just, as well as more important, in national transactions.

To trace the mischievous effects of a mutable government would fill a volume. I will hint a few only, each of which will be perceived to be a source of innumerable others.

In the first place, it forfeits the respect and confidence of other nations, and all the advantages connected with national character. An individual who is observed to be inconstant to his plans, or perhaps to carry on his affairs without any plan at all, is marked at once, by all prudent people, as a speedy victim to his own unsteadiness and folly. His more friendly neighbors may pity him, but all will decline to connect their fortunes with his; and not a few will seize the opportunity of making their fortunes out of his. One nation is to another what one individual is to another; with this melancholy distinction perhaps, that the former, with fewer of the benevolent emotions than the

latter, are under fewer restraints also from taking undue advantage from the indiscretions of each other. Every nation, consequently, whose affairs betray a want of wisdom and stability, may calculate on every loss which can be sustained from the more systematic policy of their wiser neighbors. But the best instruction on this subject is unhappily conveyed to America by the example of her own situation. She finds that she is held in no respect by her friends; that she is the derision of her enemies; and that she is a prey to every nation which has an interest in speculating on her fluctuating councils and embarrassed affairs.

The internal effects of a mutable policy are still more calamitous. It poisons the blessing of liberty itself. It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is to-day, can guess what it will be to-morrow. Law is defined to be a rule of action; but how can that be a rule, which is little known, and less fixed?

Another effect of public instability is the unreasonable advantage it gives to the sagacious, the enterprising, and the moneyed few over the industrious and uniformed mass of the people. Every new regulation concerning commerce or revenue, or in any way affecting the value of the different species of property, presents a new harvest to those who watch the change, and can trace its consequences; a harvest, reared not by themselves, but by the toils and cares of the great body of their fellow-citizens. This is a state of things in which it may be said with some truth that laws are made for the FEW, not for the MANY.

In another point of view, great injury results from an unstable government. The want of confidence in the public councils damps every useful undertaking, the success and profit of which may depend on a continuance of existing arrangements. What prudent merchant will hazard his fortunes in any new branch of commerce when he knows not but that his plans may be rendered unlawful before they can be executed? What farmer or manufacturer will lay himself out for the encouragement given to any particular cultivation or establishment, when he can have no assurance that his preparatory labors and advances will not render him a victim to an inconstant government? In a word, no great improvement or laudable enterprise can go forward which requires the auspices of a steady system of national policy.

But the most deplorable effect of all is that diminution of attachment and reverence which steals into the hearts of the people, towards a political system which betrays so many marks of infirmity, and disappoints so many of their flattering hopes. No government, any more than an individual, will long be respected without being truly respectable; nor be truly respectable, without possessing a certain portion of order and stability.

PUBLIUS.

Federalist No. 63

The Senate Continued

For the *Independent Journal*.

Author: **Alexander Hamilton** or **James Madison**

To the People of the State of New York:

A FIFTH desideratum, illustrating the utility of a senate, is the want of a due sense of national character. Without a select and stable member of the government, the esteem of foreign powers will not only be forfeited by an unenlightened and variable policy, proceeding from the causes already mentioned, but the national councils will not possess that sensibility to the opinion of the world, which is perhaps not less necessary

in order to merit, than it is to obtain, its respect and confidence.

An attention to the judgment of other nations is important to every government for two reasons: the one is, that, independently of the merits of any particular plan or measure, it is desirable, on various accounts, that it should appear to other nations as the offspring of a wise and honorable policy; the second is, that in doubtful cases, particularly where the national councils may be warped by some strong passion or momentary interest, the presumed or known opinion of the impartial world may be the best guide that can be followed. What has not America lost by her want of character with foreign nations; and how many errors and follies would she not have avoided, if the justice and propriety of her measures had, in every instance, been previously tried by the light in which they would probably appear to the unbiased part of mankind?

Yet however requisite a sense of national character may be, it is evident that it can never be sufficiently possessed by a numerous and changeable body. It can only be found in a number so small that a sensible degree of the praise and blame of public measures may be the portion of each individual; or in an assembly so durably invested with public trust, that the pride and consequence of its members may be sensibly incorporated with the reputation and prosperity of the community. The half-yearly representatives of Rhode Island would probably have been little affected in their deliberations on the iniquitous measures of that State, by arguments drawn from the light in which such measures would be viewed by foreign nations, or even by the sister States; whilst it can scarcely be doubted that if the concurrence of a select and stable body had been necessary, a regard to national character alone would have prevented the calamities under which that misguided people is now laboring.

I add, as a SIXTH defect the want, in some important cases, of a due responsibility in the government to the people, arising from that frequency of elections which in other cases produces this responsibility. This remark will, perhaps, appear not only new, but paradoxical. It must nevertheless be acknowledged, when explained, to be as undeniable as it is important.

Responsibility, in order to be reasonable, must be limited to objects within the power of the responsible party, and in order to be effectual, must relate to operations of that power, of which a ready and proper judgment can be formed by the constituents. The objects of government may be divided into two general classes: the one depending on measures which have singly an immediate and sensible operation; the other depending on a succession of well-chosen and well-connected measures, which have a gradual and perhaps unobserved operation. The importance of the latter description to the collective and permanent welfare of every country, needs no explanation. And yet it is evident that an assembly elected for so short a term as to be unable to provide more than one or two links in a chain of measures, on which the general welfare may essentially depend, ought not to be answerable for the final result, any more than a steward or tenant, engaged for one year, could be justly made to answer for places or improvements which could not be accomplished in less than half a dozen years. Nor is it possible for the people to estimate the SHARE of influence which their annual assemblies may respectively have on events resulting from the mixed transactions of several years. It is sufficiently difficult to preserve a personal responsibility in the members of a NUMEROUS body, for such acts of the body as have an immediate, detached, and palpable operation on its constituents.

The proper remedy for this defect must be an additional body in the legislative department, which, having sufficient permanency to provide for such objects as require a continued attention, and a train of measures, may be justly and effectually answerable for the attainment of those objects.

