THE

ENGLISH PARLIAMENT

IN ITS TRANSFORMATIONS

THROUGH A THOUSAND YEARS.

BY

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TRANSLATOR'S PREFACE.

FOREMOST among the earnest investigators of our Parliamentary and Constitutional system, stands the learned Author of the work before us. It has been written mainly with the view of inducing in the minds of his own countrymen a better and fuller knowledge of English State-organization. He has aimed at showing that the misconceptions prevailing on the Continent, with reference to the Parliament and Constitution of England, have arisen from a want of due knowledge. The notion had hitherto been fostered that the framework of our Parliament and parliamentary government might be transplanted bodily, and adopted straightway by any other State. The fact that a thorough knowledge was needful of the whole system, no less than of the entire administrative law and communal organization, whereon, as upon a stable foundation, the whole superstructure is raised, had been wholly kept out of account. Statesmen and public men alike, wanted to begin at the end, which seemed a far shorter and easier way towards achieving the attainment of that long-acquired political freedom which we are privileged to possess. The learned Author has, mainly

in the interest of his own countrymen, amply demonstrated the ample theme that "our Sovereign had a great Council, partly traditional and partly elective; that like the Crown itself it was partly hereditary, but was also partly elective, so as to give popular will perpetual and full expression; that the House of Lords gathered into its folds all the highest intellect, culture, and experience—civil, military, and naval; that the House of Commons, adequately represents the meaning, the will, the needs, and the desires of the people at large; that our Parliament is not a manufacture, but a growth, like the old oaks of England, which of late had spread their roots wider than ever—and was, therefore, a pledge in itself as the centre of the integrity and solidity of the British Empire."—(*Cardinal Manning.*)

In nine chapters, or "Essays," as the Professor modestly styles his labours, he presents "a varying picture of the Parliament which, looked at externally, might be the Parliament of so many different nations, and yet when regarded from the administrative point of view, and from that of communal life, is pervaded by a unity unparalleled."

Though not assuming to be strictly scientific, the author does follow, however, the scientific method adopted in Germany in the treatment of history, *i.e.*, of showing how one event, or group of facts, leads in natural flow, or inevitable sequence, to another, in one long enchainment, and traceable, link by link, until the last is reached. He tells thus the story of the Parliament, describing it in its origin, life, and progress, portraying the reciprocal action continually going on between State and Society, Church and State, Constitution

and Administration, throughout the whole range of the life of the nation.

With ancient Record or modern Statute in hand, he traces the course of events, leads the reader step by step, as through a living panorama, and revivifies, as with magician's wand, the personages who have *made* history, who have struggled and striven and bled, to achieve the liberties that are now possessed through the Parliament and in the Parliament. Foot by foot the learned author tracks the sweet steps of liberty even to our days; with the weight and voice of authority, he clearly shows that as it has ever been the scope and purpose of Parliament to safeguard liberty, so has it now become its instant aim and endeavour, "to combat the wild spirit of democratic licence by the regulated spirit of organized liberty, such as may be found in a limited monarchy with a free Parliament" (*Lecky*)—mindful of the doctrine, "non omnis arctatio privat libertatem, nec omnis districtio tollit potestatem." *Political Poem of the 13th Century.* The remarkable saying of the late Prince Consort, uttered many years ago, to the effect that "Representative Institutions are upon their trial," might well fill the mind with apprehension lest it were now in course of being realized. But amid the warring of principles and the chaos of opinions prevailing, in presence of the perils that threaten and the crises impending, one may well take heart of grace, while bearing on the tablets of memory the lofty teaching that "there is a Divinity which doth shape our ends, rough-hew them as we may."

The world of readers and students will be advantaged

by having presented to them in English garb by the hand of Dr. A. Hamann, M.A., late Taylorian Teacher in the University of Oxford, the Introduction. Written from a German point of view, and intended for the German intellectual world, possessing forms of thought and expression readily appreciable by Germans, but not so wholly within English grasp, it was deemed that through the friendly co-operation of an eminent scholar, who by a long sojourn in England and full acquaintance with the institutions, might well be thought amply qualified, a clear rendering of the aim, scope, and purpose sought to be conveyed by the Author would be best afforded. How competently this has been carried out the reader will be best able to determine, while acknowledging the benefit conferred.

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INTRODUCTION.

Parliament as connecting-link between State and Society.

THE time is past when the Constitutions of France or England were regarded by Germans as universal models. When we attempted to imitate them in practice we arrived at the conviction that the institutions of foreign countries cannot be adopted without modification. But ever ready as we are to acknowledge what is good in foreign nations, we should, when advanced to the political constitution we now enjoy, never forget how much we have owed to those examples, and that one or other fallacy, as, *e.g.*, the political doctrine of the "division of powers" has been even productive of more good than evil. And there can be no doubt that a comprehensive knowledge of the French and English Constitutions are of great importance for the further development of our own State, since the uniform constitution of either of those great centres of civilization, reveals to us with far greater certainty the laws on which it is based, than does the German body politic, with its countless varieties of individual development.

The English Constitution is, by its national character, more closely allied to us Germans, and hence especially adapted for our purpose. But to attain the end in view we require an insight to the whole of that organism, in which the bounti-

ful development of the English administrative law, and the principle of "self-government" upon which it is based, are as essential as their combination in Parliament. Such thorough knowledge of the English Constitution is no doubt better adapted than the history of any other State to promote that "practical" view of politics which is so much in favour at the present time.

For centuries past, the civilized nations of Europe have striven in rivalry to apprehend out of the "nature" of man the true character of the "State." Every inquiry that started from this side came to the result that man, as a rational being, was free and equal to his brother-man. But whenever this theory was carried into practice, it soon became equally evident that the same individual, looked at from another aspect, was not free and not equal to his fellow-man. Nay, all theories that based the State on a so-called "public contract" (*contrat social*), as well as those concerning the equality and common brotherhood of men, (*liberté, égalité, fraternité,*) resulted in grievous disappointment, so that for a time all arguments about "natural right" were discredited, and some people began to talk of reverting to a retrogression of science instead of undertaking to lead it onward, namely, to a deeper investigation of that human nature, of which political philosophy had kept in view only the aspect of free will without taking into account the determining influences of the outer world.

The present development of the States of Europe has, through mighty catastrophes, advanced the growing consciousness of mankind one important step towards a recognition of the truth that man is not only a rational and moral, but at the same time an animal being; that this double nature was intended by Providence—and is innate to man, and for that reason it appears also in human society, and that consequently the State also can

only be explained out of this double nature, if we would understand it in its organic connection with Society.

As an *animal being*, man is, in the first place, endowed with various individual peculiarities proper to his race. But the existence of all men, without exception, depends on the satisfying of a number of external wants, in fact, more than that of any other created being; there is none whose childhood is so weak, so long, so helpless, whose maturity is so hard to be contented, whose old age is so helpless and so full of suffering.

To satisfy these wants man depends on the bounties of the nature that surrounds him, and in order to make use of these, on the co-operation of his fellow-men. With every progress of civilization the quantum of those bounties and of those human forces which the man of our own day requires in order to exist in his higher stage of development, has been multiplied. Accordingly every individual is animated with an unconquerable longing to acquire and to possess those external bounties and to command those human energies which subserve his wants. In the acquisition, possession, and enjoyment of these riches, intersecting circles form themselves in the community of men, representing, so soon as a nation settles down in a fixed home, a powerful organism which, in this narrowly-defined sense, we term "Society." In this Society there reigns supreme that unchangeable principle in the world of material endowments, viz., the dependence of the poor on the wealthy. Such dependence is the unfree element in every State, and it produces that everlasting conflict of interests which strive, on the one hand, to strengthen and to intensify that dependence, and, on the other, to dissolve and to annul it. And thus arises that desire of the wealthy classes of the population which we find prevailing in every kind of political community, namely, by exercising their influence over the ruling authorities, to exclude the poorer classes from

acquiring wealth by means of various legal restrictions, such as laws against alienation of property, and by the formation of close guilds, monopolies, &c.

So long as there survives in the wandering tribe the consciousness of a common descent from one "common ancestor," the paternal authority of the chief suffices to uphold the hereditary constitution of the community. State and Society are as yet undivided. But when the tribe settles down in a permanent home, that organization of Society begins which gradually develops into what is generally called "State." The primary settlements are the work of families which take up permanent quarters in adjoining localities. In proportion as these settlements develop into village communities, the idea of private property grows up by degrees. Whilst the soil is still regarded as a common possession, the notion of separate property takes its rise in the household tools and furniture, the stables, the farmyard, and goes on extending in an ever-widening circle. It satisfies an urgent, continually-increasing want; for, as population increases, as the standard of life rises, the necessaries of life can no longer be produced through a system of farming conducted in common. And for the same reason, private property becomes irrevocable.

But coincidently with such individualization of property, the inequality of ownership gets developed. It is the result of force, skill, family connection, and of hereditary right. Henceforth, those settlers, who were originally equal, appear divided into classes, a division which continues in the families and descends from generation to generation, so that the descendants are irresistibly drawn into the sphere of existence of their ancestors, and are there held fast. And every kind of possession, begets its special kind of dependence. But the possession most common in the Middle Ages, viz., that of landed property, begets the most durable dependence, and,

at the same time, the most successful attempt to secure and to increase it. It was for this reason that among the national strata of populations deposited in the countries of Western Europe by the great migration of nations, the social principle prevailed in its crudest form, as a right of class over class, of the most absolute character, as a dependence on the part of the non-possessing, in ever-increasing intensity. Poetry and legend, the history of the customs and manners of the time, as well as the "*leges barbarorum*," afford evidence of the deep chasm that yawned between the two great classes of the populations, and of the ruthless nature of that dominion of class over class.

