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The Constitution of the United States and its Relation to the Subject of Trade-Marks.

A Paper Read Before the Bar Association of the State of New York by Rowland Cox.

As legal science progresses, much that has been said concerning "written Constitutions" is seen to be of superficial importance. The fact that the organic provisions are expressed in formulated clauses and paragraphs and in particular words is nothing more than a distinct announcement that the provisions exist. The provisions are not the more organic because they are set down in written words. Before they can be defined they must exist. And to state and ratify the definition is simply to make a formal assertion that they are operative and of controlling force.

The influences which produced the common law of England produced what is called the English Constitution, and, also, the Constitution

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of the United States. Owing to the incidental fact that George the Third was a narrow-minded and unreasonable tyrant, the American Colonies were driven into rebellion; and after their separation from England had been accomplished, they formulated a written summary of their convictions—a Constitution in which they embodied that which was generic and that which was specific. The generic provisions came of the same influences which produced the English Constitution, and the specific provisions were adopted "from reflection and choice." In its details, in that it made provision for the special conditions of the thirteen colonies and for a definite union upon certain terms, it was, perhaps, unique. But, in its spirit and substance, it was in no essential respect unlike the unwritten Constitution of the nation from which there had been a separation. Then, as now, the influences which had created the Magna Charta and that which followed it were operative in both England and the United States.

From a period earlier than we recognize, these influences had been moving, as they are now moving, with unfaltering progress. In England they found expression in rules which have not been reduced to a system of written clauses and

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paragraphs. In the United States they found expression, first, in the great Declaration of Independence (as broad and inclusive in its postulates as if it had existed only in the minds of those who published it), and at a later date in the written Constitution of the United States. To that written Constitution we have added a recognition of the fundamental doctrine that the only words of limitation which it contains are those which relate to that which has been demonstrated—the things of the past which have been solved and concluded.

For instance: We adopted the Fifteenth Amendment by which African slavery was "prohibited" within the United States. The original Constitution recognized African slavery; and to that extent, as we now perceive, it was illogical and inconsistent—a compromise with oppression, which denied the truth of the most essential premises. The inconsistency brought about a war of unprecedented magnitude. But the great force which was behind the written words prevailed, and in the end, adapting itself to circumstances, wrote the amendment.

The correction is of real root and vigor, not by reason of the struggle which preceded it, but

because it states a limitation which was imposed by an evolution—by that which had been concluded and forever settled as distinguished from that which remained to be solved.

In 1787 the Fifteenth Amendment could not be adopted because the operation of the force and influences which produced it were for a time necessarily delayed. The union of the colonies was a pressing emergency to which many important considerations were subordinated. African slavery was laid out of sight and more immediate facts and dangers were made the basis of action. But the logical and natural progress of the forces and influences which had been in part directed and given form went on; to agitation was added war, and in the end the correction of the imperfection was made to be of record by the amendment. Nothing was added to the organic law except the recognition of a limitation which the evolution of the past had demonstrated to be an irrevocable decision from which there was no semblance of appeal. The language of the amendment, *in extenso*, might have been stated thus:

> Because by experience, by suffering, by war and its losses of blood and of treasure, by the unwritten will of the American people, it has been made plain

that African slavery is contrary to the rules and maxims of civilization, we do again ordain that all men are created equal and that by our organic law African slavery shall not exist within the United States.

It would be scarcely going too far to say that the written Constitution of the United States in all its parts presupposes the existence of the common law of England and is in many respects constructively subordinate thereto.

I have ventured to offer these generalizations because they are of fundamental importance as affecting, perhaps, all that is generic in our Constitution; and because they are especially significant in connection with the things which that comprehensive instrument is by many supposed to have left untouched. They are of unusual and very pointed importance in considering the bearing which it has upon the subject of trade-marks.

At the time the Constitution of the United States was formulated trade-marks were almost unknown. At a much earlier date what may be designated "trade-mark rights" had been recognized or referred to in the English Courts of

both chancery and common-law jurisdiction; but the evil of unfair competition was of such small proportions that it attracted very little attention. In North America commercial relations were only beginning to expand. The fact, therefore, that our Constitution contains no specific reference to the subject is not in any degree surprising. There is no reason why it should have contained the word "trade-mark" or any other word which could be construed to refer specifically to marks of origin or identification.