Thus far I have considered the circumstances which point out the necessity of a well-constructed Senate only as they relate to the representatives of the people. To a people as little blinded by prejudice or corrupted by flattery as those whom I address, I shall not scruple to add, that such an institution may be sometimes necessary as a defense to

the people against their own temporary errors and delusions. As the cool and deliberate sense of the community ought, in all governments, and actually will, in all free governments, ultimately prevail over the views of its rulers; so there are particular moments in public affairs when the people, stimulated by some irregular passion, or some illicit advantage, or misled by the artful misrepresentations of interested men, may call for measures which they themselves will afterwards be the most ready to lament and condemn. In these critical moments, how salutary will be the interference of some temperate and respectable body of citizens, in order to check the misguided career, and to suspend the blow meditated by the people against themselves, until reason, justice, and truth can regain their authority over the public mind? What bitter anguish would not the people of Athens have often escaped if their government had contained so provident a safeguard against the tyranny of their own passions? Popular liberty might then have escaped the indelible reproach of decreeing to the same citizens the hemlock on one day and statues on the next.

It may be suggested, that a people spread over an extensive region cannot, like the crowded inhabitants of a small district, be subject to the infection of violent passions, or to the danger of combining in pursuit of unjust measures. I am far from denying that this is a distinction of peculiar importance. I have, on the contrary, endeavored in a former paper to show, that it is one of the principal recommendations of a confederated republic. At the same time, this advantage ought not to be considered as superseding the use of auxiliary precautions. It may even be remarked, that the same extended situation, which will exempt the people of America from some of the dangers incident to lesser republics, will expose them to the inconveniency of remaining for a longer time under the influence of those misrepresentations which the combined industry of interested men may succeed in distributing among them.

It adds no small weight to all these considerations, to recollect that history informs us of no long-lived republic which had not a senate. Sparta, Rome, and Carthage are, in fact, the only states to whom that character can be applied. In each of the two first there was a senate for life. The constitution of the senate in the last is less known. Circumstantial evidence makes it probable that it was not different in this particular from the two others. It is at least certain, that it had some quality or other which rendered it an anchor against popular fluctuations; and that a smaller council, drawn out of the senate, was appointed not only for life, but filled up vacancies itself. These examples, though as unfit for the imitation, as they are repugnant to the genius, of America, are, notwithstanding, when compared with the fugitive and turbulent existence of other ancient republics, very instructive proofs of the necessity of some institution that will blend stability with liberty. I am not unaware of the circumstances which distinguish the American from other popular governments, as well ancient as modern; and which render extreme circumspection necessary, in reasoning from the one case to the other. But after allowing due weight to this consideration, it may still be maintained, that there are many points of similitude which render these examples not unworthy of our attention. Many of the defects, as we have seen, which can only be supplied by a senatorial institution, are common to a numerous assembly frequently elected by the people, and to the people themselves. There are others peculiar to the former, which require the control of such an institution. The people can never wilfully betray their own interests; but they may possibly be betrayed by the representatives of the people; and the danger will be evidently greater where the whole legislative trust is lodged in the hands of one body of men, than where the concurrence of separate and dissimilar bodies is required in every public act.

The difference most relied on, between the American and other republics, consists in the principle of representation; which is the pivot on which the former move, and which is supposed to have been unknown to the latter, or at least to the ancient part of them. The use which has been made of this difference, in reasonings contained in former papers, will have shown that I am disposed neither to deny its existence nor to

undervalue its importance. I feel the less restraint, therefore, in observing, that the position concerning the ignorance of the ancient governments on the subject of representation, is by no means precisely true in the latitude commonly given to it. Without entering into a disquisition which here would be misplaced, I will refer to a few known facts, in support of what I advance.

In the most pure democracies of Greece, many of the executive functions were performed, not by the people themselves, but by officers elected by the people, and REPRESENTING the people in their EXECUTIVE capacity.

Prior to the reform of Solon, Athens was governed by nine Archons, annually ELECTED BY THE PEOPLE AT LARGE. The degree of power delegated to them seems to be left in great obscurity. Subsequent to that period, we find an assembly, first of four, and afterwards of six hundred members, annually ELECTED BY THE PEOPLE; and PARTIALLY representing them in their LEGISLATIVE capacity, since they were not only associated with the people in the function of making laws, but had the exclusive right of originating legislative propositions to the people. The senate of Carthage, also, whatever might be its power, or the duration of its appointment, appears to have been ELECTIVE by the suffrages of the people. Similar instances might be traced in most, if not all the popular governments of antiquity.

Lastly, in Sparta we meet with the Ephori, and in Rome with the Tribunes; two bodies, small indeed in numbers, but annually ELECTED BY THE WHOLE BODY OF THE PEOPLE, and considered as the REPRESENTATIVES of the people, almost in their PLENIPOTENTIARY capacity. The Cosmi of Crete were also annually ELECTED BY THE PEOPLE, and have been considered by some authors as an institution analogous to those of Sparta and Rome, with this difference only, that in the election of that representative body the right of suffrage was communicated to a part only of the people.

From these facts, to which many others might be added, it is clear that the principle of representation was neither unknown to the ancients nor wholly overlooked in their political constitutions. The true distinction between these and the American governments, lies IN THE TOTAL EXCLUSION OF THE PEOPLE, IN THEIR COLLECTIVE CAPACITY, from any share in the LATTER, and not in the TOTAL EXCLUSION OF THE REPRESENTATIVES OF THE PEOPLE from the administration of the FORMER. The distinction, however, thus qualified, must be admitted to leave a most advantageous superiority in favor of the United States. But to insure to this advantage its full effect, we must be careful not to separate it from the other advantage, of an extensive territory. For it cannot be believed, that any form of representative government could have succeeded within the narrow limits occupied by the democracies of Greece.

In answer to all these arguments, suggested by reason, illustrated by examples, and enforced by our own experience, the jealous adversary of the Constitution will probably content himself with repeating, that a senate appointed not immediately by the people, and for the term of six years, must gradually acquire a dangerous pre-eminence in the government, and finally transform it into a tyrannical aristocracy.

To this general answer, the general reply ought to be sufficient, that liberty may be endangered by the abuses of liberty as well as by the abuses of power; that there are numerous instances of the former as well as of the latter; and that the former, rather than the latter, are apparently most to be apprehended by the United States. But a more particular reply may be given.

Before such a revolution can be effected, the Senate, it is to be observed, must in the first place corrupt itself; must next corrupt the State legislatures; must then corrupt the House of Representatives; and must finally corrupt the people at large. It is evident that the Senate must be first corrupted before it can attempt an establishment of tyranny. Without corrupting the State legislatures, it cannot prosecute the attempt, because the periodical change of members would otherwise regenerate the whole body.

Without exerting the means of corruption with equal success on the House of Representatives, the opposition of that coequal branch of the government would inevitably defeat the attempt; and without corrupting the people themselves, a succession of new representatives would speedily restore all things to their pristine order. Is there any man who can seriously persuade himself that the proposed Senate can, by any possible means within the compass of human address, arrive at the object of a lawless ambition, through all these obstructions?

