much put to. And he cannot look to literary folk of other professions—to writers of fiction, editors, college professors, and literati of various kinds—for consolation. Poetry is with them an obsolete form of culture, and the poet who can only make a living for posterity—not for himself and his own generation—is the "poor relation" indeed.

Nor is this all. The American poet who keeps to his profession for years must prevail not only against the ordinary amount of incompetent criticism to which all writers alike must submit, but as well against a large number of prejudiced persons to whom the reviewing of poetry often falls in newspaper and magazine offices, and who may damn him with a license against which, because of his lack of a considerable audience, he is entirely powerless. No clearing-house is demanded by public opinion in these matters, so the defrauding of genius is mere child's play.

These prejudiced persons are for the most part smaller poets, who, for lack of means or ability, have been compelled to take to criticism for a career, and who use the petty power so obtained to keep properly humble those poets whom they personally dislike or to whose work some jealousy, natural or unnatural, makes them hostile.

As there are many of these poet-critics dragging at the life of poetry in America, it is a matter worth remedying. Meanwhile, whoever is interested should thoroughly discount the animadversions of every poet who has not ripely turned critic, until at least a higher tribunal of authoritative criticism has been established over our letters. Nor should those who care for the welfare of American poetry be misled by the excessive praise which these poet-critics often give to English poets or to their particular friends, as a contrast to their often guilty depreciation of work by other Americans. For there is always a sufficiently strong inclination among American reviewers to out-English the English themselves in doing justice to poets of genius, to regard any voice with a London accent, be it little or large, as of more real importance than any that is American. And if the reason for this is that our critics are still hypnotized by their English ancestry and tradition—noble as these are and continue to be poetically—it nevertheless results in making the truism that a prophet is not without honor in his own land doubly effective against the ill-starred American poet.

Great critics, then, or even serious professional judges of poetry are sadly needed among us, and until one or two manifest themselves let us have an end of this cry, coming too frequently from those who are not truly informed or unprejudiced, that we have no great poets.

RUSSELL HART.

"VESTED RIGHTS"—IN REBUTTAL

In the July issue of THE NORTH AMERICAN REVIEW the article by Mr. Cyril Dos Passos, "Vested Rights: A Refutation of Vice-President Marshall's Views," presents an interesting debate.

It would seem, however, that a close study of the early history of law would lead to the conclusion that the Vice-President and Mr. Dos Passos are each only half right.

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The Vice-President, as reported, states that both the right to inherit and the right to bequeath and devise are not inherent or "natural" rights, but are privileges conferred upon the individual by the State, and could therefore be taken away. Mr. Dos Passos says that both the right to inherit and the right to devise *are* natural and inherent and cannot be taken away. Each vigorously denies the whole of what the other affirms.

I would say that the right to inherit has always been considered an inherent or natural right, while the right to devise has not been so considered, but on the contrary was not recognized by any of the early peoples from whose customs our institutions have so largely sprung. The right to inherit is the right of the living, and within my knowledge this has never been seriously denied by any society of men, whether tribe, gens, hundred or State. On the other hand, the right to devise and bequeath which is a right of the dead and respected as such, is a privilege distinctly conferred by society upon the individual.

Consider two early peoples, the Anglo-Saxons and the Romans. And here it is fitting to say that no part of our legal structure has been influenced by the Roman or civil law so much as has our law of inheritance and succession. This is due to the fact, largely, that the clerks, monks, and abbots of the mediæval Church, all of whom were versed in Latin learning, were the only ones capable of writing wills. They were present at the death-bed, wrote the will, became the repositories of the instrument, and through the ecclesiastical courts attended to the administration and distribution of the deceased's estate. At a very early period the Church constantly taught that men should atone for wrongs done during lifetime by gifts for the relief of the poor and for other pious purposes, thus incidentally acquiring great wealth for herself. And the ecclesiastical courts, as a matter of course, applied the principles of Latin jurisprudence.

The Roman right of inheritance was predicated upon the "universal succession." The patriarch of the family was invested with the *universitas juris* or bundle of rights and duties which he held as guardian and trustee for the family. The identity of the individual was swallowed up in that of the family. The family was the unit of society. It partook of the nature of a corporation sole. It never died. If the chieftain or patriarch passed away, "long lived the king." When a Roman citizen adopted or *adrogated* a son, not already under *patria potestas,* he succeeded universally to the property and liabilities of the child, much as does an assignee in bankruptcy. Inheritance, therefore, was simply the universal succession of the *haeres* at the death of the patriarch. The deceased did not live on in the representative capacity of the heir, but the family did.

Such was their inheritance. In regard to wills and testaments, however, the evidence seems conclusive that they were only allowed to take effect upon the failure of those entitled to the inheritance by right of blood relationship. First came the *sui,* or direct descendants; next, the *agnates;* third, the *gentiles* or collective members of the dead man's gens. The testament could only stand when there were no gentiles to be found or when they waived their rights. The first Roman will was always executed in the *Comitia Calata,* thus showing the testamentary right not to

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be inherent in the individual. If in the *comitia* complaint was made by any aggrieved by its dispositions, the testament was vetoed at once.