But in the midst of this social tyranny we see emerge its most effectual remedy: *Christianity*.

The consciousness of the existence of God is as deeply rooted in human nature as the strongest social interest. Man feels that he has been created by God, not only for his own good, but also for that of his fellow-men. Aristotle already declared that it was "easier to conceive a city without a house, than a State without the belief in God." Antiquity bequeathed to us the Ten Commandments as the foundation of our moral code. But with the higher commandment addressed to the inner man: "Love thy neighbour as thyself," Christianity opened a new epoch in the history of mankind. A sudden outburst of religious feeling in a moment of inspiration, or of deep emotion, is, however, not sufficient for the needs of human life; for the inclination of self-interest to form selfish resolutions is ever active. The check of a moral sense of duty will not be efficacious unless it is understood to spring from an absolute, a divine commandment. It is this consciousness alone that enables man always to follow in his resolves the narrow border-line between interest and duty, and thus to obtain that sure impulse of the will which we term "character."

But even from this point of view, isolated man appears unable to attain his destiny. As in his material wants, so also in his moral development, he depends on the family, the community, and the nation, in order to translate his consciousness of God into acts. In this community of men his religious feeling, in order to assert itself aright, requires the organism of a "Church," ; it needs permanent institutions which afford religious instruction and spiritual assistance, and enable him to practise those human duties which invisibly but effectually alter and improve the character of Society.

This inner remedy prompts, further, the human will to assert itself in the outward forms of *State* and *Law*.

As in every crisis the resolutions of man turn on the necessity of reconciling duty and interest; this direction of his will asserts itself also in his dealings with other men whenever his resolutions, transformed into acts, affect the sphere of the will of his fellow-citizens, their person, their family, or their property. This is the origin of *Custom*, as the self-appointed (autonomous) standard of the life of men in Society. But passion and selfishness overstep this line of demarcation and compel Society, from experience, to submit to an order of things which is able to enforce obedience to its rules. The patriarchal unity once dissolved, the settled-down populations assume to themselves an organization of a republican cast and under magistrates freely-chosen.

In this stage arise the first forms of popular assemblies, the first institutions which enforce obedience to the commands of the magistrates, and that customary law which develops out of the legal instincts of Society.

But the more a people is, by character, prone to violence, the more is it in need of a strengthening of the authority of its magistrates, after the pattern and example of the

Church. As the oppression of the weaker classes by the richer increases, the magistrates freely-chosen, begin to prove insufficient to maintain right and peace. Thus the republican constitution continues to endure, only where a common and free possession has remained the material foundation of the Commonwealth. But where, on the other hand, the German tribes were mixed up with Romanized populations, or where, from the manner in which the original occupation took place, there arose a marked inequality of possession, there a "kingdom hereditary" has developed itself. The offices of chief leader of the "host," of highest judge, and of supreme liege lord, got permanently united in one family. In such hereditary king, the idea of the State found its permanent embodiment, independent of all dominating influence on the part of the wealthy classes. His office became the steadfast mainstay of an organized body of executive officers, and of a legislation overriding the narrow interests of the ruling classes.

It is true that on the Continent of Europe the consolidation of the principal nationalities under their respective dynasties only increased for the moment the struggle for political hegemony, which at last comes to a close about the beginning of the 9th century, with the recognition of a common paramount king, and a common paramount bishop. The united Empire and the united Church were the common bases whereon the international law and the civilization of the Continent developed themselves, in slow but general progress.

So far, the legal and political development of the German settlements in Great Britain had followed the course taken by those on the Continent. But in consequence of the Norman Conquest, (1066,) the Royal prerogative achieved so extraordinary an increase of power, that in England the

period of absolutism came about in the 11th and 12th centuries already, and modified, in a very striking manner, the relation of the wealthy classes to the Crown. The relation of State and Society, of Church and Society, of Church and State, was very similar in Germany and England, but, in the latter country, the periods of greater or less power of one or other of these factors followed one another in a totally different *order;* and hence the cause of the principal differences obtaining in the German and the English Constitution.

The organic *connection of State and Society* has also resulted in England from the fact that the State always requires the energies, the personal services, and the wealth of Society. But the heavier of the burdens which the State imposes can only permanently and safely be borne by the higher classes of Society, and these burdens weighed far more heavily on the wealthier classes in those days than in our own time, since, in the Middle Ages, the produce of the soil was the sole standard of wealth and the only source of revenue. The greater landed proprietors, and the lesser owners who hold between three and five hides of land, having to bear the entire burden of equipping, training, and maintaining the military forces, enjoy, as a matter of course, the position of "*optimates*" or "*meliores terræ.*" They are, moreover, indispensable for the periodical duty in the quality of law-men in the greater popular assemblies, for finding the verdict, for keeping the king's peace, &c. From such condition of things there results, in Anglo-Saxon times already, a highly-influential position of these *optimates* in the assemblies, and, correspondingly, an aristocratic organization of the county.

The Norman Conquest broke through this connection, and subjected the Estates of the Realm, together with the privileges they had already secured, to a well nigh absolute kingship. The legislative assemblies disappeared, and the local self-government got transformed into a provincial administra-

tion by Royal prefects (bailiffs). But this omnipotent Royal prerogative brought about a result which was not foreseen. Subjecting the totality of free property to equably graduated services to be performed in the army, the law courts, the police, and in the paying of taxes, it laid, through such services exacted from the higher classes, the foundation of the sturdiest aristocracy in Europe. Conscious of the justice of its claims, and borne up by the identity of interests of all the propertied classes, the nobility, ever since the passing of the Great Charter, rose against the absolute power of the king, obtained a share in the constitution and administration of the State, and, in acknowledgment of such participation, henceforth inevitable, the monarchy, since the reign of Edward I, accorded to it its fair and equitable position in the English self-government.

Whilst thus the just influence of property was sufficiently guaranteed, the Royal power, on the other hand, was strong enough in England to keep in check the social aspirations towards changing the ruling class into a caste. The frequent change of owners of the larger estates, and the prevention of the formation of inalienable lordships, checked the rise of a higher nobility, which did not appear in England as a hereditary order, before the end of the Middle Ages, and then only in small numbers. The alienability of Knights' fiefs and the gradual abolition of manorial jurisdiction barred the rise of a lower nobility, which did not appear before the age of the Stuarts, and then only in modest numbers, and without political privileges. Inasmuch as in the boroughs also, police administration was in the hands of Royal Justices of the Peace, the development of close guilds became an impossibility; and, indeed, only in a small number of towns is the local government actually in the hands of the guilds. Whilst some moderate restrictions on trade are found to exist in boroughs, freedom of trade remains as a principle of the common law.

The same Royal police administration, setting aside by degrees the exercise by the lords of the soil of manorial jurisdiction, maintained the right also of change of residence at will, and prevented any further development of serfdom. The strong judicial power of the king held together all classes of Society under one law and jurisdiction, under one right of family and of property, and prevented the inauguration of a separate birthright, in respect of knights, citizens, and peasants, severally, as on the Continent. But the loss of such separate class-interests, was the gain of the commoner class as a whole, (*communitas*,) and thus the counties and boroughs similarly organized obtained that firm cohesion which was the cause of the ever-increasing share taken by the House of Commons in the business of Parliament. The energetic and independent activity of the higher and middle classes, the persevering fulfilment of the duties of law and charity undertaken by the Commonwealth, the self-control and loyalty which grew up in the habitual fulfilment of public duties, begot that power of resistance which gloriously overcame the absolutism that had returned once more under the Stuarts. Such massive groundwork, whereon the structure of the English Parliament rests, attained its greatest strength at the end of the 18th century, but it has been shaken and become loosened by the intrusion of the new social elements of modern industry, and is thus forced into the new developments of the 19th century. Owing to this new movement, we see England at the *end* of this our century, in a position somewhat analogous to that of the Constitutional States of the Continent at its *commencement*.

The organic *connection of Church and Society* springs from the necessity of securing to the chastening influence of religion, the permanent power it should exercise on the life of the people. In order to take root by medium of religious teaching, through cure of souls, through charitable and humanizing institutions, among a people selfish and hard-hearted, the

Christian priesthood needed to be endowed with a permanent revenue arising out of landed property, to be incorporated, and to enjoy an exalted position among the wealthy classes of the population. And as the increasing intercourse of the nations of Europe in the Middle Ages brought about a uniform development, the Mediæval Church became a Church universal; a divinely-appointed order, exalted above the secular states. For this reason it appeared to the people of the time a power superior, to the point that Christianity became an inherent and vital element of the Commonwealth.

The Anglo-Saxon colony on British soil received at an early period, and with enduring fervour the principles of Christianity; but from the outset it showed a remarkable resistance to certain peculiarities of the Roman Church, especially to the "worship of images" and to the celibacy of the secular clergy. True it is that the Norman Conquest enforced an external conformity, but already at the framing of the Great Charter the national character of the English Church became distinctly prominent, and proved so strong that it not only absorbed the discordant Norman elements, but, in the dispute between King and Pope, asserted an uncommon degree of independence.