If reason condemns the suspicion, the same sentence is pronounced by experience. The constitution of Maryland furnishes the most apposite example. The Senate of that State is elected, as the federal Senate will be, indirectly by the people, and for a term less by one year only than the federal Senate. It is distinguished, also, by the remarkable prerogative of filling up its own vacancies within the term of its appointment, and, at the same time, is not under the control of any such rotation as is provided for the federal Senate. There are some other lesser distinctions, which would expose the former to colorable objections, that do not lie against the latter. If the federal Senate, therefore, really contained the danger which has been so loudly proclaimed, some symptoms at least of a like danger ought by this time to have been betrayed by the Senate of Maryland, but no such symptoms have appeared. On the contrary, the jealousies at first entertained by men of the same description with those who view with terror the correspondent part of the federal Constitution, have been gradually extinguished by the progress of the experiment; and the Maryland constitution is daily deriving, from the salutary operation of this part of it, a reputation in which it will probably not be rivalled by that of any State in the Union.

But if any thing could silence the jealousies on this subject, it ought to be the British example. The Senate there instead of being elected for a term of six years, and of being unconfined to particular families or fortunes, is an hereditary assembly of opulent nobles. The House of Representatives, instead of being elected for two years, and by the whole body of the people, is elected for seven years, and, in very great proportion, by a very small proportion of the people. Here, unquestionably, ought to be seen in full display the aristocratic usurpations and tyranny which are at some future period to be exemplified in the United States. Unfortunately, however, for the anti-federal argument, the British history informs us that this hereditary assembly has not been able to defend itself against the continual encroachments of the House of Representatives; and that it no sooner lost the support of the monarch, than it was actually crushed by the weight of the popular branch.

As far as antiquity can instruct us on this subject, its examples support the reasoning which we have employed. In Sparta, the Ephori, the annual representatives of the people, were found an overmatch for the senate for life, continually gained on its authority and finally drew all power into their own hands. The Tribunes of Rome, who were the representatives of the people, prevailed, it is well known, in almost every contest with the senate for life, and in the end gained the most complete triumph over it. The fact is the more remarkable, as unanimity was required in every act of the Tribunes, even after their number was augmented to ten. It proves the irresistible force possessed by that branch of a free government, which has the people on its side. To these examples might be added that of Carthage, whose senate, according to the testimony of Polybius, instead of drawing all power into its vortex, had, at the commencement of the second Punic War, lost almost the whole of its original portion.

Besides the conclusive evidence resulting from this assemblage of facts, that the federal Senate will never be able to transform itself, by gradual usurpations, into an independent and aristocratic body, we are warranted in believing, that if such a revolution should ever happen from causes which the foresight of man cannot guard against, the House of Representatives, with the people on their side, will at all times be able to bring back the Constitution to its primitive form and principles. Against the force of the immediate representatives of the people, nothing will be able to maintain

even the constitutional authority of the Senate, but such a display of enlightened policy, and attachment to the public good, as will divide with that branch of the legislature the affections and support of the entire body of the people themselves.
PUBLIUS.

The Recollections of Alexis de Tocqueville (1896)

CHAPTER V: THE FIRST SITTING OF THE CONSTITUENT ASSEMBLY—THE APPEARANCE OF THIS ASSEMBLY.

I stopped at Valognes only long enough to bid goodbye to some of my friends. Many left me with tears in their eyes, for there was a belief current in the country that the representatives would be exposed to great danger in Paris. Several of these worthy people said to me, “If they attack the National Assembly, we will come and defend you.” I feel a certain remorse at having seen only vain words in this promise at the time; for, as a matter of fact, they did all come, they and many more, as I shall show later.

It was only when I reached Paris that I learnt that I had received 110,704 votes out of a possible 120,000. Most of my new colleagues belonged to the old dynastic Opposition: two only had professed republican principles before the Revolution, and were what was called in the jargon of the day “Republicans of yesterday.” The same was the case in most parts of France.

There have certainly been more wicked revolutionaries than those of 1848, but I doubt if there were ever any more stupid; they neither knew how to make use of universal suffrage nor how to do without it. If they had held the elections immediately after the 24th of February, while the upper classes were still bewildered by the blow they had just received, and the people more amazed than discontented, they would perhaps have obtained an assembly after their hearts; if, on the other hand, they had boldly seized the dictatorship, they might have been able for some time to retain it. But they trusted themselves to the nation, and at the same time did all that was most likely to set the

latter against them; they threatened it while placing themselves in its power; they alarmed it by the recklessness of their proposals and the violence of their language, while inviting it to resistance by the feebleness of their actions; they pretended to lay down the law to it at the very time that they were placing themselves at its disposal. Instead of opening out their ranks after the victory, they jealously closed them up, and seemed, in one word, to be striving to solve this insoluble problem, namely, how to govern through the majority and yet against its inclination.

Following the examples of the past without understanding them, they foolishly imagined that to summon the crowd to take part in political life was sufficient to attach it to their cause; and that to popularize the Republic, it was enough to give the public rights without offering them any profits. They forgot that their predecessors, when they gave every peasant the vote, at the same time did away with tithes, abolished statute labour and the other seignorial privileges, and divided the property of the nobles among the peasants; whereas they were not in a position to do anything of the kind. In establishing universal suffrage they thought they were summoning the people to the assistance of the Revolution: they were only giving them arms against it. Nevertheless, I am far from believing that it was impossible to arouse revolutionary passions, even in the country districts. In France, every agriculturist owns some portion of the soil, and most of them are more or less involved in debt; it was not, therefore, the landlords that should have been attacked, but the creditors; not the abolition promised of the rights of property, but the abolition of debts. The demagogues of 1848 did not think of this scheme; they showed themselves much clumsier than their predecessors, but no less dishonest, for they were as violent and unjust in their desires as the others in their acts. Only, to commit violent and unjust acts, it is not enough for a government to have the will, or even the power; the habits, ideas, and passions of the time must lend themselves to the committal of them.

As the party which held the reins of government saw its candidates rejected one after the other, it displayed great vexation and rage, complaining now sadly and now rudely of the electors, whom it treated as ignorant, ungrateful blockheads, and enemies of their own good; it lost its temper with the whole nation; and, its impatience exhausted by the latter's coldness, it seemed ready to say with Molière's Arnolfe, when he addresses Agnès:

"Pourquoi ne m'aimer pas, madame l'impudente?"

