

some change in regard to which all parties are agreed; thus showing very satisfactorily that the actual facility of change, in popular governments, sometimes actually conduces to the stability of the judiciary, while the opposite not unfrequently begets a popular distrust and uneasiness, not so much on account of existing evils, as of those apprehended in the future.

But having said so much in regard to the manifest disposition among the American states to reduce the tenure of judicial office to a brief term of years, and, in most cases, to subject it to the test of popular elections, we feel bound to add, that it has not seemed to us that this could fairly be laid to the account, chiefly, or to any considerable degree, of popular impulses or desires. The great mass of the people are, no doubt, deeply and vitally interested in having and maintaining, permanently, the ablest, most fearless, and independent judiciary which the wisdom of man can devise. Wherever the appointment and the action of the judiciary has been brought near enough to the people to have them properly appreciate its importance, it has always been found that a fearless and able judiciary was sufficiently safe in their hands. And although they do not readily volunteer to extend the term of judicial office, they are always content to let it remain where it is. It has always been found hitherto that movements in the different states, to limit the term or weaken the tenure of judicial office, have proceeded from those who hoped some time to obtain the position themselves, or who desired the places as political capital, to distribute among their followers, or else dreaded the opposition or the control of an independent judiciary, as an obstacle to legislative and other reforms in the municipal administration. With the exception of these three classes, there would never have been any difficulty in maintaining the perfectly independent tenure of judicial office in all those states where it was first adopted. The interests of a permanent judiciary have been betrayed by political demagogues and time-serving placemen, and not by the people at large.

And, sooner or later, it is obvious that the American States will have to consider the question of the indispensable necessity of an able and independent judiciary, in order to the proper maintenance of constitutional government. That was first secured after a struggle of many hundred years, in the British Government, at the period of the Revolution of 1688. And from that day to this it has proved the mightiest bulwark of the British constitutional Government. We do not here refer, of course, to any written constitution, for, aside from some few ancient charters, the Magna Charta, the Petition of Right, and the Bill of Rights, there is, as every student of the history of British constitutional law must know, no such thing as a written constitution in the British empire. But it is none the less a constitutional government, and one based upon well-settled and recognized principles, and principles lying at the very foundation of all the American constitutions. There is no guarantee of constitutional freedom in America which is not, as every well-read lawyer knows, extracted from the common law of our British ancestors. And one cannot enter the superior courts in Westminster Hall, or Lincoln's Inn, and not feel that the character and temper, the wisdom and forbearance of the English judiciary has very much to do with the quiet and order of this island.

Amid all the lawlessness and disturbance in this great Babel of cities (London), the largest, and really the least arbitrarily governed of any great city in the world, with the hundred other cities and large towns in Great Britain, what could be accomplished, with such universal freedom, and such unquestionable exemption from all arbitrary exercise of power, either by the general executive officers or the police of the towns and cities, except by a judicial administration, above all possible doubt or question, and one which the people felt to be their best friend and surest defence? What security exists for rights of property or person except in the judiciary? The legislature, in all times of disturbance, will be the first to propose the concession of part which is demanded, and thus by degrees yield the whole.