The superficial observer is disposed to find in the fact that our Constitution contains no direct reference to trade-marks evidence that the instrument is imperfect and iucomplete. It contains provisions conferring power to legislate upon copyrights, patents and bankruptcy; the popular view appears to be that there should have been a delegation of power to provide for the protection of trade-marks. But to examine the supposed omission, and to understand the nature and history of the things involved, is to demonstrate that in this respect the supposed defect is the strongest possible evidence of wisdom and consistency.

I think that there is no doubt whatever that the Constitution of the United States contains

a delegation of power to legislate on the subject of trade-marks, and that the power which is conferred is as inclusive as it could have been made without assailing distinctions of a fundamental character. I think that in this respect nothing can be logically added to it, and that any amendment conferring power analogous to that conferred in respect of copyrights and patents would be a deplorable inconsistency.

Allusion has been made to the now well-defined fact that to our written Constitution has been added the doctrine by which its language is given the greatest elasticity. This doctrine or rule of construction is not, in the abstract, a new one. It comes in part of the inevitable growth and expansion of the use and meaning of words. We realize that the meaning of words changes, and that the concept or idea communicated by a particular word in one century differs materially from the concept or idea which the same word symbolizes a century or the fraction of a century later. The words of our Constitution, except to the extent that they have a final value, are to be read in the light of the present and not as inseparable parts of the period in which they were first used. Without this necessary rule of con-

struction, it is obvious that they would be hopelessly inadequate and impotent.

The importance and utility of the rule by which the true meaning of the words of our Constitution is determined are conspicuously illustrated in the judicial deliverances relating to the word "commerce." When the Constitution was adopted, the word meant much less than it means to-day. But the wisdom of the Supreme Court has given it such elasticity that we easily perceive that it is of the most inclusive character.

Telegraphy was wholly unknown in 1787, and the word "telegraph" had not been coined. But it has been held in our national court of last resort, and with obvious wisdom and consistency, that the word "commerce" as used in the Constitution includes telegraphy. Speaking for the Court, Chief-Justice Waite says:

"The powers thus granted are not confined to the instrumentalities of commerce * * * known or in use when the Constitution was adopted, but they keep pace with the progress of the country, and adapt themselves to the new developments of time and circumstances. They extend from the horse with its rider to the stage coach, from the sailing vessel to the steamboat, from the coach and the steamboat to the railroad, and from the railroad to the telegraph, as these agencies are successively brought into use to meet the demands of increasing population and wealth." (96 U. S., 9.)

Not less liberal have been the constructions which have been placed upon the organic provisions relating to copyrights. These provisions are that "Congress shall have power to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." It is not difficult to understand what the word "writings" meant in 1787; but it has been held by the highest judicial authority to include things which were not in any sense "writings" at the time the word was selected. In the Courts of the United States it means to-day anything and everything which is the result of that kind of mental operation which produces a book or writing. A figure or group of figures in marble or bronze, a design or bas-relief in stone or metal or wood, even a photograph or a negative thereof, is a "writing" in the sense of the organic word. Those who, with unimpeached wisdom, have given this elasticity to the word, have read it in the light of the purpose which was intended to be secured, and, reading it in that light, there is no room for doubt or difference of opinion.

It is thus plain that the words of the Constitution of the United States are under no circum-

stances to be read as words of restriction or limitation where they apply to the living and increasing growth of the present as distinguished from that which has been finally executed and closed. Where the word relates to that which is executory, it has no boundaries or limitations except those which define the object which is contemplated. The expression "writings and discoveries" includes everything of which the mind of man is capable, which, being the result of "original thought," tends to promote the progress of science and the useful arts.

There can be no doubt that there are but two provisions in our Constitution which can by any process of reasoning be made to include the power to legislate concerning trade-marks.

The first of these is the provision which has just been mentioned, relating to the progress of science and the useful arts.

This provision, however, may be at once laid out of sight for almost obvious reasons. It was said by Mr. Justice Miller:

> "The ordinary trade-mark has no necessary relation to invention or discovery. * * * It may be, and generally is, the adoption of something already in existence. * * * It does not depend upon

novelty, invention, discovery, or any work of the brain. It requires no fancy or imagination, no genius, no laborious thought. It is simply founded on priority of appropriation." (100 U. S., 94.)