One thing was not ridiculous, but really ominous and terrible; and that was the appearance of Paris on my return. I found in the capital a hundred thousand armed workmen formed into regiments, out of work, dying of hunger, but with their minds crammed with vain theories and visionary hopes. I saw society cut into two: those who possessed nothing, united in a common greed; those who possessed something, united in a common terror. There were no bonds, no sympathy between these two great sections; everywhere the idea of an inevitable and immediate struggle seemed at hand. Already the *bourgeois* and the *peuple* (for the old nicknames had been resumed) had come to blows, with varying fortunes, at Rouen, Limoges, Paris; not a day passed but the owners of property were attacked or menaced in either their capital or income: they were asked to employ labour without selling the produce; they were expected to remit the rents of their tenants when they themselves possessed no other means of living. They gave way as long as they could to this tyranny, and endeavoured at least to turn their weakness to account by publishing it. I remember reading in the papers of that time this advertisement, among others, which still strikes me as a model of vanity, poltroonery, and stupidity harmoniously mingled:

"Mr Editor," it read, "I make use of your paper to inform my tenants that, desiring to put into practice in my relations with them the principles of fraternity that should guide all true democrats, I will hand to those of my tenants who apply for it a formal receipt for their next quarter's rent."

Meanwhile, a gloomy despair had overspread the middle class thus threatened and

oppressed, and imperceptibly this despair was changing into courage. I had always believed that it was useless to hope to settle the movement of the Revolution of February peacefully and gradually, and that it could only be stopped suddenly, by a great battle fought in the streets of Paris. I had said this immediately after the 24th of February; and what I now saw persuaded me that this battle was not only inevitable but imminent, and that it would be well to seize the first opportunity to deliver it.

The National Assembly met at last on the 4th of May; it was doubtful until the last moment whether it would meet at all. I believe, in fact, that the more ardent of the demagogues were often tempted to do without it, but they dared not; they remained crushed beneath the weight of their own dogma of the sovereignty of the people.

I should have before my eyes the picture which the Assembly presented at its opening; but I find, on the contrary, that only a very confused recollection of it has lingered in my mind. It is a mistake to believe that events remain present in one's memory in proportion to their importance or their greatness alone; rather is it certain little particularities which occur, and cause them to penetrate deep into the mind, and fix them there in a lasting manner. I only remember that we shouted, "Long live the Republic" fifteen times during the course of the sitting, trying who could out-shout the other. The history of the Assemblies is full of parallel incidents, and one constantly sees one party exaggerating its feelings in order to embarrass its opponents, while the latter feign to hold sentiments which they do not possess, in order to avoid the trap. Both sides, with a common effort, went either beyond, or in the contrary direction to, the truth. Nevertheless, I think the cry was sincere enough; only it responded to diverse or even contrary thoughts. All at that time wished to preserve the Republic; but some wished to use it for purposes of attack, others for purposes of defence. The newspapers spoke of the enthusiasm of the Assembly and of the public; there was a great deal of noise, but no enthusiasm at all. Everyone was too greatly preoccupied with the immediate future to allow himself to be carried beyond that thought by sentiment of any kind. A decree of the Provisional Government laid down that the representatives should wear the costume of the Conventionals, and especially the white waistcoat with turn-down collar in which Robespierre was always represented on the stage. I thought at first that this fine notion originated with Louis Blanc or Ledru-Rollin; but I learned later that it was due to the flowery and literary imagination of Armand Marrast. No one obeyed the decree, not even its author; Caussidière was the only one to adopt the appointed disguise. This drew my attention to him; for I did not know him by sight any more than most of those who were about to call themselves the Montagnards, always with the idea of keeping up the recollection of '93. I beheld a very big and very heavy body, on which was placed a sugar-loaf head, sunk deep between the two shoulders, with a wicked, cunning eye, and an air of general good-nature spread over the rest of his face. In short, he was a mass of shapeless matter, in which worked a mind sufficiently subtle to know how to make the most of his coarseness and ignorance.

In the course of the two subsequent days, the members of the Provisional Government, one after the other, told us what they had done since the 24th of February. Each said a great deal of good of himself, and even a certain amount of good of his colleagues, although it would be difficult to meet a body of men who mutually hated one another more sincerely than these did. Independently of the political hatred and jealousy that divided them, they seemed still to feel towards each other that peculiar irritation common to travellers who have been compelled to live together upon the same ship during a long and stormy passage, without suiting or understanding one another. At this first sitting I met again almost all the members of Parliament among whom I had lived. With the exception of M. Thiers, who had been defeated; of the Duc de Broglie, who had not stood, I believe; and of Messrs Guizot and Duchâtel, who had fled, all the famous orators and most of the better-known talkers of the political world were there; but they found themselves, as it were, out of their element, they felt isolated and suspected, they both felt and inspired fear, two contraries often to be met with in the

political world. As yet they possessed none of that influence which their talents and experience were soon to restore to them. All the remainder of the Assembly were as much novices as though we had issued fresh from the Ancien Régime; for, thanks to our system of centralization, public life had always been confined within the limits of the Chambers, and those who were neither peers nor deputies scarcely knew what an Assembly was, nor how one should speak or behave in one. They were absolutely ignorant of its most ordinary, everyday habits and customs; and they were inattentive at decisive moments, and listened eagerly to unimportant things. Thus, on the second day, they crowded round the tribune and insisted on perfect silence in order to hear read the minutes of the preceding sitting, imagining that this insignificant form was a most important piece of business. I am convinced that nine hundred English or American peasants, picked at random, would have better represented the appearance of a great political body.

Continuing to imitate the National Convention, the men who professed the most radical and the most revolutionary opinions had taken their seats on the highest benches; they were very uncomfortable up there; but it gave them the right to call themselves Montagnards, and as men always like to feed on pleasant imaginations, these very rashly flattered themselves that they bore a resemblance to the celebrated blackguards whose name they took.

The Montagnards soon divided themselves into two distinct bands: the Revolutionaries of the old school and the Socialists. Nevertheless, the two shades were not sharply defined. One passed from the one to the other by imperceptible tints: the Montagnards proper had almost all some socialistic ideas in their heads, and the Socialists quite approved of the revolutionary proceedings of the others. However, they differed sufficiently among themselves to prevent them from always marching in step, and it was this that saved us. The Socialists were the more dangerous, because they answered more nearly to the true character of the Revolution of February, and to the only passions which it had aroused; but they were men of theory rather than action, and in order to upset Society at their pleasure they would have needed the practical energy and the science of insurrections which only their colleagues in any measure possessed.

