which the latter has equal rights with the former, in both peace and war. America, just as much as Europe, is entitled to an open door in Asia for peaceful commerce, and, in emergency, she has an equal right to exert physical force upon Asia for the attainment of her ends. This America has already done, more than once. The 'opening' of Japan was acquiesced in by European powers, which profited from it. The 'opening' of Korea was not reckoned a violation of the Monroe Doctrine. Neither has our acquisition of the Philippines traversed that Doctrine in any sense. It is from it a matter entirely apart."

His view of expansion may be considered as commonly accepted by the nation; at any rate the policy of the United States is forced to take the consequences of the situation. We cannot help growing, and so the old notion of restricting territorial acquisitions must be considered as antiquated. Mr. Johnson says:

"The notion that America should refrain from taking part in so-called world politics is as mistaken as it is futile."

Under these principles the Spanish war and the acquisition of the Spanish islands, the protectorate of Cuba is fully justified. As to the other islands of the West Indias Mr. Johnson says:

"The second island of the West Indias in point of size, Hayti, is now divided between two independent republics. They are pursuing a troubled course, which may decline into hopeless anarchy, or may happily lead upward into tranquil prosperity. If the latter, we shall be pleased to see them remain forever independent. If the former, it may become necessary for the United States to intervene and even to establish its authority over them. In any case, there must be an inexorable American prohibition of anything like European conquest or control of them. They must remain independent, and justify their independence, or else become territories of the United States."

The book is decidedly timely and is written in the proper spirit which neither echoes the sentiments of Jingoism nor the narrowness of the anti-expansionist who has no idea of the conditions of national growth and the duties of national life.

THE HEBREW SECULAR LAW IN THE LIGHT OF COMPARATIVE JURISPRUDENCE.

In the *Jewish Conservator* for June 17, A. H. Godbey discusses "The Making of Hebrew Secular Law," arguing that a new source should be recognized in the literary criticism of the Hebrew records. He suggests that the method heretofore pursued, of treating the laws for daily secular life as emanating from the same element in society that produced the primitive religious law, and as possessing equal authority, is open to criticism.

"We know enough of simple clan and tribal life in all parts of the world to be able to trace with accuracy some phases of human development. In this primitive stage, the line between secular and sacred things is fairly distinct. The functions of the chiefs, the elders, or the popular assembly, are quite definite. Intertribal wars, internal disputes, petty crimes and misdemeanors, divisions of property, are matters that concern the popular courts. The sacred class is concerned with its taboos, its magic, and its rituals. It

may be called upon to detect a criminal, to say whether omens are favorable for some proposed movement; it does not judge the thief, nor lead the expedition."

The writer points out that there is always friction between the secular and sacred leaders: that there are frequent cases of encroachment of either upon the domain of the other; nevertheless there is no permanent fusion of function, owing in part to the vast difference in personal qualities required in each field of activity; nor does there seem to be confusion in the popular mind. The one class claims supernatural powers or authority: the judges of secular matters appeal to tradition. "It is the way of the fathers"—"it is contrary to the great charter,"—are but expressions of the fact of this appeal to tradition:

"Sir H .S. Maine has told us how in India some new thing may be introduced into a retired peasant commune, where the simple principles of early Aryan law remain unchanged by the passage of millennia, and not buried by the superpositions of Brahmanism. The village elders must decide how the new thing shall be managed, what part each family must take or receive in responsibility or product; and after long discussion, their crude ideas of equity will reach a *modus vivendi.* But the reason always is, 'That is the way our fathers did it.' And such will be the verdict upon scores of things their fathers never heard of. * * * But the learned Brahmin, citing the same principle, will enounce it upon the authority of Menu: it is the sacred law. Clearly the idea of the sacredness of the law is far younger than primitive Aryan institutions."

The writer then suggests that the development of case-law, and of a body of men who expound the law, do not necessarily produce confusion of ceremonial law with secular. The critical factors here he thinks to be the right of appeal, and the stability of political organizations. "If the government be unstable, the monarch vacillating, the dynasty frequently changed, and social organization poor, the interpreters of the law may be eventually almost dictators: and if the sacred authorities continue to have some prestige after secular authorities are swept away, the very necessities of the situation may compel this class to render decisions upon cases and in accordance with principles heretofore unfamiliar to them. Sheer necessity, again, would bring about their compilation of hand-books for their use, in which the old secular law and their own sacred code would be strangely intermingled. Such a work, by reason of a lack of minute technical familiarity with the secular law of the past, might be expected to contain whatever the compilers could find upon the subject, without much regard to the age of the matter in question: and hence incongruous or even contradictory enactments might creep into the hand-book; while the modern student would be impressed with the idea that ritual was much more modern, and more highly developed, than the secular law. How critical a factor in literary compilation the loss of political independence would be, if accompanied by the perpetuation of old social and sacred institutions, will readily appear."

Mr. Godbey concludes then, that a law for secular life is considered sacred only because the administration of the law has finally passed into the hands of the sacred class, who claim for their decision the same prestige that is claimed for their authority in ceremonial matters. Also, that this confusion of functions is responsible for the stressing of ritual at the ex-

pense of justice, and *vice versa*. The secular lawyer and the ritualist naturally magnify their respective fields of activity.