The Constitution is as if it read: Congress shall have power to promote the progress of science and the arts, but only by securing the exclusive right to writings and discoveries.

Manifestly, trade-marks are not in any right sense included within the words "writings and discoveries." They are symbols or commercial signatures, and for this reason they are not within a provision which looks to "fancy," "imagination," "genius," and "laborious thought."

After reading the opinion of Mr. Justice Miller, it is obvious that marks used in commerce to denote origin cannot be brought within any possible construction of the section relating to literature and the arts.

The other provision of the Constitution which has been said to have a bearing upon the subject of trade-marks is what is known as "the commerce clause." And to say that this clause does not include trade-marks is to say that there has been no actual or constructive delegation of

power to legislate on that important subject, and, baldly, that the Constitution of the United States is imperfect and incomplete.

But, whatever may be our impressions, in view of the history of the last quarter of the present century and the decisions of the Supreme and inferior Courts of the United States, it may be said that no doubt remains that the word "commerce" is broad enough to support any legislation that Congress will ever enact.

Perhaps the most important part of the history of trade-marks, and that which is especially instructive, is the fact that they have been made the subject of treaties between nearly all the civilized nations of the world. During the last half a century the United States have made treaties with nation after nation, by which what purport to be reciprocal obligations have been assumed; and whatever power the United States have to make these treaties is derived from the Constitution. They have no power to enter into any agreement, or exercise any power with which they have not been invested by the Constitution; they can make contracts only within the limitations of the Code from which their capacity to act is derived. They certainly cannot by means of a treaty or in any other way control those

things which have been reserved to the several States, and the jurisdiction over which has been expressly withheld from the Central Government. It is necessarily true either that the Government of the United States has no power to make a treaty having relation to trade-marks, or that it has, by virtue of the Constitution, been invested with power to make such a treaty; and it is equally certain that unless the power to make such a treaty was conferred by the commerce clause it does not exist.

Unquestionably, the word "commerce" includes the use of trade-marks in the same way and for the same reason that it includes telegraphy; and Congress may regulate the use of trade-marks in the same manner and to the same extent that it can regulate commerce generally.

But, as has been suggested, the decisions of the Supreme Court probably leave no room for doubt. It is possible that the language used in the Trade-Mark Cases is suggestive of some uncertainty, but the opinion as a whole may be regarded as a statement that the statute which was held to be unconstitutional would have been found to be within the powers of Congress if it had been accurately limited to those kinds of

commerce which are under congressional control.

In the case of Ryder v. Holt, 128 U. S., and possibly in cases which have been since decided, there is a recognition of the power of Congress to legislate concerning trade-marks used in commerce with foreign nations; and in the Circuit Courts the existence of this power has been directly affirmed (22 Fed. Rep., 823). In recent legislation it has been assumed that the power exists, as well as by what is known as "the silent practice of the Courts."

It is not to be doubted, and would seem to be axiomatically plain, that the treaty-making power of the Government of the United States necessarily includes the power to make a treaty which shall deal with any and every subject which is a matter of international importance; and, in the light of the broad rule by which the possible insufficiency of the letter of our Constitution is subordinated to the spirit and purpose which may have been imperfectly expressed, we have no difficulty in finding in the word "commerce" all the elasticity that is necessary.

We need not concern ourselves about what the word might have meant at the beginning of the

present century. There is no accepted rule or maxim by which it can, at the end of the century, be given a meaning which is narrow and exact.

By the Constitution commerce may be said to be divided into four classes; namely, foreign commerce, commerce with the Indian tribes, interstate commerce and infra-state commerce. Over the first three classes Congress may exercise control; over the last, "the commerce only between citizens of the same State" (100 U. S., 96), it has been repeatedly held that Congress has no color of jurisdiction. In numerous cases the Supreme Court has emphasized the importance of the limitations by which the power to regulate commerce is restricted.

"Commerce among the States," it is said, "means commerce between the individual citizens of the different States," and "there still remains a very large amount of commerce, perhaps the largest, which, being trade and traffic between citizens of the same State, is beyond the control of Congress." (100 U. S., 96.)

These words were uttered by Mr. Justice Miller less than a quarter of a century ago, and are an expression of views about which there existed no possible uncertainty.