From the seat I occupied it was easy for me to hear what was said on the benches of the Mountain, and especially to see what went on. This gave me the opportunity of studying pretty closely the men sitting in that part of the Chamber. It was for me like discovering a new world. We console ourselves for not knowing foreign countries, with the reflection that at least we know our own; but we are wrong, for even in the latter there are always districts which we have not visited, and races which are new to us. I experienced this now. It was as though I saw these Montagnards for the first time, so greatly did their idioms and manners surprise me. They spoke a lingo which was not, properly speaking, the French of either the ignorant or the cultured classes, but which partook of the defects of both, for it abounded in coarse words and ambitious phrases. One heard issuing from the benches of the Mountain a ceaseless torrent of insulting or jocular comments; and at the same time there was poured forth a host of quibbles and maxims; in turns they assumed a very humorous or a very superb tone. It was evident that these people belonged neither to the tavern nor the drawing-room; I think they must have polished their manners in the cafés, and fed their minds on no literature but that of the daily press. In any case, it was the first time since the commencement of the Revolution that this type made any display in one of our Assemblies; until then it had only been represented by sporadic and unnoticed individuals, who were more occupied in concealing than in showing themselves.

The Constituent Assembly had two other peculiarities which struck me as quite as novel as this, although very different from it. It contained an infinitely greater number of landlords and even of noblemen than any of the Chambers elected in the days when it was a necessary condition, in order to be an elector or elected, that you should have money. And also there was a more numerous and more powerful religious party than

even under the Restoration: I counted three bishops, several vicars-general, and a Dominican monk, whereas Louis XVIII. and Charles X. had never succeeded in securing the election of more than one single abbé.

The abolition of all quit-rents, which made part of the electors dependent upon the rich, and the danger threatening property, which led the people to choose for their representatives those who were most interested in defending it, are the principal reasons which explain the presence of so great a number of landlords. The election of the ecclesiastics arose from similar causes, and also from a different cause still worthier of consideration. This cause was the almost general and very unexpected return of a great part of the nation towards the concerns of religion.

The Revolution of 1792, when striking the upper classes, had cured them of their irreligiousness; it had taught them, if not the truth, at least the social uses of belief. This lesson was lost upon the middle class, which remained their political heir and their jealous rival; and the latter had even become more sceptical in proportion as the former seemed to become more religious. The Revolution of 1848 had just done on a small scale for our tradesmen what that of 1792 had done for the nobility: the same reverses, the same terrors, the same conversion; it was the same picture, only painted smaller and in less bright and, no doubt, less lasting colours. The clergy had facilitated this conversion by separating itself from all the old political parties, and entering into the old, true spirit of the Catholic clergy, which is that it should belong only to the Church. It readily, therefore, professed republican opinions, while at the same time it gave to long-established interests the guarantee of its traditions, its customs and its hierarchy. It was accepted and made much of by all. The priests sent to the Assembly were treated with very great consideration, and they deserved it through their good sense, their moderation and their modesty. Some of them endeavoured to speak from the tribune, but they were never able to learn the language of politics. They had forgotten it too long ago, and all their speeches turned imperceptibly into homilies.

For the rest, the universal voting had shaken the country from top to bottom without bringing to light a single new man worthy of coming to the front. I have always held that, whatever method be followed in a general election, the great majority of the exceptional men whom the nation possesses definitively succeed in getting elected. The system of election adopted exercises a great influence only upon the class of ordinary individuals in the Assembly, who form the ground-work of every political body. These belong to very different orders and are of very diverse natures, according to the system upon which the election has been conducted. Nothing confirmed me in this belief more than did the sight of the Constituent Assembly. Almost all the men who played the first part in it were already known to me, but the bulk of the rest resembled nothing that I had seen before. They were imbued with a new spirit, and displayed a new character and new manners.

I will say that, in my opinion, and taken all round, this Assembly compared favourably with those which I had seen. One met in it more men who were sincere, disinterested, honest and, above all, courageous than in the Chambers of Deputies among which I had spent my life.

The Constituent Assembly had been elected to make a stand against civil war. This was its principal merit; and, in fact, so long as it was necessary to fight, it was great, and only became contemptible after the victory, and when it felt that it was breaking up in consequence of this very victory and under the weight of it.

I selected my seat on the left side of the House, on a bench from which it was easy for me to hear the speakers and to reach the tribune when I wished to speak myself. A large number of my old friends joined me there; Lanjuinais, Dufaure, Corcelles, Beaumont and several others sat near me.

Let me say a word concerning the House itself, although everybody knows it. This is necessary in order to understand the narrative; and, moreover, although this monument of wood and plaster is probably destined to last longer than the Republic of which it

was the cradle, I do not think it will enjoy a very long existence; and when it is destroyed, many of the events that took place in it will be difficult to understand.
The house formed an oblong of great size. At one end, against the wall, was the President's platform and the tribune; nine rows of benches rose gradually along the three other walls. In the middle, facing the tribune, spread a huge, empty space, like the arena of an amphitheatre, with this difference, that this arena was square, not round. The consequence was that most of the listeners only caught a side glimpse of the speaker, and the only ones who saw him full face were very far away: an arrangement curiously calculated to promote inattention and disorder. For the first, who saw the speaker badly, and were continually looking at one another, were more engaged in threatening and apostrophizing each other; and the others did not listen any better, because, although able to see the occupant of the tribune, they heard him badly.
Large windows, placed high up in the walls, opened straight outside, and admitted air and light; the walls were decorated only with a few flags; time had, luckily, been wanting in which to add to them all those spiritless allegories on canvas or pasteboard with which the French love to adorn their monuments, in spite of their being insipid to those who can understand them and utterly incomprehensible to the mass of the people. The whole bore an aspect of immensity, together with an air that was cold, solemn, and almost melancholy. There were seats for nine hundred members, a larger number than that of any of the assemblies that had sat in France for sixty years.
I felt at once that the atmosphere of this assembly suited me. Notwithstanding the gravity of events, I experienced there a sense of well-being that was new to me. For the first time since I had entered public life, I felt myself caught in the current of a majority, and following in its company the only road which my tastes, my reason and my conscience pointed out to me: a new and very welcome sensation. I gathered that this majority would disown the Socialists and the Montagnards, but was sincere in its desire to maintain and organize the Republic. I was with it on these two leading points: I had no monarchic faith, no affection nor regrets for any prince; I felt called upon to defend no cause save that of liberty and the dignity of mankind. To protect the ancient laws of Society against the innovators with the help of the new force which the republican principle might lend to the government; to cause the evident will of the French people to triumph over the passions and desires of the Paris workmen; to conquer demagogism by democracy—that was my only aim. I am not sure that the dangers to be passed through before it could be attained did not make it still more attractive to me; for I have a natural inclination for adventure, and a spice of danger has always seemed to me the best seasoning that can be given to most of the actions of life.

