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Sketches Of The History Of Man

In Two Volumes

Home, Henry

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Sketch I. Scotch Entails considered in Moral and Political views.

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A P P E N D I X.

Sketches concerning S C O T L A N D.

S K E T C H I.

SCOTCH ENTAILS considered in Moral and Political views.

MAN is by nature a hoarding animal; and to secure to men what they acquire by honest industry, the sense of property is made a branch of human nature (*a*). During the infancy of nations, when artificial wants are unknown, the hoarding appetite makes no figure. The use of money produced a great change in the human heart. Money having at command the goods of fortune, introduced inequality of rank, luxury, and artificial wants without end. No bounds are set to hoarding, where an appetite for artificial wants is indulged: love of money becomes the ruling passion: it is coveted by many in order to

(*a*) Book 1. sketch 3.



be hoarded; and means are absurdly converted into an end.

The sense of property, weak among savages, ripens gradually till it arrives at maturity in polished nations. In every stage of the progress, some new power is added to property; and now for centuries, men have enjoy'd every power over their own goods, that a rational mind can desire (*b*): they have the free disposal during life; and even after death, by naming an heir. These powers are sufficient for accomplishing every rational purpose: they are sufficient for commerce, and they are sufficient for benevolence. But the artificial wants of men are boundless: not content with the full enjoyment of their property during life, nor with the prospect of its being enjoy'd by a favourite heir, they are anxiously bent to preserve it to themselves for ever. A man who has amassed a great estate in land, is miserable at the prospect of being obliged to quit his hold: to sooth his diseas'd fancy, he makes a deed securing it for ever to certain heirs; who must without end bear his name, and preserve his estate entire. Death, it is true, must at last separate him from his idol: it is some consolation, however, that his will governs and gives law to every subsequent proprietor. How repugnant to the frail state of man, are such swollen conceptions! Upon these however are founded entails, which have prevailed in many parts of the world, and unhappily at this day infest Scotland. Did entails produce no other harm but the gratification of a distemper'd appetite for property, they might be endured, though far from deserving approbation: but, like other transgressions of nature and reason, they are productive of much mischief, not only to commerce, but to the very heirs for whose benefit it is pretended that they are made.

Considering that the law of nature has bestow'd on man, every

(a) Historical Law-tracts, tract 3.

power



power of property that is necessary either for commerce or for benevolence, how blind was it in the English legislature to add a most irrational power, that of making an entail! But men will always be mending; and when a lawgiver ventures to tamper with the laws of nature, he hazards much mischief. We have a pregnant instance above, of an attempt to mend the laws of God, in many absurd regulations for the poor; and that the law authorising entails, is another instance of the same kind, will be evident from what follows.

The mischievous effects of English entails were soon discovered: they occasioned such injustice and oppression, that even the judges ventured to relieve the nation from them, by an artificial form, termed *fine and recovery*. And yet, though no moderate man would desire more power over his estate than he has by common law, the legislature of Scotland enabled every land-proprietor to fetter his estate for ever; to tyrannize over his heirs; and to reduce their property to a shadow, by prohibiting alienation; and by prohibiting the contracting debt, were it even to redeem the proprietor from death or slavery. Thus many a man, fonder of his estate than of his wife and children, grudges the use of it to his natural heirs, reducing them to the state of mere liferenters. Behold the consequences. A number of noblemen and gentlemen among us, lie in wait for every parcel of land that comes to market. Intent upon aggrandizing their family, or rather their estate, which is the favourite object, they secure every purchase by an entail; and the same course will be followed, till no land be left to be purchased. Thus every entailed estate in Scotland becomes in effect a mortmain, admitting additions without end, but absolutely barring any alienation; and if the legislature interpose not, the period is not distant, when all the land in Scotland will be locked up by entails, and withdrawn from commerce.



The purpose of the present essay, is to set before our legislature, coolly and impartially, the destructive effects of a Scotch entail. I am not so sanguine as to hope, that men, who convert means into an end, and avariciously covet land for its own sake, will be prevailed upon to regard, either the interest of their country or of their posterity: but I would gladly hope, that the legislature may be roused to give attention to a national object of no slight importance.