As we read them to-day we perceive that they have not the same weight and significance which they had at the time they were uttered. This is true, because what is designated "commerce * * * among the several States" and "infra-state commerce" are essentially antagonistic, and the former is manifestly of greater energy and momentum. As the institutions and commerce of the United States have increased, the relations between the citizens of the different States have become more intimate and important. The purchase and sale of the necessities of life may be restricted to the limits of a single State, but the production of these necessities and their sale in quantities are of a different character.

It is manifestly true that in 1895 the expression "among the different States" has a meaning which is distinctly different from that which it bore when the expression was adopted. Commerce between New York and California at one time involved apparent impossibilities. The infra-state commerce of California was almost the only commerce which existed within the borders of the State. To-day, by reason of the convenience of travel and transportation, New York sends her products in large quantities to California, and that wonderful land of plenty returns to

New York her fruits and wines and other products in almost fabulous profusion.

The importance of infra-state commerce depends upon the existence of communities which are separated from each other. Inter-state commerce contemplates a broad and perfect union by which the whole country is to all the intents and purposes made to be a single community. All the increase which comes of the progress of the different arts and manufactures of the different States must be in the direction of an enlargement of the relations existing between them. And the enlargement and multiplication of those relations will necessarily add to the organic provision and render it effectual in promoting its true objects.

Thus we find that Congress, moved by important considerations, has within a few years enacted statutes by which the Constitution is made to bear a meaning which would certainly have seemed extraordinary before the railroad and the telegraph were known. These enactments relating to inter-state commerce are of unmistakably good foundation in the organic law and are convincing evidence of its elasticity.

They illustrate the existence and fundamental value of the great doctrine of construction by

which the organic words are made to be truly organic in that they define the power to-day, just as they defined it a century ago. The power and the limitations of the power are the same; the American people and their commerce are not the same; the constitutional provision is none the less now, as it has always been, a valid and effectual rule of action.

It may be said that, under the Constitution, Congress has power to deal with all the influences and agencies by which the interchange of commodities among the States is effected. The channels of trade have their sources in one State, and cross and terminate in many States. Congress has power to keep these channels free, and to do so it may enter the jurisdiction of a State. This doctrine is, also, one by which the narrow rule is antagonized, and by which the lines of the internal commerce of the States are rendered of doubtful stability.

Certainly we shall never reach the conclusion that the earlier deliverances of the Supreme Court were in any sense erroneous or inconsistent, but there is as little doubt that civilization is progressing, that in this favored land it moves more rapidly than anywhere else, and

that even the Supreme Court of the United States moves with it.

But, although the lines which separate inter-state from infra-state commerce may yield and continue to yield in the direction of the expansion of the former, for the present it must be reasoned that to identify infra-state commerce is to absolutely stay and terminate the power of the General Government.

In respect of trade-marks used in the kinds of commerce which are under the control of the General Government, there is no doubt that Congress may legislate the same as it may in other relations. It has power to provide for the registration of such trade-marks, and to protect them by remedies both civil and criminal. I do not, however, understand that Congress has power absolutely to prohibit the use of lawful trade-marks, a right to the enjoyment of which exists at common law; but for the purposes of the present discussion I think we need not undertake to fix the exact boundaries of the power. If it is true that trade-marks lawfully in use may be protected, there is jurisdiction to enact whatever statutes are expedient without attacking rights which are beyond dispute.

I think there can be no doubt that there resides in neither the General nor State Government power to legislate concerning any trade-marks except such as are lawful at common law; in other words, there is no power in either the General or State Government to destroy the right to the use of a trade-mark existing at common law.

The right to use such a trade-mark is property, and in the United States that element of sovereignty, so-called, by which there may be a confiscation of property in times of peace by legislation, has ceased to exist. It has been lost to the States, and by the limitations of the Federal Constitution it does not reside in the General Government.

But Congress, under the commerce clause, has power to do all that is necessary, I think, to accomplish the effectual protection in the United States of the trade-marks of all who, directly or indirectly, carry on business within their jurisdiction.

There is little difficulty in reaching a conclusion as to the inadequacy of existing statutes, and as to the duty which the United States owe to their own citizens and to foreign nations. What is demanded is a statute which shall pro-

vide for the registration of trade-marks used in the kinds of commerce over which Congress has control, the counterfeiting of the trade-mark to be made a crime punishable by fine and imprisonment. The statute should authorize the issuing of a certificate, to be delivered to the registrant upon compliance with reasonable proof of ownership, the certificate to be *prima facie* evidence of ownership in all proceedings in which the right to the trade-mark may be made the basis of action.