CHAPTER X: THE DAYS OF JUNE—(*continued*).

The porter of the house in which we lived in the Rue de la Madeleine was a man of very bad reputation in the neighbourhood, an old soldier, not quite in his right mind, a drunkard, and a great good-for-nothing, who spent at the wine-shop all the time which he did not employ in beating his wife. This man might be said to be a Socialist by birth, or rather by temperament.
The early successes of the insurrection had brought him to a state of exaltation, and on the morning of the day of which I speak he visited all the wine-shops around, and among other mischievous remarks of which he delivered himself, he said that he would kill me when I came home in the evening, if I came in at all. He even displayed a large knife which he intended to use for the purpose. A poor woman who heard him ran in great alarm to tell Madame de Tocqueville; and she, before leaving Paris, sent me a note in which, after telling me of the facts, she begged me not to come in that night, but to go to my father's house, which was close by, he being away. This I determined to do; but when I left the Assembly at midnight, I had not the energy to carry out my intention. I was worn out with fatigue, and I did not know whether I should find a bed

prepared if I slept out. Besides, I had little faith in the performance of murders proclaimed beforehand; and also I was under the influence of the sort of listlessness that follows upon any prolonged excitement. I accordingly went and knocked at my door, only taking the precaution to load the pistols which, in those unhappy days, it was common to carry. My man opened the door, I entered, and while he was carefully pushing the bolts behind me, I asked him if all the tenants had come home. He replied drily that they had all left Paris that morning, and that we two were alone in the house. I should have preferred another kind of *tête-à-tête,* but it was too late to go back; I therefore looked him straight in the eyes and told him to walk in front and show a light. He stopped at a gate that led to the court-yard, and told me that he heard a curious noise in the stables which alarmed him, begging me to go with him to see what it was. As he spoke, he turned towards the stables. All this began to seem very suspicious to me, but I thought that, as I had gone so far, it was better to go on. I accordingly followed him, carefully watching his movements, and making up my mind to kill him like a dog at the first sign of treachery. As a matter of fact, we did hear a very strange noise. It resembled the dull running of water or the distant rumble of a carriage, although it obviously came from somewhere quite near. I never learnt what it was; though it was true I did not spend much time in trying to discover. I soon returned to the house and made my companion bring me to my threshold, keeping my eyes on him the whole time. I told him to open my door, and so soon as he had done so, I took the candle from his hand and went in. It was not until I was almost out of his sight that he brought himself to take off his hat and bow to me. Had the man really intended to kill me, and seeing me on my guard, with both hands in my pockets, did he reflect that I was better armed than he, and that he would be well advised to abandon his design? I thought at the time that the latter had never been very seriously intended, and I think so still. In times of revolution, people boast almost as much about the imaginary crimes they propose to commit as in ordinary times they do of the good intentions they pretend to entertain. I have always believed that this wretch would only have become dangerous if the fortunes of the fight had seemed to turn against us; but they leant, on the contrary, to our side, although they were still undecided; and this was sufficient to assure my safety.

At dawn I heard some one in my room, and woke with a start: it was my man-servant, who had let himself in with a private key of the apartment, which he carried. The brave lad had just left the bivouac (I had supplied him at his request with a National Guard's uniform and a good gun), and he came to know if I had come home and if his services were required. This one was certainly not a Socialist, either in theory or temperament. He was not even tainted in the slightest degree with the most general malady of the age, restlessness of mind, and even in other times than ours it would have been difficult to find a man more contented with his position and less sullen at his lot. Always very much satisfied with himself, and tolerably satisfied with others, he generally desired only that which was within his reach, and he generally attained, or thought he attained, all that he desired; thus unwittingly following the precepts which philosophers teach and never observe, and enjoying by the gift of Nature that happy equilibrium between faculty and desire which alone gives the happiness which philosophy promises us.

"Well, Eugène," I said, when I saw him, "how are affairs going on?"

"Very well, sir, perfectly well!"

"What do you mean by very well? I can still hear the sound of cannon!"

"Yes, they are still fighting," he replied, "but every one says it will end all right."

With that he took off his uniform, cleaned my boots, brushed my clothes, and putting on his uniform again:

"If you don't require me any more, sir," said he, "and if you will permit me, I will go back to the fighting."

He pursued this two-fold calling during four days and four nights, as simply as I am

writing it down; and I experienced a sort of reposeful feeling, during these days filled with turmoil and hate, when I looked at the young man's peaceful and contented face.

Before going to the Assembly, where I did not think there would be any important measures to take, I resolved to make my way to the places where the fighting was still going on, and where I heard the sound of cannon. It was not that I was longing "to go and fight a bit," like Goudchaux, but I wanted to judge for myself as to the state of things; for, in my complete ignorance of war, I could not understand what made the struggle last so long. Besides, shall I confess it, a keen curiosity was piercing through all the feelings that filled my mind, and from time to time dominated them. I went along a great portion of the boulevard without seeing any traces of the battle, but there were plenty just beyond the Porte Saint-Martin; one stumbled over the *débris* left behind by the retreating insurrection: broken windows, doors smashed in, houses spotted by bullets or pierced by cannon-balls, trees cut down, heaped-up paving-stones, straw mixed with blood and mud. Such were these melancholy vestiges.

I thus reached the Château-d'Eau, around which were massed a number of troops of different sorts. At the foot of the fountain was a piece of cannon which was being discharged down the Rue Samson. I thought at first that the insurgents were replying with cannon on their side, but I ended by seeing that I was deceived by an echo which repeated with a terrible crash the sound of our own gun. I have never heard anything like it; one might have thought one's self in the midst of a great battle. As a matter of fact, the insurgents were only replying with an infrequent but deadly musketry fire.

It was a strange combat. The Rue Samson, as we know, is not a very long one; at the end runs the Canal Saint-Martin, and behind the canal is a large house facing the street. The street was absolutely deserted; there was no barricade in sight, and the gun seemed to be firing at a target; only from time to time a whiff of smoke issued from a few windows, and proclaimed the presence of an invisible enemy. Our sharp-shooters, posted along the walls, aimed at the windows from which they saw the shots fired. Lamoricière, mounted on a tall horse in full view of the enemy, gave his commands amid the whirl of bullets. I thought he was more excited and talkative than I had imagined a general ought to be in such a juncture; he talked, shouted in a hoarse voice, gesticulated in a sort of rage. It was easy to see by the clearness of his thoughts and expressions that amid this apparent disorder he lost none of his presence of mind; but his manner of commanding might have caused others to lose theirs, and I confess I should have admired his courage more if he had kept more quiet.