But the like social influence which, so long as it progressed, enabled the Church to fulfil its great mission, became a danger to the Church through the social interests of the individuals through whom the divine idea gets realized. The rich endowment of the Church at the time of its foundation among the newly-converted people, the steady increase of these possessions through the influence exercised by the clergy on the dying, the maintenance of this wealth in mortmain, the position of the Prelates at the head of the ruling-class, gradually made worldly possession and power the main purpose of clerical endeavour. Since the 13th century the divine vocation of teaching and preaching, of guiding and comforting the

people was abandoned to poorly-paid vicars and to mendicant friars, whilst the vast estates of the Church, rendering it more and more associated with the secular nobility, served to sustain the clergy as a ruling-class. The wealth, aggrandizement, and dominion of the Church then, its chief objects already in the 14th century rendered the Papal governance so worldly and depreciated, that even in England part of the clergy and laity became estranged from the Church of Rome. From love of power, the religion of love and charity had thus become transformed into one rather of discord and persecution. At the beginning of the 15th century (1401) the first heretics were burned in England just when the Church had well nigh surrendered its religious character. Instead of the former cohesion, we now perceive a growing dissension between clergy and laity, which was increased by the foundation of a separate clerical Parliament (Convocation). In the terrible struggles of the 15th century, the Church as an institution seems stripped of moral influence. The Reformation of the 16th century, forced upon the nation by the king, was unable to restore the old sympathetic touch between Church and laity, until in the reign of Elizabeth, after severe trials, the Reformation became a living force, and struck deep roots in the heart of the people of England. The Church became once more a bond of union for the nation, intimately interwoven with the laity in the House of Lords, in the administration of the office of Justice of the Peace, in the management of the affairs of the parish, and through Church patronage. Yet the English Reformation was originally a work so superficial, that the dissenting elements, kept down by main force, played once more an important part in the civil wars of the 17th century. Only after long and severe struggles, and fostered further by the vain attempts of the Stuarts to bring about a Catholic reaction, did the Anglican Church gain an intimate connection with the life

of the nation. At the beginning of the 18th century it comprised, with unimportant exceptions, the entire population of England and Wales, and was bound up once more with the most vital interests and the ideas of the ruling classes of Society, being admittedly at the same time exposed anew to the peril of worldly-mindedness and ambition. In the 19th century, the clerical side of the groundwork of the parliamentary constitution has been still more shaken and unsettled by the rapid increase of Dissent, by the emancipation of the Presbyterian, the Roman Catholic, and other denominations, and thus has a new problem of legislation originated, which Germany had to tackle already two centuries ago.

The organic *connection between Church and State* which appears in the England of our day as a new problem, had been a reality during the Middle Ages, having been attained through the subjection of the States of Western Christendom to the Papal chair. When the great pact was made between Pope and Emperor at the beginning of the 9th century, the island of Great Britain, it is true, held aloof, but after the Norman Conquest it conformed, and under John it even submitted to a solemn recognition of the suzerainty of the Pope. An attempt to unite the Lower Chamber of the House of Convocation with the House of Commons proved an absolute failure, and only increased the estrangement which had begun to set in, in consequence of which the Catholic clergy could interpose but a weak resistance to the introduction by an arbitrary monarch of the Reformation. By the declaration of the Royal supremacy, the old conflict between "*Imperium*" and "*Sacerdotium*" was apparently settled, yet by so superficial an expedient, that a strong body of Dissenters rose up against the Royal supremacy, and even turned the scales in the political struggles of the 17th century. After many alternations of fortune, peace was at last

established at the end of the 17th century, and the harmony between the King in Parliament and the Church was restored in the course of the 18th century. A united Church in a State united was henceforth established as the fundamental principle of English parliamentary government, which has, however, experienced a rude shock in the 19th century through the successive emancipation of the other denominations.

In presence of a plurality of Churches, enjoying equal rights, England too has now to learn that religion, inasmuch as it is the strongest bond of *union* for the society of men, may become the strongest element of *discord* in the State; and that consequently the State is under obligation to set certain legal barriers to the autonomy of the conflicting Churches, and to establish some new and general institutions, with a view to preserve the unity of the moral and intellectual development of the nation.

Out of the reciprocal relations of these elements of national life arose, "as highest Council of the Crown," the Parliament of England, which found itself alike in its relation to the Crown, in every century in a different position of right and might. And yet people have fancied to fashion out of fragments of this constitution, as it existed in the 18th century, a universal ideal of a representative constitution, attempts which, under conditions totally different could only result in an imitation of the outward uses and abuses of the English Parliament, and which have brought about fatal misconceptions, from which European nations are still suffering.

In order to get beyond a barren discussion, *pro et contra* "Parliamentarism," the author has endeavoured all his life through to convey a clearer exposition of the two hitherto neglected phases of English political life, viz., the "History

of English Self-Government," [iii. ed. 1871,] and the "History of English Administration," [iii. ed. 1883-84,] and to combine these in a "History of the English Constitution" [1882]. The third chief part of English political life, viz., the Parliamentary Constitution, might have been made over to younger men of learning after the building material for the whole fabric had once been collected and was ready to hand. Such a revision by some competent authority on the subject would have been highly desirable as a test of the fairness and justice of the body of evidence gathered from those two sources by the author. But inasmuch as his hope has, as yet, not been fulfilled, the author has undertaken this third task also, which he has endeavoured to carry out, for the time being, in a short and popular form. The constitutional history of a great nation is in itself difficult to narrate, but it may, even without the complicated apparatus of a strictly scientific work, be brought in an intelligible manner before an educated public.

The narrative thus simplified, brings before the reader in nine essays, a very varied description of Parliaments which, to a superficial observer, might seem to be Parliaments of different nations. Yet there prevails in them an inner unity of which there exists no parallel, when we contemplate them in connection with the administration of the country and of the *communæ*, which has been imported here from the "History of the English Constitution." Concentrating then our inquiry on the form and position of the Parliaments, we shall see appear precedent after precedent in legal connection, which will explain difficult problems that had hitherto remained unsolved, and which had been regarded in England as insoluble.

In this biography of the representative assemblies of a great and highly-gifted nation, which often reveals its true character by slight traits, an inner unity and continuity manifest themselves throughout the course of a thousand years, as

if these were but nine days in the life of a man of worth, who through all the trials and errors of his mortal life remains true to his nature and to his convictions. But in order to arrive at this result we shall have to discard the traditional method of treating English Constitutional History. The English habit of thought which connects the History of the Constitution with parties and individuals, sufficed so long as the fundamental conditions of the parliamentary constitution were supposed to be fully understood and were taken for granted. Such fundamental conditions, however, no longer exist, in consequence of the fundamental change that has supervened in Society and in the electoral bodies. We need now a pragmatical exposition of the *institutions* in the living connection of all these reciprocal operations. And thus, by a kind of vivisection as it were, that *organic defect* will appear in the light of day which has developed itself in the English body politic of our own time, and which will render impossible a continuation of that government by alternating parliamentary parties, which has hitherto prevailed. The weather forecast of the approaching future may, for this reason, only point to "storm"—violent, deep-going, long-lasting tempests mayhap —but it points also to a triumph over this new peril. Our hope is justified by the past history of the English nation, as well as by the experience of our own people, which has likewise had to pass through severe crises in order to arrive at its present stage of development. May this biography of the Parliament of England contribute, at a critical moment, to sustain the confidence cherished in the triumph of the good cause.

I.

The Anglo-Saxon Gemôtes.*

TABLE OF KINGS.

EGBERT, 800-836.
ÆTHELWULF, 836-857.
ÆTHELBALD, 857-860.
ÆTHELBERT, 860-866.
ÆTHELRED, 866-871.
ÆLFRED, 871-901.
EADWARD THE ELDER, 901-924.
ÆTHELSTAN, 924-941.
EADMUND, 941-946.
EADRED, 946-955.
EADWI, 955-959.
EADGAR, 959-975.
EADWARD THE MARTYR, 975-978.
ÆTHELRED THE UNREADY, 978-1016.
EADMUND IRONSIDE, 1016.
CNUT, 1016-1035.
HAROLD HAREFOOT, 1035-1039.
HARTHACNUT, 1039-1042.
EADWARD THE CONFESSOR, 1042-1066.
HAROLD II., January-October, 1066.

AS the beginning of the 9th century indicates the turning-point whence, from amid the rush and hurry of the great migration of races, the political history of the civilized countries of Europe first assumes distinct outlines, so may it in like manner be taken, that the political history of the Isle of Britain dates from about the year 800. All that precedes that period—manifold though the interest to the historian and ethnologist would seem to be—may be regarded, so far as our purpose is concerned, as merely prefatory history, wherein those elements of land and race become embodied under the name of "England," which, in its own characteristic guise, took its stand among the nations of Europe.

The population of the Isle of Britain, mainly Celtic, came first into contact with the Roman Empire through Cæsar's bold campaigns. Some hundred years later, this led to a lasting subjection, and to the consequent inauguration of Roman provincial administration, under which, those of British race who had become submissive, remained purely passive; while the tribes that had kept up their independence preserved their strongly-marked national characteristics, exhibiting stubborn opposition, amid varying fortunes, against Roman and northern invaders alike. The comparatively early introduction of Christianity, and the protection afforded by the hardy Roman legions, had imparted to the conquered portion of the race, certain elements of Roman civilization. The gradual pressure exercised by the great migration on the western portion of the Roman Empire, during the reign of Honorius, severed the legions in Britain from the Empire. Thenceforth (406) and for about seventy years after, Britain, though belonging, nominally, to the Roman Empire, had its own emperors and usurping rulers. But after it had vainly applied to Rome for protection against the invading hordes of barbarians, there ensued a formal disruption from the Empire and the consequent expulsion of all Roman functionaries.

