vention with a rigid consistency that went beyond the example of Britain where one branch of the legislature still remains a court of appeal. Each one of the three departments proceeded from the people.—*Bancroft, Id. par.*13.

The manner in which the due administration and application of charitable estates is secured, depends upon the judicial institution and machinery of the particular government to which they are subject.

This statement is certainly clear enough; and in view of it, it is proper to inquire, Why then should the court find it necessary to go to the judicial institutions and machinery of the governments of Europe, and even to that of Rome which has been dead more than twelve huudred years? However, instead of adhering to the judicial institutions and machinery of our owu government, the court in the very same paragraph proceeds as follows:

In England, the court of chancery is the ordinary tribunal to which this class of cases is delegated, and there are comparatively few which it is not competent to administer. * * There are some cases, however, which are beyond its jurisdiction; as where, by statute, a gift to certain uses is declared void, and the property goes to the king. In such case the king as *parens patriæ* [parent of the country or father of the people], under his sign manual, disposes of the fund to such uses, analogous to those intended, as seems to him expedient and wise.

Now in this country there is no king; nor is there anything anywhere among the institutions of this country that can fill the place, or exercise the office, of *parens patriæ*. Here, instead of the Government or any part of it being the parent of the country or father of the people, the case stands just the reverse. The people are the parents of the Government and everything in connection with it. To secure the inalienable rights of men this Government was established, deriving its ust power from the consent of the governed, and whenever the form of government which was established by the revolutionary fathers becomes destructive of the ends for which it was created, "it is the right of the people to alter or abolish it and to institnte a new government, layiug its foundation on such principles and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness." So that, in this government, and according to American doctrine, there is no such thing as *parens patriæ*, and there is no place for such a thing, even if the thing should be proposed.

Therefore, as there is in this government, neither king nor *parens patriæ* to which the property in this case might go, it follows logically from the previous statement of the court (that the administration and application of the estate involved, depends upon the judicial institution and machinery of the particular government to which they are subject), that the decision of the territorial court should have been reversed and the money involved restored to the individuals to whom it belonged. Such is the logic of the case, according to the principles and institutions of the Government of the United States. But this logic was not followed. Instead of it, the court proceeded to create and establish a sovereign power, and clothe it with the office of the parent of the country and the father of the people.

The Court first quoted a number of decisions, Roman, Spanish and English, to sustain the principles which it had adopted from Rome and England, every one of which is of course strictly in accord with the character of sovereignty and paternalism which is part and parcel of all those governments; but not one of which is applicable under American institutions, nor can be sustained according to American principles. Then the decision says:

"The authority thus exercised, arises in part from the ordinary power of the Court of Chancery over trusts, and in part from the right of the government or sovereign as *parens patriæ*. * * * If it should be conceded that a case like the present transcends the ordinary jurisdiction of the court of chancery, and requires for its determination the interposition of the *parens patriæ* of the State, it may then be contended that, in this country, there is no royal reason to act as *parens patriæ*, and to give direction for the application of charities which cannot be administered by the court. It is true we nave no such chief magistrate. But here the Legislature is the *parens patriæ*, and unless restrained by constitutional limitations, the Legislature possesses all the powers in this regard which the sovereign possesses in England.

This at once creates a sovereign power and clothes it with paternal authority. And if this doctrine shall be maintained, so that it becomes a principle of American law, and shall become established as a principle of government here, then the revolution backwards is complete; government of the people is gone; and that of a sovereign parent of the people is put in its place. Then the doctrine of the Declaration of Independence and of the Constitution of the United States is subverted and the doctrine of sovereignty, absolutism, and paternalism, is established in its stead. Theu also Bancroft's history in the place above cited, will need to be revised so that it shall read as follows: "Is it asked who is the sovereign of the United States? The Legislature is the sovereign and the people are subjects."

To prove the correctness of its position the Court quoted from Chief Justice Marshall, in the Dartmouth College cases, the statement tbat "By the Revolution, the duties, as well as the powers of Government developed upon the people." This is true enough, but it is particularly to be noticed that the Court has made these devolve upon the Legislature. It is a singular piece of logic that would prove that certain powers devolve upon the Legislature, by citing a passage which declares that those powers have devolved upon the people. Again, the Court quoted a statement from Chancellor Kent, that "in this country the Legislature or government of the State as *parens patriæ* has the right," etc., and furthes from Justice McLean, that "when this country achieved its independence the prerogatives of the crown devolved upon the people of the State." Justice McLean's statement like that of Chief Justice Marshall's is strictly correct in saying that these powers devolved upon the people. But that of Chancellor Kent, like some other legal expressions of his, is utterly false and contrary to American principles. Among American institutions there is no king, and aside from the people there is nothing that corresponds to a king. And even in the people all that corresponds to a king is in the individual; for each individual American citizen is sovereign and king in his own right.

Again, the Court says:—

This prerogative of *parens patriæ* is inherent in the supreme power of every State, whether that power is lodged in a royal person or in the legislature.

But in this country the supreme power is lodged neither in a royal person nor in the Legistarure; but as stated by Bancroft, in the law alone, and in the Constitution that supremacy is defined.

It is true that the decision of the Court is qualified by the expression, that "unless restraint by constitutional limitations, the Legislature possesses all the power in this regard which the sovereign possesses in England." But this is another instance of the reversal of the principles of our Government. This argues that the Legislature is already in possession of power, and can exercise that power to the full, unless it is restrained by constitutional limitations. Whereas, the truth is that the Legislature has no power at all, is possessed of no authority at all, and can exercise none except as it is granted. The Constitution plainly declares "The powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively, or to the people." The expressed doctrine of the Constitution is, that the powers not delegated are reserved. The doctrine of this decision implied, if not expressed is, that the powers not prohibited are possessed. This in itself would be sufficient ground upon which seriously to question the correctness of the decision but there is laid against it, by the Chief Justice, the additional evidence that the Legislature is restrained by the very constitutioual limitations suggested by the Court.

The Chief Justice, with Justice Field and Lamar concurring, dissented from the decision. In his dissenting opinion he speaks as follows:—

In my opinion, Congress is restrained, not merely by the limitations expressed in the Constitution, but also by the absence of any grant of power, expressed or implied in that instrument. And no such power as that involved in the act of Congress under consideration is conferred by the Constitution nor is any clause pointed out as its legitimate source. I regard it of vital consequence, that absolute power should never be conceded as belonging under our system of government to any one of its departments. The legislative power of Congress is delegated and not inherent, and is therefore limited. I agree that the power to make needful rules and regulations for the Territories necessarily comprehends the power to suppress crime; and it is immaterial even though that crime assumes the form of a religious belief or creed. Congress has the power to extirpate polygamy in any of the Territories, by the enactment of a criminal code directed to that end; but it is not authorized under the cover of that power to seize and confiscate the property of persons, individuals, or corporations, without office found, because they may have been guilty of criminal practices.

The doctrine of *cy-pres* is one of con-