As historical illustrations of this development of law, Mr. Godbey suggests Brahminism, the Brehon law of the Celt, and the development of the Catholic Church. "When the empire of Rome went down before the barbarians, the great bishops of Rome stepped into the breach. They overawed the barbarian horde bent upon plunder and sent it away. They helped to make provision for the famished and panic-stricken multitude. Without thought of self-aggrandizement at first, they labored for many needy secular interests; and all this time Rome was in the world's thought the center of law. In consequence, by the time order was restored, and society could be called stable once more, the great bishops of Rome surpassed in prestige and power the secular princes. The rest of the tale is familiar: we know how the sacred courts actually supplanted or absorbed the secular courts in some places, or claimed superior authority in others. But Rome represents the arrested development of the tendency we are considering. The empire fell too early. The Church was too young. The incoming hordes had not been assimilated in language, law, and institutions ere the task of dealing with them was thrown upon the Church. The work was too multifarious. The Papacy, however, all but succeeded. The final stage could not be reached: there was no literary fusion of civil and sacred law. The Church produced her Brahminism, but could not attain Menu."

This finds a certain parallel in Hebrew history. The returned exiles find themselves without able secular leadership. The king and the judge have disappeared. It is the hour for the priest and the rabbin to wax strong at the expense of the older secular authorities: the Sanhedrin is the analogue of the Papal Curia. Yet the evolution was not premeditated. Ezekiel in Babylon compiled a code; but he did not make one for secular life, though Babylon afforded precisely the material needed. Clearly he did not think of secular law falling within priestly functions. The pre-exilic priest is continually assailed by the prophet, because he does not instruct the people in secular righteousness. The secular law has no sanctity in the popular mind. When religious rites are observed most minutely, the prophet still cries aloud and spares not. The secular law is not of divine command: it consists of decisions and customs, and has grown up apart from the religious code. It is not surprising then that post-exilic compilations by priestly editors, devised for Palestinian necessities, contain rather primitive legislation. Ere this could be highly developed, the Jew was again under some one else's civil law. The literary *potpourri* remained.

Much more then must be conceded to the period of the Judges, in Mr. Godbey's opinion, than has been usually hitherto. The fundamental principles of law in an agricultural community are developed very early. Questions arise daily, and a *modus vivendi* is imperative; and such will be attained more speedily if the change from nomadic to agricultural life take place through settlement among an older agricultural people. The influence of older institutions is inevitable. The prophetic complaint at this point is familiar. Hence the name "Judges" must have been given to the great leaders of this period of settlement, because of an ineffaceable impression upon the minds of the people that this was their great civil-law making epoch. Could all decisions of these early leaders have disappeared, or been

easily displaced? For they would rank in their own day as our decisions of the Supreme Court rank.

Mr. Godbey then points out that the "Book of the Covenant" of critical scholars contains a "Book of Decisions" (Ex. xxi-xxiii) that this code pertains to an agricultural people, knows nothing of commerce, knows no king, has no highly developed ritual or priesthood; it has not the refinements of sacred architecture: it has only three simple agricultural feasts. The criminal code is primitive; there are none of the peculiar interests of city life; woman seems viewed as a chattel to some extent. The writer concludes:

"We have next to inquire if there is any body of men known to us who were more concerned about 'the decisions and the consuetudinary law' than about the sacred ritual. To ask the question suggests the answer. Should we endeavor to be more specific and indicate a definite person, we should say that a member of such party who had himself been a judge would be decidedly best fitted for the task of compilation; and he could give the civil law of the people, the manner of the kingdom, as definite a trend as the priest gave to the ceremonial law. Whether he would have done so would depend upon circumstances. Had he been cognizant of an attempt of a priestly clique to take the leadership, and of much consequent corruption against which no small effort of his own was directed, it seems improbable that he should have neglected to make any provision for such emergency. If we are told also that his sons were noted as not walking in his ways, there would be reason to think that his principles or decisions were becoming fairly well known to the people. And in view of the complaint of the people, their desire to have a definite crystallization of the results of past growth, it seems probable that the retiring judge would have made provision for his successor, that the latter might be able to walk in his ways. A handbook of his own precedents would have been of first importance. And when we add the popular tradition that he did write such a book (and there seems no good reason to discredit the tradition), we may surmise that the main elements of this 'Book of Decisions,' if not the entire collection, were compiled by Samuel the prophet. Finally, he is the great father and ideal of the prophetic party, who are ever insisting upon 'the decisions and the consuetudinary law': and he must have been associated in the minds of his successors with their great body of law."

DHARMAPALA'S MISSION IN INDIA, AND HIS LECTURE IN ALBERT HALL, CALCUTTA.

The Anagarika Dharmapala is doing his best for the elevation of India. Though he is a Singhalese from Ceylon and not a Hindu from the valley of the Ganges, he takes a great interest in the country which gave birth to Buddha, his master and teacher. Having seen the enormous benefits of a thorough and scientific education, the Anagarika has decided to found a school in Isipatane, Benares, in which he proposes to teach poor children such arts and crafts as will enable them to become self-reliant men and women. We have before us reports of Indian newspapers discussing his plans and recapitulating an address of his, delivered on this subject in Albert Hall, Calcutta. For an explanation of his arguments and plans we give a résumé of Mr.