"The spectacle Britain then presented," says Lappenberg,* "is one of the saddest, but withal most striking, in the whole range of history. It was emancipated from the greed of the Roman procurator, and freed from the overbearing arrogance of the imperial cohorts; but not to its own courage, nor to its higher instincts, did the nation owe this freedom, hence that very freedom left them wholly unprovided with protection. Never did a nation so speedily relinquish a cultivated language, which, through many generations, had grown to be its mother-tongue. Never had the Christian religion so quickly and thoroughly lapsed into heathenism and un-

belief. This was the pitiable fate of the land whose nationality, trampled under the heel of the Roman conqueror, had retained no power to withstand its savage foes." On the cessation of the Roman sway, Britain had become a centre of internal feuds, and an object for plunder to invading "hosts," when, about the middle of the 5th century, two northern sea-kings, or chiefs, bearing the legendary names "Hengist" and "Horsa," found a footing, at first, as paid allies and, subsequently, as conquerors. Soon followed smaller or larger bands, of lower-Saxon stock, assumedly from Holstein and the districts of the lower Elbe, invited partly by their fellow-countrymen, and partly coming of their own prompting, to fix upon new settlements and win rich booty. Amid sturdy conflicts with the hardy British tribes and their northern neighbours, the Saxon military invasion advanced slowly into the land and founded small kingdoms which, as "Essex," "Sussex," "Wessex," retain their Saxon designation up to the present day.

In conjunction with these Saxon colonizers must be named the "Angeln," who, from the districts between the Schley, Flensburg, and further ahead, coming, as a self-contained race, with their wives and children, in quest of a permanent settlement, left their native region denuded of population. In the minor kingdoms of North Britain, as "East Anglia" and "West Anglia," this designation continued to exist for centuries, and ended by giving the name of "Anglia" to the whole land, either to distinguish them from the Saxons of the main-land, or from the fact that the "Angles" on settling down, as a self-contained race, had preserved a firm coherence. By their language, they belonged to the great Saxon stock. The assumption that they were of Thuringian origin is based on uncertain data. As third element in the colonization, next came the Jutes, who possessed themselves of the small kingdom of Kent, the Isle

of Wight, and a limited portion of Wessex. Subsequently, these tribes on British soil became classified as "Anglo-Saxons," a designation which is as foreign to popular, as it is to legal usage.

The picture presented by these military colonies during the first two centuries, resembled in some degree the throng and pressure of the great German races on the main-land. There prevailed constant strife for the possession of fertile tracts of land and rich plunderings, during which the weaker members got merged in the great seething mass. The smaller districts having become united into larger kingdoms, strove jealously to attain ascendency, actual or lawful. During their strivings, under influence of the Christian clergy, a general conviction gradually prevailed that peace, well-being, and morality, could only develop, in such a complex of small kingdoms, when the unity of Church, of the armed "host," of the Courts of Law, and the preservation of the peace were secured, under one single kingdom. This became realized under Egbert (800) in the union of the kingdoms south of the Trent, under the name "England." On such basis there occurred, strikingly in contrast with the monarchy of Charlemagne, a series of events which have exercised a characteristic influence on the progressive development of England. By reason of these manifold contests, persisting through centuries—and hence all the more detrimental to the subjected portion—the Britons, having become partly effeminate, and partly lapsed into barbarism, got conquered at last. The settlements dating from Roman times fell into disarray, the elements of old Roman civilization disappeared, and the ancient population got partly dispersed into the mountain regions, partly reduced to thraldom, or lowered to the condition of an impoverished peasantry. The exceptional state of things that prevailed in Western Europe, consequent upon the

admixture of the German with the latinized provincial populations possessing Roman culture, combined with Roman provincial and ecclesiastical organization, was, consequently, non-existent in England. On the other hand, the Conquest had the result of loosening the ties of kindred that naturally bound them to their country. Some of the single settlements were formed, apparently, through the emigration of small tribes, but in the gradual progress of colonization, fresh migrations were carried out, somewhat analogous to the "mark" colonization in East Germany—in consequence of which the older races intermingled, and by means of fresh settlers took further expansion. After the land was taken possession of, there occurred the parcelling-out, the smallest allotment for the free soldier, amounting to a plough-land (*hida, familia, mansus*); and inasmuch as the colony, in the main, found land that had been already under culture, and under Roman provincial administration, the settler regarded not only "roof and holding" as his own property, and heritable, but also the land therewith annexed; the meadow-land, and the right of lopping wood, to be "held in common." An early and well-defined development of individual right of property, as well as of the power of transfer by deed and by will, was soon established. From the time of King Alfred the name "bôc-land" (book-land) occurs, as designating free ownership in land. The land not granted out, remained as "common property" of the dominant tribe, under the name of "folk-land," which, by special grant, might mature into "free-hold."

Individual property in land speedily became the efficient cause of *inequality of ownership*. Already, at the time of the settlement, larger allotments had been made to the numerous chiefs and leaders, and this inequality was carried through later strifes and feuds.

The number of those in the densely-peopled district who,

in the taking possession of the land, had received no allotment, or who, on occasions of inheritances or parcellings-out, remained land-less, continued to increase. To such free-men there was nothing left but to enter into personal service in the household of some tenant-in-chief, or in quality of "settlers," to loan a piece of land ("laen-land") in consideration of "suit and service" rendered.

These loan-lands thus constituted, with services appendant, and in reality hereditary, came to be the normal type of administration in each great ownership. By reason of the ruin, or the surrender of their "loan" by the small tenants, in times of war, the greater ownerships took expansion, and, during times of peace, through the increase of population, or by partition and alienation. The indescribable misery occasioned, especially through subsequent Danish inroads, contributed to destroy the prosperity of the ceorls, and to render the ascendancy of the great land-owners still more marked.

Thus, through the development of individual ownership, the old family-organization of peasants fitted to bear arms, merges into a system of lasting seignorial-right, at an earlier period certainly, and on a more extended scale, than in Germany. The old inheritance of "common liberty," the considerable amount of the "wehr-gild," and the personal protection afforded by law to the "liber homo," pertains still to the land-less man. In every other respect, however, the trenching of the great owners upon the peasant-holder and the down-crushing of the land-less free-man below the level of the common freedom, is brought more and more into prominence.

From this evolution of the conditions of ownership, the conception of the "*kingship*" in England is seen to arise, whereas, in the nearest allied races of the Continent in their ancient holdings, no such designation is to be met with. When

it came into being amongst the Anglo-Saxons, one may take for granted that it had its foundation in social conditions, developed from the time of the settlement. The kingship was not developed during the first ages. Doubtless those conquering hordes had chiefs at their head who belonged to families renowned in war ("*nobiles*"). The victorious leader, remained on the conquered land at the head of his "host," which had taken possession of the soil; and, as in the case of the inheritance of ownership, so also did the transference of this leadership to the son, seem as a matter of course. Even with regard to the democratic races of the Continent, a like state of things took place. The kingship really begins to exist (1.) when the dignity of the chief is regarded as not merely one of leadership, but gets recognized also as one comprising a superior power, and coincidently the office of judge, the keeping of the peace, and a protectorate over the Church; (2.) as soon as such superiority is looked upon as the continuing privilege of some family renowned in war.

The new legal conception then becomes known under the designation of "cyning" (king), the derivation of which word remains, be it said, an open question.

Consequent upon a more distinct delimitation of tracts of land, there were constituted towards the beginning of the 7th century seven or eight kingdoms of greater or less extent: Kent, Sussex, Essex, Wessex, East Anglia, Mercia, Deira, Bernicia. The two latter, at an early date, merged into the ancient kingdom of Northumberland. To this group, history has assigned the name "Heptarchy." In course of time, however, conditions very favourable to supremacy were found united in the kingdom of Wessex, whose king, Egbert (800-836), asserted the mastery over the minor kingdoms up to the River Humber. The period of peaceful development immediately attending the kingdom

thus consolidated was, indeed, broken in upon by the barbarous plunderings of Dano-Norwegian sea-robbers, but thereafter supervened, under Alfred the Great, and up to the death of Edgar (871-975) a high pitch of prosperity, from which period there are extant comprehensive accounts relating to Anglo-Saxon administration, *i.e.*, in the mediæval sense of the term in relation to the military, judicial, and ecclesiastical organization in their perceptible relation to the kingship.

The *military*-system of the Anglo-Saxons was founded on the duty of all to bear arms. Thereby was meant the duty of every free-man to obey, in person, the summons to arms; to equip himself, and to live throughout the campaign, at his own cost. The difficulty on the part of the free-man of carrying out fully such duty, lay at the root of every transformation occurring in class-relations throughout the Germanic world. But the Anglo-Saxon kingship, in direct contrast with the Carolingian monarchy, never succeeded in determining, under purview of the law, the apportioning of the war-burden. The equipment of the "host" continued to be an object for deliberation, at the Shire-courts and Hundred-courts, whence resulted an unequal and withal a defective organization. Hence, in regard to the general summons to arms, already during the Heptarchy, the chiefs, to fight their manifold battles, had to recur to other devices, by equipping armed men from among their own free household and dependents, and having them ready at their personal summons. All offices at Court bore at first a war-like character. The prospect of booty, of honour, favour, and reward, often induced even free-men to join these followings. Hence around the petty kings there was constituted a first levy of such as were well trained for war, thus lessening the necessity of recurring to a levy *en masse*, when urgent need was pressing upon the country. After the disastrous

Danish wars there ensues a blending, so to say, of the two systems, so that the holders of five plough-lands and upwards, entered upon a relation of personal summons, as *thaini Regis*, whereas the "common free-men" were only, as a rule, employed in the building of castles, in guarding the same, and improving the roads (*trinoda necessitas*).

The system of *Courts of Law* had its mainspring in the judicature by the free-men (suitors) under control of some self-established superior authority. Just as in the case of the military service, so does the taking part at stated periods at the "people's court," with its numerous suitors, pre-suppose a domestic independence bound up with the possession of one "plough-land." But constant "attendance" is a condition precedent, inasmuch as he who appears only now and again, cannot aptly convey the meaning and the custom of the law.