This conflict, in which one saw nobody before him, this firing, which seemed to be aimed only at the walls, surprised me strangely. I should never have pictured war to myself under this aspect. As the boulevard seemed clear beyond the Château-d'Eau, I was unable to understand why our columns did not pass further, nor why, if we wanted first to seize the large house facing the street, we did not capture it at a run, instead of remaining so long exposed to the deadly fire issuing from it. Yet nothing was more easily explained: the boulevard, which I thought clear from the Château-d'Eau onwards, was not so; beyond the bend which it makes at this place, it was bristling with barricades, all the way to the Bastille. Before attacking the barricades, we wanted to become masters of the streets we left behind us, and especially to capture the house facing the street, which, commanding the boulevard as it did, would have impeded our communications. Finally, we did not take the house by assault, because we were separated from it by the canal, which I could not see from the boulevard. We confined ourselves, therefore, to efforts to destroy it by cannon-shots, or at least to render it untenable. This took a long time to accomplish, and after being astonished in the morning that the fighting had not finished, I now asked myself how at this rate it could ever finish. For what I was witnessing at the Château-d'Eau was at the same time being repeated in other forms in a hundred different parts of Paris.

As the insurgents had no artillery, the conflict did not possess the horrible aspect which it must have when the battle-field is ploughed by cannon balls. The men who

were struck down before me seemed transfixed by an invisible shaft: they staggered and fell without one's seeing at first anything but a little hole made in their clothes. In the cases of this kind which I witnessed, I was struck less by the sight of physical pain than by the picture of moral anguish. It was indeed a strange and frightful thing to see the sudden change of features, the quick extinction of the light in the eyes in the terror of death.

After a certain period, I saw Lamoricière's horse sink to the ground, shot by a bullet; it was the third horse the General had had killed under him since the day before yesterday. He sprang lightly to the ground, and continued bellowing his raging instructions.

I noticed that on our side the least eager were the soldiers of the Line. They were weakened and, as it were, dulled by the remembrance of February, and did not yet seem quite certain that they would not be told the next day that they had done wrong. The liveliest were undoubtedly the Gardes Mobiles of whom we had felt so uncertain; and, in spite of the event, I maintain that we were right, at the time; for it wanted but little for them to decide against us instead of taking our side. Until the end, they plainly showed that it was the fighting they loved rather than the cause for which they fought.

All these troops were raw and very subject to panic: I myself was a judge and almost a victim of this. At a street corner close to the Château-d'Eau was a large house in process of building. Some insurgents, who doubtless entered from behind across the court-yards, had taken up their position there, unknown to us; suddenly they appeared on the roof, and fired a great volley at the troops who filled the boulevard, and who did not expect to find the enemy posted so close at hand. The sound of their muskets reverberating with a great crash against the opposite houses gave reason to dread that a surprise of the same kind was taking place on that side. Immediately the most incredible confusion prevailed in our column: artillery, cavalry, and infantry were mingled in a moment, the soldiers fired in every direction, without knowing what they were doing, and tumultuously fell back sixty paces. This retreat was so disorderly and so impetuous that I was thrown against the wall of the houses facing the Rue du Faubourg-du-Temple, knocked down by the cavalry, and so hard pressed that I left my hat on the field, and very nearly left my body there. It was certainly the most serious danger I ran during the days of June. This made me think that it is not all heroism in the game of war. I have no doubt but that accidents of this kind often happen to the very best troops; no one boasts about them, and they are not mentioned in the despatches.

It was now that Lamoricière became sublime. He had till then kept his sword in the scabbard: he now drew it, and ran up to his soldiers, his features distorted with the most magnificent rage; he stopped them with his voice, seized them with his hands, even struck them with the pummel of his sword, turned them, brought them back, and, placing himself at their head, forced them to pass at the trot through the fire in the Rue du Faubourg-du-Temple in order to take the house from which the firing had come. This was done in a moment, and without striking a blow: the enemy had disappeared.

The combat resumed its dull aspect and lasted some time longer, until the enemy's fire was at length extinguished, and the street occupied. Before commencing the next operation, there was a moment's pause: Lamoricière went to his head-quarters, a wine-shop on the boulevard near the Porte Saint-Martin, and I was at last able to consult him on the state of affairs.

"How long do you think," I asked, "that all this will last?"

"Why, how can I tell?" he replied. "That depends on the enemy, not on us."

He then showed me on the map all the streets we had already captured and were occupying, and all those we had still to take, adding, "If the insurgents choose to defend themselves on the ground they still hold as they have done on that which we have won from them, we may still have a week's fighting before us, and our loss will be enormous, for we lose more than they do: the first side to lose its moral courage

will be the first to be beaten."

I next reproached him with exposing himself so rashly, and, as I thought, so uselessly.

"What will you have me do?" said he. "Tell Cavaignac to send generals able and willing to second me, and I will keep more in the background; but you always have to expose yourself when you have only yourself to rely on."

M. Thiers then came up, threw himself on Lamoricière's neck, and told him he was a hero. I could not help smiling at this effusion, for there was no love lost between them: but a great danger is like wine, it makes men affectionate.

I left Lamoricière in M. Thiers' arms, and returned to the Assembly: it was growing late, and besides, I know no greater fool than the man who gets his head broken in battle out of curiosity.

The rest of the day was spent as the day before: the same anxiety in the Assembly, the same feverish inaction, the same firmness. Volunteers continued to enter Paris; every moment we were told of some tragic event or illustrious death. These pieces of news saddened, but animated and fortified, the Assembly. Any member who ventured to propose to enter into negociations with the insurgents was met with yells of rage.