So when the laws of Solon gave the Athenians testamentary power, they were forbidden to disinherit their direct male descendants. Similar provisions are to be found governing the will of Bengal, and the rabbinical testament which supplied a defect of the Mosaic law that nowhere recognized a testamentary right.

And centuries after the Twelve Tables of law, we find the remedy called *querala inofficiosi testamenti* or the "plaint of an unduteous will," which was evoked when children or natural heirs were disinherited. The older Romans never looked upon a will as an instrument for disinheriting a family, but as something to be used only when there was no family, or to make a fairer and more equitable distribution than their later rules of intestate succession gave.

It is noteworthy, too, that their early will was always a conveyance *inter vivos*—between the living—like the Saxon *post obit* gift, and was neither secret nor revocable.

This brief glance at the Roman civil law which so largely influenced our own testamentary law shows that the right to inherit was always considered inherent and natural in the descendants of the dead, but the right to will was not so regarded.

The early institutions of the Anglo-Saxons bear out this same conclusion. For example, Tacitus says of the Germans that they knew nothing of the testament, although they did have rules of intestate succession. The *allod* or fee in those far-gone times was not even susceptible of transfer *inter vivos,* and when later the power of alienating land became recognized, it was very commonly necessary to obtain the consent of the real or presumptive heir before the transfer was made, thus showing the right of inheritance to have been considered natural and inherent. Possibly this consent of the heir gave birth to the "confirm"—*confirmavit*—in the operative words of the conveyance.

The common belief that there was a will before the Norman Conquest is not accepted by Sir Frederick Pollock and other students of English law. What is now said to have been their will was the *post obit* gift, a disposition of property *in præsenti,* to take effect after death, but neither revocable, ambulatory, nor hereditative. This was condemned not so much on account of feudalism and primogeniture, as commonly supposed, but because it was wrung from a man in his death agony, and further because no publicity attached to the act. It was a gift without transfer of possession. It seems that unless authorized by local custom there was no power to devise land in the twelfth century. Later when wills became more common we find in them the denunciatory clause which cursed the heirs if they disputed the gift. Testamentary dispositions of property which were opposed to the interests of the heir were very vigorously condemned by the judges of Henry II., thus duplicating the attitude of the Romans toward disinherison.

Indeed, it is quite possible that the right to devise is so often considered a natural one because in the great majority of cases it is exercised in a natural way. Else why the so-common belief that a will is invalid if it cuts off a natural heir "without a shilling." When children or spouse are disinherited to-day by a devise to strangers to the blood

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of the testator, it is generally supposed that there are exceptional circumstances justifying the act. If not, the instrument is promptly attacked and the attempt made to "break" it under one pretense or the other.

And who will doubt that if in any large locality to-day, or if in any large society of men, a church or secret order, the custom should grow up to disinherit children or wife and bestow the property on strangers, that the legislature or the courts would not at once step in and deny such right to the individual?

SAMUEL B. PETTENGILL.

AGAIN "THE ETHICS OF MIRACLES"

WEST ORANGE, NEW JERSEY, *July 9, 1913.*

DEAR EDITOR,—Kindly permit me to reply to the article, "The Ethics of Miracles," in the June number of the REVIEW. The writer objects to miracles, on the ground of their partiality to some and injustice to others. But the same objection can be urged against the most frequent and universal laws of nature. Reference was made by the writer of the article to the "miraculous draught of fishes." Two fishermen are favored, the others are not; this is unjust. But does not nature endow some men with the ability to catch fish, while others are not so endowed? Is such a condition wrong, or unjust? It is not a question of ethics. It is not a question of justice, or injustice.

The blind man is referred to, and his healing is a partiality which is condemned. But nature is constantly working out the same kind of acts. Some children are born blind; some are not. It is not a question of ethics.

The widow of Nain lost her son and his being brought back to life was a partiality. Again, Nature works her same kind of partialities. There are homes remaining unbroken for years; other homes are always in mourning.

The objection to miracles from the ethical standpoint, from the standpoint of "ought such things to be?" can be urged against conditions of human life which have always manifested inequalities. One child is born inheriting a strong body and capable mind; another inherits the very opposite. It is not an unethical situation. It is non-ethical. It does not belong to the sphere of ethics.

Whether the miracles of Jesus be historically true, is one of question. The solution of that question is not furthered by considering it from the ethical point of view.

If there be a personal God, then the present inequalities of life exist by His permission and arrangement. If the personal God once chose to work by miracle, that also was His arrangement. Ethics pertains to one no more than to the other. They both are non-ethical conditions.

I am, dear sir,

J. M. CORUM, JR.

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