On account of the division of landed property the circle of "triers" at the "people's court" was narrowed to a smaller group of peasant-proprietors, who now, through giving regular attendance and getting acquainted with the customary law, acquired the designation of "Witan." The greater owners soon began to form courts of their own, wherein the dependent free-men, by reason of their service and loan-land, carry out their legal relation to the land-lord, and to those of their own class, continuing all the while, and in every respect, members of the "people's court."

As against such a severance of rights in the "people's court," the free-man found his only safeguard in the "protection" of his superior lord. In the kingdom united, the king ruled, with firm hand, as hereditary judge of the land, over grandees and free-men alike; and his representative prevented the dissolution of the "people's court," by means of supreme authority distributing the administration of justice

to the neighbouring districts in a more suitable manner. Since the days of Alfred appear two categories:—

I. *The Hundred-court*, "hundred-gemôte," meeting monthly, in the narrower circuit of the divisional district, for the decision of civil suits amongst free-men, for judging petty criminal offences, and for transaction of formal law business.

II. *The Shire-court*, "shir-gemôte," which met twice annually, to exercise the power of inflicting criminal punishment, to settle disputes amongst the inhabitants of the various Hundreds, to determine questions of law amongst more influential parties, and to decide other matters of business recurring before the Court of the Shire.

This organization already bears the character of a State-system. The Shire-court is held by the "ealdorman," appointed by the king; in conjunction with him a shir-gerêfa, for the carrying-out of the sentences, the levying of fines, the maintenance of the peace, and, already from an early period, presiding as representative of the Ealdorman. In the Hundred-court appears, in like manner, the shir-gerêfa, or a special "bailiff," as holder of the court, and here again the "common free-men" from the immediate neighbourhood, exercise their powers as men of court ("triers"). This century, from 871-975, is also, consequently, the time of consolidating, wherein land and people get so firmly constituted, that the frame-work continues, with wonderful steadfastness, down to this day. The naming of the English "counties" and "hundreds" dates from this century, in which the Anglo-Saxon laws name the districts of Shires, and Hundreds, clearly as divisions of the kingdom. The "tithings," in the older histories, are regarded, although erroneously, as being the lowest local divisions of the "hundred." Certain it is that a division into *decaniæ*, was derivable from the military-system of the German races. In the case of the Anglo-Saxons, however, this construction was broken in upon by

the increased development of large ownerships, and by the King's Courts, determining questions connected with service, and tenure (laen). The small groups of free peasant-owners did not consequently obtain local courts with similar attributions. Not until a later period did the civil arrangement of the so-called "peace-pledge," since the time of Edgar, unite the inhabitants free actually, and the land-less free-men who had no lord, under tithing-unions, with a responsible controller ("tithing-man," "head-borough"). In the districts round his estate, the Thane possessed a like responsibility in regard to his vassals and ceorls. The Local Court of the later kingly period becomes consequently a very complicated one. (1.) Large seignorial estates, on which the local bailiff exercises an administrative control over the inhabitants, holding the position of a bailiff of court. (2.) More restricted groups of persons, originally free, who, united for purposes of more convenient administration, on the part of the court, under a kingly or seignorial "reeve," were emancipated from the legal duties of the "hundred." (3.) Kingly, and also to some extent lordly, "burhs"—mostly surrounded with a wall—are modelled after the fashion of the "hundreds," under a special gerêfa, holding three times a year a burh-gemôt. Between these huge lordly structures, wedged in, and often very scattered, we find next, the rest of the free-men who have safeguarded their old right of freedom, by means of the legally-organized system of the "tithings," under some responsible civil officer—and, still existing only as a small remnant of communal government for "common free-men."*

In firmer unity is constructed the constitution of the *Church*, which, among the Anglo-Saxons received and endowed by their kings, and placed under protection of the king, acquires a strongly-marked national character, as, in like manner, the bishoprics and archdeaconries which were established on the formation of the Heptarchy, and

later on, in the Shires. The Church has further, in England, laid the groundwork of legal protection against the sale and maltreatment of women, children, and "theowes" or thralls. She it was who first secured to the ceorl a day of rest, his own earnings, and a more effectual emancipation. She it was who first established houses of education for the higher ranks, while the lower clergy and the monks were found assisting all classes, by their counsel and their teaching. She it was who first softened manners, favoured skill and industry, peaceful intercommunion, and became the initiator of the systematic care of the poor. To her was due the moralizing of marriage, and the further elevation of the position of woman. In the administration of justice she wins influence by reason of the frequent introduction of the oath, in connection with matters before the courts, and by the conducting of the legal ordeal, by "fire and water." As leader of the Shiremôt, the bishop takes his stand side by side with the king's representative. The Church enters into the communal life for the carrying-out of duties, for which, in the temporal constitution of the Middle Ages, there was no scope.

From this framework of Army, Courts of Law, and Church, in conjunction with ownership in land and spiritual functions, were evolved the *relations of all classes*. The duty of bearing arms, is bound up with the land acquired by force of arms. The land-less free-men enter into lasting dependence on the land-owner, and the peasant-proprietors into conditions of dependence, reaching many-wards. Throughout the entire class of land-owners a spirit of dependence goes on manifesting itself, and strives for some legal recognition. Fidelity and obedience between lords, laen-folks, and followers, become positive duties at law. The higher services rendered in the Army, in the Courts of Law, and in the Church, lead to the recognition of a higher estimation, higher

privileges in social standing, in "wehr-gild," fines, and peace-pledge, and constitute the beginning of a privileged class or condition. Domestic power exercised over the members of the household, the laen-men, and the settlers on the estate, develops into a superior authority which represents, in regard to the ordinary intercourse of life, the actual Court for the dependent. From the mutual growth of such relations there stands forth a class of owners who, from generation to generation, slowly approach the condition of a hereditary race. In outlines clearly discernible are found three classes, the Great Thanes, the Shire Thanes, and the "common free-men;" the latter, by reason of a remnant of old national liberty, remaining still separated from serving-folk un-free from birth. The people become classified, in a more marked manner, into governing and governed (eorls and ceorls), full tenants, and land-less free-men under "protection."

Around the kingship are found grouped the correspondingly periodic *assemblies of the whole people*, that is to say, of the free tenants, in their actual position resembling the organization among other Germanic races, to understand which it is necessary to enter into some prefatory remarks. The ancient democratic courts and assemblies of the people described by Tacitus, only existed for smaller groups of people (*civitates*), in some degree comparable with the small cantons of Switzerland in later times. This original groundwork becomes modified, however, at an early period, through the influence of ownership in land, subsequent to the settlement. The regular service in the "host," and the "finding" of the "triers" in court, get centred next in the middle and higher classes of the land-owners. Out of their habitual activity in the army, and in the courts, there comes into being a more restricted measure of participation as regards the *boni, probi, legales homines* (*Witan*), by the side of whom

the smaller groups of "common free-men" appear, as a "*surrounding*" or "bystanders" (*Umstand*).

With the union of the smaller groups (*civitates*) to the great assemblages of the people, and to the kingdoms, the general assemblies of the people cease, in the main. Such an assembly would not, on geographical and administrative grounds, have been practicable. The representation of the people in its entirety, through *boni homines*, gets restricted, consequently, to a still narrower circle of *meliores seu optimates terræ*, to the most prominent representatives of military service in the "host," in the courts, and the Church, and, conjointly with the inequality of possession, there usually stands forth at the head of such an assembly a kingship, hereditary in some family. The king, moreover, not only fixes the time and place of the assembly, but further, and inseparable therefrom, the personal summons to the *meliores terræ* as regards the traditional usage, and for purposes of deliberation on matters concerning war, the courts, and the Church, whereunto their ready co-operation is required. The assembly of the people becomes the *consilium regis*.

The like proceeding was followed also by the folksmôtes of the Anglo-Saxons. The most complete survey of data extant, relating to 147 Anglo-Saxon popular assemblies, are furnished by Kemble ("Saxons in England," II. cap. 6). As a rule, he only affords short notices about them. To gain an insight to the actual state of things these require, like the fragments of some old inscription, a hundred interpolations. As the majority of data are given, by learned clerks and chroniclers, in the Latin tongue, it is necessary to bear in mind that the national designation of things and persons is very arbitrarily and diversely translated into Latin, and that, accordingly, not much weight should be attached to these variants in meaning. The courts of the people are, at the caprice of the writer, styled *consilia*, *conventus sapientum*,

principum, optimatum, magnatum, procerum. (The name "parliamentum" first appears, as will be shown later on, in the 13th century, and even then, and still for a long time after, is used alternately with the above "additions.") The Saxon designation of the assemblies was "gemôt," frequently also with an adjunct, as "michel-gemôt" (great assembly), at times as "Witenagemôt" (assembly of the "Witan," that is of the "*sapientes*"). The latter designation in Anglo-Saxon chronicles, frequently met with, has passed into historical use under the name of "Witenagemôte."

All testimonies concur in saying, that those who took part in the assembly were a relatively small number of persons. As to the significance of their presence, a searching inquiry will be gone into further on, when the objects of deliberation, based on those very data, shall have been passed in review. They are undeniably, on the whole, identical with those which, in the great popular assemblies of the Continent, during the Carolingian epoch, were treated of; and according to a similarity of objects, through the course of centuries, the inference is justified that they almost resembled those matters about which Tacitus enlightens us, at a time when these assemblies still took place in the circle of small groups of tribes (*civitates*), wherein the free-men of the district met together, to deliberate upon and determine, in person, matters of common interest. We may distinguish the objects in modern terms as being "matters of law," "matters of State" and "matters ecclesiastical."