I begin with effects of a private or domestic nature. To the possessor, an entail is a constant source of discontent, by subverting that liberty and independence, which all men covet, with respect to their goods as well as their persons. What can be more vexatious to a proprietor of a great land-estate, than to be barred from the most laudable acts, suitable provisions for example to a wife or children? not to mention numberless acts of benevolence, that endear individuals to each other, and make society comfortable. Were he ever so industrious, his fields must lie waste; for what man will lay out his own money upon an estate that is not his own? A great proportion of the land in Scotland is in such a state, that by laying out a thousand pounds or so, an intelligent proprietor may add a hundred pounds yearly to his rent-roll. But an entail effectually bars that improvement: it affords the proprietor no credit; and supposing him to have the command of money independent of the estate, he will be ill-fated if he have not means to employ it more profitably for his own interest. An entail, at the same time, is no better than a trap for an improvident possessor: to avoid altogether the contracting debt, is impracticable; and if a young man be guided more by pleasure than by prudence, which commonly is the case of young men; a vigilant and rapacious substitute, taking advantage of a forfeiting clause, turns him out of possession, and delivers him over to want and misery.

But



But an entail is productive of consequences still more dismal, even with respect to heirs. A young man upon whom the family-estate is entailed, without any power reserved to the father, is not commonly obsequious to advice, nor patiently submissive to the fatigues of education: he abandons himself to pleasure, and indulges his passions without control. In one word, there is no situation more subversive of morals, than that of a young man, bred up from infancy in the certainty of inheriting an opulent fortune.

The condition of the other children, daughters especially, is commonly deplorable. The proprietor of a large entailed estate, leaves at his death children who have acquired a taste for sumptuous living. The sons drop off one by one, and a number of daughters remain, with a scanty provision, or perhaps with none at all. A collateral male heir succeeds, who after a painful search is discovered in some remote corner, qualified to procure bread by the spade or the plough, but entirely unqualified for behaving as master of an opulent fortune. By such a metamorphosis, the poor man makes a ludicrous figure; while the daughters, reduced to indigence, are in a situation much more lamentable than are the brats of beggars.

Our entails produce another domestic evil, for which no proper remedy is provided. The sums permitted in most entails to younger children, however adequate when the entail is made, become in time too scanty, by a fall in the value of money, and by increase of luxury; which is peculiarly hard upon daughters of great families: the provisions destined for them will not afford them bread; and they cannot hope to be suitably matched, without a decent fortune. If we adhere to entails, nunneries ought to be provided.

But the domestic evils of an entail make no figure, compared with those that respect the public. These in their full extent would



would fill a volume: they are well known; and it may be sufficient to keep them in view by some general hints.

As observed above, few tenants in tail can command money for improvements, however profitable. Such discouragement to agriculture, hurtful to proprietors of entailed estates, is still more so to the public. It is now an established maxim, That a state is powerful in proportion to the product of its land: a nation that feeds its neighbours, can starve them. The quantity of land that is locked up in Scotland by entails, has damped the growing spirit of agriculture. There is not produced sufficiency of corn at home for our own consumpt: and our condition will become worse and worse by new entails, till agriculture and industry be annihilated. Were the great entailed estates in Scotland, split into small properties of fifty or a hundred pounds yearly rent, we should soon be enabled, not only to supply our own markets, but to spare for our neighbours.

In the next place, our entails are no less subversive of commerce than of agriculture. There are numberless land-estates in Scotland of one, two, or three hundred pounds yearly rent. Such an estate cannot afford bare necessaries to the proprietor, if he pretend to live like a gentleman. But he has an excellent resource: let him apply to any branch of trade, his estate will afford him credit for what money he wants. The profit he makes, pays the interest of the money borrowed, with a surplus; and this surplus, added to the rent of his estate, enables him to live comfortably. A number of land-proprietors in such circumstances, would advance commerce to a great height. But alas! there are not many who have that resource: such is the itch in Scotland for entailing, as even to descend lower than one hundred pounds yearly. Can one behold with patience, the countenance that is given to selfish wrong-headed people, acting in direct opposition to the prosperity of their country? Commerce is no less hurt in another respect: when

when our land is withdrawn from commerce by entails, every prosperous trader will desert a country where he can find no land to purchase; for to raise a family by acquiring an estate in land, is the ultimate aim of every merchant, and of every man who accumulates money.

Thirdly, An entail is a bitter enemy to population. Population is generally proportioned to the number of land-proprietors. A very small portion of land, managed with skill and industry, affords bread to a numerous family; and the great aim of the frugal proprietor, is to provide a fund for educating his children, and for establishing them in business. A numerous issue, at the same time, is commonly the lot of the temperate and frugal; because they are strangers to luxury and voluptuousness, which enervate the body, and dry up the sources of procreation. This is no chimaera or fond imagination: traverse Europe; compare great capitals with distant provinces; and it will be found to hold universally, that children abound much more among the industrious poor, than among the luxurious rich. But if division of land into small properties, tend to population; depopulation must be the necessary consequence of an entail, the avowed intent of which is to unite many small properties in one great estate; and consequently, to reduce land-proprietors to a small number.