I think there can be no doubt that the General Government has power to make its certificate *prima facie* evidence of ownership; there is as little doubt, as has been intimated, that neither the General Government nor the State Government has power to issue a certificate which would be equivalent to a grant and conclusive evidence of title.

The Federal statute would necessarily be limited so as to prohibit only the unauthorized use, actual or constructive, of the registered mark in connection with transactions relating to foreign, inter-state and Indian commerce. To protect the mark in these kinds of commerce would be practically to protect it effectually, for there is no commercial reputation which is worth

protecting which is confined to the isolated infra-State commerce of a single State. To preserve the individuality and identity of the mark in the avenues of trade which lead from State to State is to preserve it against any injury which is worth consideration.

'There is no doubt that experience has demonstrated that a civil remedy is adequate in those marginal cases where there may be room for difference of opinion as to the plaintiff's exclusive right and as to the question of infringement. But the use of a studied counterfeit or copy of a trade-mark, *malo animo*, involves both misrepresentation and false personation, and is, in its nature, a crime. The selling of goods bearing the spurious mark is obviously a species of false pretences, involving the use of a false token and substantially the same as forgery.

Perhaps all the civilized nations of the world, with the exception of the United States, have made what is commonly called the forging or counterfeiting of a trade-mark a crime, punishable by fine and imprisonment. In Great Britain, France, the German Empire, Belgium, the Netherlands, Norway, and Japan, Italy, Switzerland, and other countries, and in effect in

Russia, Denmark, and the Argentine Confederation, the crime is punished by fine and imprisonment, with or without the confiscation and destruction of the spurious goods.

And there are the most convincing reasons why these severe criminal enactments are expedient. A trade-mark, constructively, represents a personal accountability for the character of the contents of the package to which it is attached; and, as marks of origin are used very largely upon food products and medicinal preparations of every description, it is manifestly a matter of public importance that they be protected.

These laws which have sought to prevent the crimes to which they relate have been given international importance by treaties. To the United States have been extended the benefits of the laws of Austria-Hungary, Belgium, Brazil, France, the German Empire, Great Britain, Italy, Russia, Servia, Spain, Switzerland and the Netherlands. We have accepted and for years enjoyed the privileges and benefits of the statutes of those nations and in return by our treaties have given very little. By proclamation and with much ceremony we have announced the ratification by the high contracting parties of the formalities of numerous treaties, but it is

not too much to say that for what we have received we have rendered in return practically nothing.

In 1879 the Supreme Court (100 U. S., 82) decided that the Act of 1870 relating to trade-marks was unconstitutional. By a number of treaties, which had been made at the time that act was in force, it was understood that its privileges and remedies were extended to the citizens and subjects of the foreign nations with which the treaties were made. The act was expunged by the Court, and thousands of registrations of foreign marks were displaced and rendered nugatory. In 1881 an act was passed which purported to have in view the correction of international relations which were thus unceremoniously disturbed. But, astonishing as the fact may be, the new act had no relation whatever to commerce within the jurisdiction of the United States except the anomalous commerce with the Indian tribes, in connection with which trade-marks are of very little importance. The Act of 1881, now in force, does not purport to include or protect the use of trade-marks in inter-state commerce, which is tantamount to saying that it is in itself practically valueless. I doubt if a single case has arisen in connection with which

the provisions of the Act of 1881 have afforded a remedy or been made the basis of an adjudication in favor of the injured party.

The fact that the United States have accepted and enjoyed the benefits of treaties with all the civilized nations of the world, and have specifically given in return nothing which admits of definition, is a demonstration that additional legislation is demanded. Our attitude before the world, when it is understood, is not that of a charlatan, but it is one which admits of no justification. In time it will be corrected. But the page of our history which records our persistent inconsistency and procrastination will add nothing to the dignity of the volume of which it is a part.

But in this connection, as in many others, we cannot fail to turn with the greatest satisfaction to the unwritten law which is back of our Constitution and which has been by it protected and preserved. Upon every occasion, our Constitution has operated to add dignity and character to our relations with other nations; and, where the legislative and executive branches have failed in their duty, the unwritten law has done much to correct the fault.