I. *The important objects of deliberation* were at all times the changes, mayhap necessary, in the traditional "common law" (*jus terræ* or *lex terræ*), that is to say, according to our modern parlance, customary principles of the law of property, family, and house, the usual appointments made of functionaries connected with the Court, as well as the customary mode of bringing an action, in protection of

individual right, and to ensure the enforcement of the punishment assigned. This "common law," growing out of social life, is found to prevail among the Germans through the whole range of the Middle Ages, as the inborn right of the free-man, and not subject to any change, without his assent. This fundamental idea of "right," from which the conception of "law" has developed in our modern constitution, stood in mutual operation with the formation of the mediæval Courts of Law. Inasmuch as these rights were not under control of any superior authority, but could only be determined by a court of the people, (in the Carolingian scheme, the Scabini) according to the best of their judgment, so was it necessary, in order to induce the freemen charged with the "finding" of a verdict, to obtain approbation of the folksmôte, and to induce the "triers" of the court, to adopt the rule of the new law. So long as men of law discharged this function, (*judicia parium,*) some limit was interposed against the controlling power of any superior authority, and thus no change in the fundamental principles in the framing of a law could be introduced, or have efficacy, without the decision of the popular assembly, which was in reality, or was considered as, an equivalent of a general assembly of the people. The interdependence between the Court of Law and the assembly deliberating on law, remained during the Middle Ages closely connected; under the term "court of law" (*gericht*) was understood every local, district, and shire assembly, wherein not only questions at issue were determined, but where public matters, concerning district or county business, were treated of. This constant mixing-up of the proceedings of the court, and of "resolutions" bearing upon law, continues in the "Witenagemôte." The king, in the assembly of the people, exercises a complete judicial authority over the powerful lords, in respect of whom, in the Shire itself, no suitable *judicium parium* was found to exist,

as also in cases of a failure of justice (*defectus justitiæ*). The modes of procedure in the courts and in Parliament have always exercised a mutual influence over each other, in reciprocal imitation; and just as in the Middle Ages the Court of Law could only be conceived of, as being under the formal control of a superior authority, comprising also the men of law endowed with a power to assent, so, in like manner, the shaping of new legal maxims of law could only be effected with the concurrence of the king, and with the joint "resolution" and "assent" of the Witan. The testimonies in favour of such conception, dating on the Continent from Carolingian times, and from the later Middle Ages, are found to correspond almost word for word in this particular (*Lex consensu populi fit et constitutione regis*). In like manner, the resolutions of the Anglo-Saxon popular assemblies, in every century, tend to show that the customary laws, coming down from ancestors, cannot by the king alone be altered, but must have the consent of the people, or of the Witan, in the name of the people. For instance, in the 7th century we find, touching the law of Wihtraed: "Then the great lords, with the consent of all, came to a resolution upon these ordinances, and added them to the customary laws of the men of Kent." In like manner King Alfred says: "Many laws that seemed not good to me have I set aside, with the consent of my Witan, and I have ordered that these same laws should be put in force, when re-fashioned." Again, in the 9th century we read, touching the resolutions of law under Æthelred: "This is the Ordinance the King of the English has selected and fixed upon, with the consent of his spiritual and temporal advisers." To what degree this fundamental doctrine was still in force during the Norman period will be shown later on.

II. *The most important measures and regulations bearing upon temporal authority* comprise a subject ever varying,

according as time or the exercise of power urged, *i.e.*, all measures concerning the Army, proceedings of the Courts of Law, and the maintenance of the peace. In this respect, too, the Anglo-Saxon popular assemblies represent the continuance of the democratic cantonal gatherings.

The decision in respect of the levying of a national war, involving the duty of every free-man to equip and maintain himself during the campaign, was come to with the solemn assent of the assembly of the people. Their concurrence was not required for the summoning of the men bound to the king contractually for personal service about the Court, by reason of some Court office, or otherwise. The numerous private wars which existed throughout the small kingdoms, previous to their union under the Heptarchy, were in great measure carried on only by means of such personally summoned bodies of men. On a more extended scale, the summoning to arms, in the light of a personal service, first took effect most probably under King Alfred, the large owners of five plough-lands and upwards entered into a relation of Thaneship with the king, and, by way of reward, received a higher rank, and an extension of their seignorial and civil authority in their own demesnes. Even in later times, a "resolution" of the Witan was, except in case of urgent pressure of war, regularly asked for, in order to secure their voluntary co-operation during the course of the war.

The same holds good as regards conclusions of peace, which, in times of district sovereignty, constituted one of the most important objects of popular decision. In kingly times, also, we find, for example, respecting Alfred's peace with the Danish "host," thus expressed: "This is the peace, which Alfred the King, and Gythrum the King, and the Witans of the whole English people, and the people assembled in East Anglia, have all settled, and with oaths confirmed." Also when, under stress of war, a peace was

concluded without such concurrence, there was needed for the carrying-out of the same, a further "resolution" of the Witan; as, for instance, in regard to the disgraceful peace with the Danes, in the year 994, we find, "That it has been frequently renewed, and by the Witan ratified." Simple regulations touching the external administration of justice, that contained no modification of national law, the king might, indeed, of his own accord, prescribe, just as such regulations are frequently to be met with in the Carolingian Capitularies. In case such regulations were meant to establish a lasting ordinance, involving important consequences, it was advisable to ask for the concurrence of the Witan, as the laws of the Anglo-Saxons of that time contained various injunctions, having quite as much reference to the administrative side of justice as to law-giving.

In like manner, the kings could issue injunctions for peace, and for the maintenance of civil order in the land. A prerogative of this kind was derivable equally from his position as Lord of War and Lord of Justice. For the actual preservation of peace, the warrant of the Witan was, in troublous times, urgently advisable, and in order to give to such injunctions a lasting character, as regulations of the land, numerous and important civil regulations of that time were, with the concurrence of the Witan, determined upon, in solemn assembly of the people. Just as defective as is the legislative arrangement relating to the armed "host," so carefully elaborated is the civil aspect of local and district organization, in the matter of Anglo-Saxon lawgiving, especially as regards the surety of the land-lords for their domestics and their Thanes, the surety of the civil authorities, (*præpositi*) in respect of the still free peasantry and, further, a surety for the appearance of the accused before the judge, and also a co-surety for penalties incurred which subsequently became the ground-work for still further-reaching civil

regulations. Finally, if we do not meet with a determining right over money matters, we should keep in view that the State, as then constituted, administered only through payments *in kind*, and that a system of taxation was of later date. Possession of the conquered land, so far as it was not portioned out in private ownership, was looked upon as being originally "folk-land." The use of this "*ager publicus*" was truly, in great measure, left at the disposal of the king, serving mainly for the maintenance of his household expenditure, of his officials, and armed followers, just as in the Carolingian Empire, the "*Cæsaris fiscus*" forms only a personal house revenue, while the needful expenditure for the "host," the Courts of Justice, and the maintenance of peace was principally supplied by products *in kind*, obtained from the subjects. Should, however, a portion of the "folk-land" become assigned, either by way of gift or loan to the Church, or to private persons, the concurrence of the people was necessary thereto and, as a consequence also, the concurrence of the Witan, which was made generally known, in numerous cases, and exactly for such grantings-out. The initiative of a right of taxation, when the nation is under sore stress, is first found to be taken during the unlucky wars with the Danes, under guise of "Dane-gelt."

III. *The legislation bearing upon Church matters* comprises a region quite apart. The introduction of the Christian religion, and its recognition as the religion of the State, came about through the solemn "resolutions" of the king, with the concurrence of the Witan. Once the ecclesiastical hierarchy was acknowledged, and the Church was endowed with considerable possessions in land and rich revenues, a kind of separation of powers ensued. Laws which concerned purely Church matters were, in the popular assembly, settled only by the ecclesiastical Witan, while, as concerned matters temporal and of a mixed

character, the spiritual and temporal lords deliberated in common. As objects within scope of the general resolutions of the entire assembly were, the introduction of Church tithes, and some other matters of Church revenue were treated of, as also the keeping holy of the Sunday, and the stricter observance of fasts and festivals. The question of the introduction of monks was repeatedly deliberated on by the Witan, but without resulting in any formal "resolutions." On the other hand, the prohibition of marriage within certain degrees of kindred, as well as the personal privileges of the clergy, were unquestionably the object of general legislation. As concerns the internal service of the Church, and Church discipline, the provisions thereanent, were left entirely to the ecclesiastical authorities.

Surveying the region of judicial, administrative, and Church legislation in its entirety, one may already infer, from the objects for deliberation, that such assemblies could not have represented the assembling of the whole people, as in times when a cantonal sovereignty prevailed. A deliberation upon new measures of law, conclusions of peace, civil regulations, and Church matters of a mixed character, could not possibly have been settled, in one or two days, in an assemblage consisting of many thousand persons.