Let us, in the fourth place, take under consideration, the children of landholders with respect to education and industry; for unless men be usefully employ'd, population is of no real advantage to a state. In that respect, great and small estates admit no comparison. Children of great families, accustomed to affluence and luxury, are too proud for business; and were they even willing, are incapable to drudge at a laborious employment. At the same time, as the father's hands are tied up by his entail from affording them means to subsist as persons of rank, they become a burden on the family, and on the state, and can do no service to
either,



either, but by dying. Yet there are men so blind, or so callous, as to be fond of entails. Let us try whether a more pleasing scene will have any effect upon them. Children of small landholders, are from infancy educated in a frugal manner; and they must be industrious, as they depend on industry for bread. Among that class of men, education has its most powerful influence; and upon that class a nation chiefly relies, for its skilful artists and manufacturers, for its lawyers, physicians, divines, and even for its generals and statesmen.

And this leads to consider, in the fifth place, the influence that great and small estates have on manners. Gentlemen of a moderate fortune, connected with their superiors and inferiors, improve society, by spreading kindly affection through the whole members of the state. In such only resides the genuine spirit of liberty, abhorrent equally of servility to superiors and of tyranny to inferiors. The nature of the British government, creates a mutual dependence of the great and small on each other. The great have favours to bestow: the small have many more, by their privilege of electing parliament-men; which obliges men of high rank to affect popularity, if they have none at heart. This connection produces good manners at least between different ranks, and perhaps some degree of cordiality. Accumulation of land into great estates, produces opposite manners: when all the land in Scotland is swallow'd up by a number of grandees, and few gentlemen of the middle rank are left; even the appearance of popularity will vanish, leaving pride and insolence on the one hand, and abject servility on the other. In a word, the distribution of land into many shares, accords charmingly with the free spirit of the British constitution; but nothing is more repugnant to that spirit, than overgrown estates in land.

In the sixth place, Arts and sciences can never flourish in a country, where all the land is engrossed by a few men. Science
will

will never be cultivated by the dispirited tenant, who can scarce procure bread; and still less, if possible, by the insolent landlord, who is too self-sufficient for instruction. There will be no encouragement for arts: great and opulent proprietors, fostering ambitious views, will cling to the seat of government, which is far removed from Scotland; and if vanity make them sometimes display their grandeur at their country-seats, they will be too delicate for any articles of luxury but what are foreign. The arts and sciences being thus banished, Scotland will be deserted by every man of spirit who can find bread elsewhere.

In the seventh place, Such overgrown estates will produce an irregular and dangerous influence with respect to the House of Commons. The parliament-boroughs will be subdued by weight of money; and with respect to county-elections, it is a chance if there be left in a county as many landholders capable to elect, and to be elected, as even to afford a choice. In such circumstances, will our constitution be in no danger, from the ambitious views of men elevated above others by their vast possessions? Is it unlikely, that such men, taking advantage of public discord, will become an united body of ambitious oppressors, overawing their sovereign as well as their fellow-subjects? Such was the miserable condition of Britain, while the feudal oligarchy subsisted: such at present is the miserable condition of Poland: and such will be the miserable condition of Scotland, if the legislature afford not a remedy.

If the public interest only were to be regarded, the axe ought to be applied, cutting down entails to the very root: but a numberless body of substitutes are interested, many of whom would be disinherited, if the tenants in tail had power. To reconcile as much as possible these opposite interests, it is proposed, that the following articles be authorised by a statute. First, That the act of parliament 1685 be repealed with respect to all future operations.



tions. Second, That entails already made and completed, shall continue effectual to such substitutes as exist at the date of the act proposed; but shall not benefit any substitute born after it. Third, That power be reserved to every proprietor, after the act 1685 is at an end, to settle his estate upon what heirs he thinks proper, and to bar these heirs from altering the order of succession; these powers being inherent in property at common law.

At the same time, the prohibiting entails will avail little, if trust-deeds be permitted in their utmost extent, as in England. And therefore, in order to re-establish the law of nature with respect to land-property, a limitation of trust-deeds is necessary. My proposal is, That no trust-deed, directing or limiting the succession of heirs to a land-estate, shall be effectual beyond the life of the heirs in existence at the time.

SKETCH