The intricate relations existing between the Central Government and the States have caused misconception, and overzealous representatives of some nationalities have unhesitatingly accused us of bad faith. But these accusations have rarely been well-founded, and have had their origin in a want of knowledge of the limitations of our treaty-making power. What, in the plain pursuance of our duty, we have utterly failed and continued to fail to do directly by legislation we have supplied out of the abundance of our common law, and that which is better than the common law—the Equity which it has caused to be evolved.

It has been said that the real origin of equity was an application of the inflexible rules of the common law. At the time these rules were originated they would have been almost valueless if they had not been inflexible. As the influences of civilization grew stronger, as the lawless classes lost ground, this inflexibility, once of essential value, was seen to be a defect, and the discovery of that defect was the beginning of equity jurisprudence. Because the rule was inelastic, it came to be inadequate, and thus there was evolved what was called "Equity," which is

innocence, and "the correction of that wherein the law, by reason of its universality, is deficient." But the same force which produced the inflexible rule of the common law produced also that Equity to which the inflexible rule had no application.

The inflexible precision of the common law was a barrier and safeguard erected by civilization as it moved forward, and it stands, and will always stand, as a barrier and monument, the value and importance of which is too great to be estimated. But, after it had been erected, civilization moving forward upon the highway evolved that which was better and more enlightened—that Equity which shall continue to increase until the books of our jurisprudence are directed to be burned. The equity which was thus created depends for its existence upon the common law which is back of it; but it bears the same relation to the common law that the things of one period of evolution bear to those of an earlier period. There is no antagonism except as it may be said there is antagonism between the science of to-day and that of the last and earlier centuries. There is no antagonism, but there is a stronger and a better light.

Where we have failed in our duty to foreign nations in connection with our treaty obligations the unwritten law which our Constitution has made safe and effectual has been an active force and factor. In the matter of trade-marks it has lifted our jurisprudence to the highest elevation of judicial thought. It has opened our courts to all men of all nations, and, uninfluenced by circumstances, has dealt with the issues presented as abstract questions. The Court having jurisdiction, the question of alienage has been wholly immaterial, the broad doctrines of the unwritten rule being the only controlling considerations. There is little room for adverse criticism of that part of the jurisprudence of the courts of the United States which relates to trade-marks and unfair competition. It is a book of the greatest interest and of the greatest dignity and value, because it outlines, let us hope and believe, the equities of the coming centuries in which the science of the law shall be classified as a part of the science of ethics.

And it is to be traced, I think, directly to the influences and forces to which reference has been made as those which produced the Constitution of England and the Constitution of the United States, which built up the noble temple of the

common law, and evolved the light of Equity, whereby the common law may be read with "the spirit of understanding," and made useful in promoting the ends of civilization.

From the standpoint of the subject of trade-marks we may, I think, satisfy ourselves that our organic law is organic in the broadest and most profound sense, and we may reach the lesser conclusion that to seek to amend it for specific objects is to make a false use and application of original sources of power no less than powers which were technically delegated. We may satisfy ourselves that the instrument in every relation, whether in the matter of trade-marks or more important things, is an expression and embodiment of the noble declaration which preceded it, a recognition of the common law, of the philosophy of Thomas Jefferson, and the "reflection and choice" of Madison and Alexander Hamilton. It bears the firm impress of the genius and wisdom of John Marshall, of all judges the one to whom the United States and the world will long owe the largest measure of gratitude and respect; and we may follow the thought of the great Chief-Justice in the utterances of Mr. Justice Story, who sat at his feet, and in the

penetration, logic and irresistible conclusion of the late Mr. Justice Bradley.

From these, and those who not less worthily have sought to read and understand, and in some degree expound, the things of the existence of which our Constitution is a demonstration, we may learn, not that it is an instrument which is better than man's history, but that it is a part of the best of man's history; not that it is a perfect expression and definition of the forces which it seeks to define and make effectual, but that it is an expression which gives energy and form and direction to those forces; not that it is, in any sense, a final step, but that it is a consistent and logical step in the true evolution, leading upward, of human civilization.

Above all, we may learn that the forces which constitute its spirit and its life have their origin and justification no less than their limitations in the great truths and problems of civilization which have been completely solved.