Moreover, there were still more urgent regards, and of a more far-reaching character. Inasmuch as the smaller tribes on the Continent had been merged in larger nations, it is deducible, even without the negative testimony from the silence of historians, that popular assemblies, in the older sense of the word, never existed amongst the Goths, Franks, &c. From the fact of their fixed settlements on a wide-reaching region, this would have been, geographically speaking, impossible. Reference to the condition of the means of communication then existing, of the transport and provisioning, &c., leads one to regard an assembly, consisting

of a hundred thousand men, to deliberate on laws, conclusions of peace, and so forth, as the very height of contradiction. Further, it is also manifest, from the strongly republican constitution of the Saxons, that only through a small number of deputed representatives were matters of common interest, from time to time, deliberated upon. The very nature of things required that the popular assemblies should be transformed, in one way or other, into assemblies of delegates, and, again, necessity and custom demanded that those hailing from a far distance, should come accompanied with a large number of retainers and menials. The large assemblies of the Carolingian Monarchy were restricted, consequently, to a review of the armed "host," and, in combination therewith, to an assemblage of the superior lords. In a somewhat smaller degree, all these fundamental relations hold good also as regards England, from the time of the grouping-together of the small kingdoms. In a land* covered with forests, and traversed by deep streams, or long expanses of bog, and only badly provided with means of communication, even "attendance" connected with a county assembly, must have been hard to combine with the necessary pursuits of agriculture. It seemed wholly impracticable to require every free-man to betake himself to localities which were far off, and wholly unknown to him, mayhap from Essex, to undertake a journey to Gloucestershire, in the cold Christmas season, or about Easter-tide, when it was important for him to attend to the culture of his land. What did it concern him to have to do with laws touching any other portion of the country save the one in which he lived? Even in later centuries it was hard to get the more advanced population of the towns to interest themselves in matters relating to the State, which went beyond the range of their home concerns, or their money interests.

The summons to a popular assembly was held then,

through the entire Middle Ages, as a claim which one would fain forego. Since the time and place of the assemblies was always changing, the summons had to come from the king. Inasmuch as there seemed no other practical way of carrying the matter out, this mode of constituting the popular assemblies took place, in like fashion, throughout hundreds of years, in the various countries of Europe. Even without express testimony, it is almost certain that the summons, even in those times, was issued by the hand of the king's secretary (chancellor) under the form of a gracious writ of summons, just as in later centuries they came expedited in quaint Chancery style. The summons could only be addressed to persons whose presence the king might require, and from whose counsel and co-operation, in matters relating to war and peace, law and order, Church and morals, a certain authority and influence might be expected.

General regulations relating to the "host," and concerning war-like expeditions, had necessarily to be advised upon with the leaders. A leadership, conferred by the fact of landed possession, we now come upon in the case of the great Thanes, with their numerous retainers, trained to the use of arms. The rightful leadership, however, was ascribed to the Ealdormen, nominated, for the most part, from that very class, or, to the war-like high officials, or to Thanes inured to war, and entrusted with high command.

General regulations and changes in popular law had, necessarily, to be deliberated upon by those who had the customary control of the courts. These were, again, the Ealdormen appointed by the king, and, in conjunction with them, the more distinguished Shire-gerêfas; but, apart from these officials, the great Thanes likewise, as lords in their own courts, over their own vassals.

Church matters had necessarily to be advised upon with those who had the conduct of education and the care

of souls; that is, by the Bishops named by the king, and, in conjunction with them, some few Abbots also, by reason of the flourishing condition of the larger monasteries. The large landed possessions of the Prelates placed them, as a matter of course, on a level with the great Thanes, conferring on them, in conjunction with their spiritual dignity, precedence over the lords temporal. The persons best qualified were selected for the continuous conduct of business.

It was of urgent interest to the kingship itself to allow persons to take part in such positions, who were estimable alike for their counsel and energy; and as a participation in the assembly was, in the first place, a costly affair, there does not appear, in historical records, any trace of a contention for a claim to any such summons; on the contrary, a considerable portion of the summoned will, at all times, have devised grounds for being excused from attendance.

From these considerations, the statements bearing upon the persons composing the popular assemblies will be understood. It is to be borne in mind, however, that the *clerici* charged with the drawing-up of the records have oftentimes translated into their own Latin, and with intentional variations, the names of offices, and the rank of the persons concerned. For instance, in a full popular assembly, held at Winchester in the year 934, there are described as being present: the king, as well as 4 Chiefs from Wales, 2 Archbishops, 17 Bishops, 4 Abbots, 12 Ealdormen, 52 Thanes (*ministri*), in all 92 persons.

The greater number of the Records extant give a smaller number of signatures, especially in those dating from the earlier centuries, previous to the union of the kingdom, and also of later times, when popular assemblies were often summoned for individual parts of the kingdom. The number of the signatures is admittedly smaller, on an average, than the number of those present and taking active

part, inasmuch as after the signatures of the greater officials, further signatures were not regarded as being at all necessary. One record, 855, is characteristic enough in this respect, running thus: "In presence of, and with the signatures of all the Archbishops and Bishops, the King of Mercia, of King Edmund of East Anglia, of the Abbots and Abbesses, of the *duces*, *comites*, and *proceres* of the whole land, and of an 'innumerable throng' of other lieges who all acknowledged the Royal record, the holders of offices of dignity (*dignitates*), their names have been undersigned." In another record it is said that all the heads of the kingdom have undersigned; and then follows:—the King, 2 Archbishops, the Queen, 11 Abbots, 9 Ealdormen (*duces*), and 26 Thanes (*milites*), and so in like manner numerous other records.

The tradition bearing on a later period has led to much error in respect to the Anglo-Saxon popular assembly; now it was regarded as a House of Lords, now as a House of Commons, but in reality it was neither, not at least in the later sense, of a body giving assent to the levying of taxes.

There is no representation discoverable therein of a hereditary class, for the privileges of the great land-owners, in the main, first point to the notion of a class of nobles hereditary in the 6th generation. In Anglo-Saxon times this was only found attributed to the nearest relatives of the king's Royal House (ATHELINGI).

Further, there is no representation of a well-defined class of great land-owners, for the combination of high offices with large landed possessions is, indeed, actually to be met with already, but they are not as yet connected according to law, nor yet "so conditioned," as that the land-owner would have had any legal claim to be invested with an office or dignity.

In the Witenagemôte no elected representatives are to

be found, for ecclesiastical dignities, Thaneships, and offices of Court, did not rest upon popular election.

Least of all is any trace of the representation of towns to be found, for the walled-round places (burhs) are still fully comprised in the Shire-organization, and, at most, are placed under the administration of a special Court-reeve.

From the style and manner of the Public Records, it is evident in what sense such "assemblies" were regarded, as representing the people assembled. The powerful influence of personal worth, and the acknowledgment thereof, is met with throughout the temporal communal life of the German Middle Ages, and explains why, up to the end of the period, no question exists about determining, by a counting of votes, by majorities or minorities, whenever elections and resolutions take place. It was regarded as a matter of course that the war-leader should, in the battle, fight at the head of his men, and that the others should follow him; and, as being quite of course, that in the judicial assemblies a recognized expert in law should draw up the formula. Still more circumscribed was the circle of those who in the Shire-assembly had right of speech. In a more marked degree still, the proposal and recommendation of a measure, in the great popular assembly, was made over to the recognized authorities in Church, Army, and Law. One comes again upon the trace of the old mode of procedure in the district-assemblies of the *civitates* as described by Tacitus:—

"The eldest (*princeps*) opens the proceeding; then each one speaks according as distinguished by age, family, renown in war, or eloquence. No one commands, only the personal dignity residing in him exercises its influence. No distinction of rank exists. The assembly determines, and its determination is law. Proposals when deemed acceptable are saluted with loud acclaim and clashing of arms; a loud dissenting cry rejects what appears unacceptable."

This old mode of a war-like popular assembly continued in force, despite all transformations in State and Society, in the assemblies of nobles in later centuries. The free-man never abandoned his right to take part in the general resolutions; never has a decided limit been set to such participation by the formulating of any law (*census*). But the circle of those "distinguished by age, family, renown in war, or eloquence," had become gradually narrower and narrower, the more the importance of the higher offices had increased throughout the kingdom. In proportion as the ascendancy of the wealthy-classes made itself felt, through the increasing inequality of their holdings, the more the primitive administration of the Middle Ages, rendering this connection a necessary one in relation to office and ownership, increased this ascendancy in a twofold degree. This process ranges through every connecting link existing between State and Society.

Already in the narrow circle of the Hundred-court, in which the every-day interests of the smaller free community were still indirectly determined, and in which they still, according to their powers, took part, the sentence is made over to a still narrower circle of experienced men, ripe in years, and of steadfast behaviour (Witan), who by their accustomed co-operation have become the interpreters of the customary law. The others stand around as "bystanders," (*Umstand,*)and ratify the sentence by signifying their approval; but they still, at times, also dissent, and compel by such dissent, the appointment of other sentence-"triers." In the later forms of appeal this original relation continues in force.

In the wider circle of the Shire-court, there appears usually only a small group of large land-owners, of local officials, and free-men of the district especially summoned to the assembly. Here, in like manner, from the chance neighbours present, the "bystanders" (*Umstand*) recede into

still more modest dimensions. In the Witenagemôte of the land, to which the largest land-owners, the highest functionaries of the Church and of the king, were invited, by special summons, together with the inhabitants of the district and of the neighbourhood, constitute an "*Umstand*," whose participation in the individual objects for deliberation could only be of a passive nature.

Hence there are two circles to be distinguished; the narrower is constituted of those notables summoned by the king who, as such, are designated by name, and become noteworthy from the fact of their signatures being affixed on the spiritual side. As far as the spiritual portion is concerned there are always the Archbishops and Bishops, a number of Abbots, at times, too, a Deacon, and other ecclesiastics of lower *ordo*, who (through some clerkly office or similar functions) hold positions of importance. On the temporal side there are always the Ealdormen, who, by the recording clerks, as the whim takes them, are designated as *duces*, *principes*, *comites*, *præsides*, &c.; next, those war-like great land-owners, honoured with offices of Court, who are wont to be entitled, according to their courtly office, as *dapifer*, *pincerna*, *discifer*, *procurator aulæ*, *aulicus*, *palatinus*, &c.; not unfrequently those belonging to the kingly family, *regina*, *regis propinquus*, &c. Therewith range next, as in second rank, and usually in very great number, the Sheriffs summoned to the assembly, and other Thanes in offices of trust, who, under the designation *ministri*, *milites*, &c., may be grouped summarily together.