In the evening I decided to go myself to the Hôtel de Ville, in order there to obtain more certain news of the results of the day. The insurrection, after alarming me by its extreme violence, now alarmed me by its long duration. For who could foresee the effect which the sight of so long and uncertain a conflict might produce in some parts of France, and especially in the great manufacturing towns, such as Lyons? As I went along the Quai de la Ferraille, I met some National Guards from my neighbourhood, carrying on litters several of their comrades and two of their officers wounded. I observed, in talking with them, with what terrible rapidity, even in so civilized a century as our own, the most peaceful minds enter, as it were, into the spirit of civil war, and how quick they are, in these unhappy times, to acquire a taste for violence and a contempt for human life. The men with whom I was talking were peaceful, sober artisans, whose gentle and somewhat sluggish natures were still further removed from cruelty than from heroism. Yet they dreamt of nothing but massacre and destruction. They complained that they were not allowed to use bombs, or to sap and mine the streets held by the insurgents, and they were determined to show no more quarter; already that morning I had almost seen a poor devil shot before my eyes on the boulevards, who had been arrested without arms in his hands, but whose mouth and hands were blackened by a substance which they supposed to be, and which no doubt was, powder. I did all I could to calm these rabid sheep. I promised them that we should take terrible measures the next day. Lamoricière, in fact, had told me that morning that he had sent for shells to hurl behind the barricades; and I knew that a regiment of sappers was expected from Douai, to pierce the walls and blow up the besieged houses with petards. I added that they must not shoot any of their prisoners, but that they should kill then and there anyone who made as though to defend himself. I left my men a little more contented, and, continuing my road, I could not help examining myself and feeling surprised at the nature of the arguments I had used, and the promptness with which, in two days, I had become familiarized with those ideas of inexorable destruction which were naturally so foreign to my character.

As I passed in front of the little streets at the entrance to which, two days before, I had seen such neat and solid barricades being built, I noticed that the cannon had considerably upset those fine works, although some traces remained.

I was received by Marrast, the Mayor of Paris. He told me that the Hôtel de Ville was clear for the present, but that the insurgents might try in the night to recapture the streets from which we had driven them. I found him less tranquil than his bulletins. He took me to a room in which they had laid Bedeau, who was dangerously wounded on the first day. This post at the Hôtel de Ville was a very fatal one for the generals who commanded there. Bedeau almost lost his life. Duvivier and Négrier, who succeeded him, were killed. Bedeau believed he was but slightly hurt, and thought only of the

situation of affairs: nevertheless, his activity of mind struck me as ill-omened, and alarmed me.

The night was well advanced when I left the Hôtel de Ville to go to the Assembly. I was offered an escort, which I refused, not thinking I should require it; but I regretted it more than once on the road. In order to prevent the insurgent districts from receiving reinforcements, provisions, or communications from the other parts of the town, in which there were so many men prepared to embrace the same cause, it had very properly been resolved absolutely to prohibit circulation in any of the streets. Everyone was stopped who left his house without a pass or an escort. I was constantly stopped on my way and made to show my medal. I was aimed at more than ten times by those inexperienced sentries, who spoke every imaginable brogue; for Paris was filled with provincials, who had come from every part of the country, many of them for the first time.

When I arrived, the sitting was over, but the Palace was still in a great state of excitement. A rumour had got abroad that the workmen of the Gros-Caillou were about to take advantage of the darkness to seize upon the Palace itself. Thus the Assembly, which, after three days' fighting, had carried the conflict into the heart of the districts occupied by its enemies, was trembling for its own quarters. The rumour was void of foundation; but nothing could better show the character of this war, in which the enemy might always be one's own neighbour, and in which one was never certain of not having his house sacked while gaining a victory at a distance. In order to secure the Palace against all surprise, barricades were hurriedly erected at the entrance to all the streets leading up to it. When I saw that there was only a question of a false rumour, I went home to bed.

I shall say no more of the June combats. The recollections of the two last days merge into and are lost in those of the first. As is known, the Faubourg Saint-Antoine, the last citadel of the civil war, did not lay down its arms until the Monday—that is to say, on the fourth day after the commencement of the conflict; and it was not until the morning of that day that the volunteers from la Manche were able to reach Paris. They had hurried as fast as possible, but they had come more than eighty leagues across a country in which there were no railways. They were fifteen hundred in number. I was touched at recognizing among them many landlords, lawyers, doctors and farmers who were my friends and neighbours. Almost all the old nobility of the country had taken up arms on this occasion and formed part of the column. It was the same over almost the whole of France. From the petty squire squatting in his den in the country to the useless, elegant sons of the great houses—all had at that moment remembered that they had once formed part of a warlike and governing class, and on every side they gave the example of vigour and resolution: so great is the vitality of those old bodies of aristocracy. They retain traces of themselves even when they appear to be reduced to dust, and spring up time after time from the shades of death before sinking back for ever.

It was in the midst of the days of June that the death occurred of a man who perhaps of all men in our day best preserved the spirit of the old races: M. de Chateaubriand, with whom I was connected by so many family ties and childish recollections. He had long since fallen into a sort of speechless stupor, which made one sometimes believe that his intelligence was extinguished. Nevertheless, while in this condition, he heard a rumour of the Revolution of February, and desired to be told what was happening. They informed him that Louis-Philippe's government had been overthrown. He said, "Well done!" and nothing more. Four months later, the din of the days of June reached his ears, and again he asked what that noise was. They answered that people were fighting in Paris, and that it was the sound of cannon. Thereupon he made vain efforts to rise, saying, "I want to go to it," and was then silent, this time for ever; for he died the next day.

Such were the days of June, necessary and disastrous days. They did not extinguish

revolutionary ardour in France, but they put a stop, at least for a time, to what may be called the work appertaining to the Revolution of February. They delivered the nation from the tyranny of the Paris workmen and restored it to possession of itself.

Socialistic theories continued to penetrate into the minds of the people in the shape of envious and greedy desires, and to sow the seed of future revolutions; but the socialist party itself was beaten and powerless. The Montagnards, who did not belong to it, felt that they were irrevocably affected by the blow that had struck it. The moderate Republicans themselves did not fail to be alarmed lest this victory had led them to a slope which might precipitate them from the Republic, and they made an immediate effort to stop their descent, but in vain. Personally I detested the Mountain, and was indifferent to the Republic; but I adored Liberty, and I conceived great apprehensions for it immediately after these days. I at once looked upon the June fighting as a necessary crisis, after which, however, the temper of the nation would undergo a certain change. The love of independence was to be followed by a dread of, and perhaps a distaste for, free institutions; after such an abuse of liberty a return of this sort was inevitable. This retrograde movement began, in fact, on the 27th of June. At first very slow and invisible, as it were, to the naked eye, it grew swifter, impetuous, irresistible. Where will it stop? I do not know. I believe we shall have great difficulty in not rolling far beyond the point we had reached before February, and I foresee that all of us, Socialists, Montagnards and Liberal Republicans, will fall into common discredit until the private recollections of the Revolution of 1848 are removed and effaced, and the general spirit of the times shall resume its empire.