The wider circle is constituted by the numerous retainers of Prelates and Thanes, the parties and witnesses invited to some judicial inquiry, as well as the lesser Thanes and freemen coming from the neighbourhood, who, according to the importance of the locality, and of the time of holding the assembly, often appear in considerable numbers; of course,

those accompanying the assembled great functionaries of the Church and of the State; the retainers of the great land-owners, and of the comites of the king, who, chance to be present, but who, not being called to the council, cannot, as a rule, raise a claim to take part in the deliberation. As free members of the popular assembly, and in remembrance of the erewhile participation of free-men at the district assemblies, the "bystanders" would not be deprived of their right to greet with "acclamation" popular resolves, or to signify their dissent. With reference to this frequently numerous following and participation, historians loudly proclaim such assemblies as assemblies of the people, *placita universi populi*, *placita omnium liberorum et hominum*, *assisa generalis*, and so forth, and it was in the very nature of things that, at earnest and perilous conjunctures, much weight should be attached to the acclaiming of such "bystanders," as on occasion of the election, or the coronation of a king. Even at the election of the Roman Emperor of the German nation (upon the right of election of the seven electors of the empire being legally established), the "acclamation" of the assembled people, in remembrance of very ancient traditions, was recurred to, after previous question addressed, as to whether they accepted the new lord, and were willing to render him obedience. This "acclaiming" seems accordingly easy to be understood in the case of the so-called king's election, and after the hereditary character of the kingly dignity had been long settled. At the elevation of Canute and the settling of the Danish kingly family on the Throne, this "acclaiming" is mentioned as being of great significance, and it had a tantamount significancy, especially in the case of a doubtful, or a contested succession to the Throne. If there chanced to arise a powerful opposition of the war-like great lords against the king, as often happened before the consolidation of power in the smaller kingdoms, resulting, mayhap, from violent usurpation or

murder, or, on occasion of the extinction of one dynasty or the establishment of another, the consciousness of an elective right pertaining originally to all free-men was quickened anew, and even a reserve right for the assembled people in respect to the establishment of a new dynasty. From solitary revolutionary manifestations of this kind one should not infer an erroneous notion, as though the Witenagemôtes had exercised a *quasi* constitutional right of electing and of displacing kings, as has been of late set forth anew in the English constitutional history of a casuistical historian.

The strong personal influence making itself felt in all such cases, resulted at last in creating the powerful position and initiative attaching to the kingly condition, under such circumstances where the people were ripe for it. In the flourishing period of the West Saxon kingdom accordingly the resolutions of the popular assembly scarcely ever appear otherwise than as acknowledgments of the proposals or resolutions of the king. Of how much great personal qualities were, in such a position, capable to effect for land and people alike is manifest, especially from the history of Alfred, the king of popular song, to whom a later age was inclined, in pious belief, to ascribe all that is great in the traditions and customs of the people.

The consciousness of the blessing of hereditary monarchy for the well-being of the people had, in those happy times, become so ingrained that, even under incapable successors and in the times of the so-called six "boy-kings," the right of hereditary kingship was firmly established. In consequence of the decline of personal leadership, the initiative in matters relating to the kingdom reverted to tutelary representatives, at one time some great temporal lord, at another, some high Church dignitary. The course of the resolutions then depended on the internal coherence, and on the unanimity of the assemblies of the great lords, the compo-

sition whereof, under the unhallowed influence of the later incursions of northern adventurers, the so-called Danish hordes, became by degrees thoroughly changed.* After manifold, varying withal, and, in the main, unfortunate strivings, the Danish elements, on adopting Christianity, made their way in numbers into the highest ecclesiastical dignities, and the war-loving Danish jarls assumed the functions of Ealdormen, and Court offices of a war-like cast. The scission of the national elements in the popular assemblies, a strongly hierarchic and monastic tendency in the higher prelacy, which, amid the universal degradation of morals, takes development, leads in the end to the rejection of the kingly race of Cerdic, and to the elevation of Canute to the Throne, to whom, after an energetic and powerful rule, Edward the Confessor succeeds, as the last lawful descendant of the old kingly race. In this last century an astonishing change supervened, which must have resulted from the personal glamour attaching to the king, and from the individuals constituting the "Witenagemôte," where everything depended on the impression created by such personal influence, and on securing its recognition. If the kingly power under Canute was all-mighty in the assembly of the people, under his earlier predecessor, Ethelred the Unready, and his later successor, Edward the Confessor, it appears, under the ascendancy of the great lords, like a shadowy kingship. As in France and Germany, the kingdom seems to break up of its own accord into independent dukedoms and lordships.

In the last seventy years of Anglo-Saxon times are found meeting the two unhappy factors, the inaptitude of the kingship and the disruption of the legal and moral cohesion of the nation.

The old kingly family itself disintegrated, by intermarriage with the Danish family of Earl Godwin: Edward

the Confessor irresolute, unwarlike, surrounded and controlled by Frankish favourites, partly friends of his youth, partly French clerics, whom he preferred to bishoprics, in all his ways of life being sundered from his country and his native Church; the hardy Danish class of Thanes, is driven thereby at last to open resistance, which ends in the victory of Godwin, and from that time forth places the kingship under the tutelary control of the great lords.

The great lords themselves, on the other hand, were divided into national and ecclesiastical groups. The introduction of the war-loving Danish Thanes, had severed the strong ties which previously bound the Anglo-Saxon lords to the kingdom. Side by side with them, existed a prelacy of mixed character, which, interwoven with the family and landed interests of the great nobles, bent on the strengthening of its power and privileges, and externally in allegiance to Rome, partly also, already in intelligence with the Duke of Normandy, and hoping for an extension of their powerful position. This spirit of dissension affected in a less degree the old home of the Wessex dynasty. The great territory of Mercia had thereby become, through its very mixed population, a portion of the land whereon, at a moment of crisis, no reckoning could be placed. Matters stood at the worst ebb in the northern districts, where a confused blending of many races, led ambitious representatives of the king to declare themselves independent.

Just as dissimilar, and even more completely disintegrated, appears the inner life of the Shires. In Kent, and a few Shires in Wessex, a peasantry capable of bearing arms does still exist, with its judicial attributions in popular form, but in the majority of Shires there reigns already the system of lordships, with their following of un-free farmer peasants and servants. The Danish wars completed the destruction of the small free-holds. The power of the free community, the sense

of independence, and the war-like capacity of the ceorl declined, from century to century. Even the flourishing times of the kingdom only tended to stem the process of disintegration, but could not stave it off. Town-life had not yet taken such development, as to allow of fresh energy and sense of dignity being infused into the ancient spirit of communal freedom, in respect of the new conditions bearing on ownership in land. Hitherto no new principle as to the repartition of the war-burden had been devised, so as to ward off from the smaller land-owners the influences disturbing their agricultural prosperity, by reason of the "service" owed by them to the Army. Comprehensive reforms, such as the Carolingian laws attempted, would seem least called for in England, since its insular condition occasioned less sense of anxiety. The extensive landed possessions of the Church, had served, further, to weaken and to break down the system of armed defence. But the gentle-ruling family of Cerdic, prompted by their Thanes spiritual and temporal, was ever averse from resorting to measures of violence. Canute's powerful character led him, when danger urged, to uphold his throne by the aid of a body of 3,000 mercenaries—"Huscarle"—who could not gain any headway or foothold in relation to either the national customs, the ownership in land, or in matters bearing on finance. Besides which, the decline of the military-system was becoming more marked; Canute had found it advisable to make his peace with the Church, and in like manner, to let the ever-increasing system of large estates (*latifundia*) take its course. Like a meteor then, the appearance of this puissant king of the northmen, flashed by.

The Witenagemôtes of the 11th century might hence, alone, afford a picture of the internal dissolution. "So often as the Earls assembled in Council," relates William of Malmesbury, "one chose one thing, one another. They were seldom at one upon any opinion. They deliberated more about domestic

treachery than about public needs." The true origin of the weakness is rightly discerned in the recent description by Stubbs:—"The coherence of the nation was still relatively strongest in the lowest grades. Families, localities, Hundreds, Shires, held together, while Ealdorman strove with Ealdorman, and the king remained in his isolated dignity. Kent, Devonshire, Northumberland, possessed their communal life, but England not. The Witenagemôte represented a wisdom that did not combine either the power or the will of the nation."

In this position the heroic successor of Edward—Harold—found himself, in the decisive struggle for the national existence of the kingdom, almost induced to rely solely upon the power of the old kingdom of Wessex, wherein State and Church, Thanes and people, still clung together. When the great "host" of the Norman Duke had already landed on English soil, the summons to arms was issued in Mercia, but the greater portion of the temporal lords held back from the fight, in faithless neutrality. The decisive battle near Hastings—(Senlac)—was merely a struggle of the peasant levy from Wessex, with numerous followers and mercenaries, wherein the nation, together with the king, succumbed.*

Sad though the picture of those last seventy years appears, yet two striking features stand forth, which no change of time has availed to efface. The first is the upholding of the Germanic organization as regards the judicial-system, which ever more and more surrounded personal liberty with protecting arm. The judgment pronounced through the members of the community and the men of law, with the strange modes of evidence, might fail to protect the weak against the strong, but they remained a powerful bulwark against the arbitrariness of the kingly and lordly reeves. Even at the period of the incipient decline, the

Anglo-Saxon judicial mode of procedure conveys the impression of a process conducted according to law (fair trial), and hence, on that account, the fundamental law of trial by peers (*judicium parium*), was held to very sturdily, even by the heavily-burdened ceorl, as the point which still gives some value to the individual conception of liberty. For the maintenance of the peace, the social element existing in the "tithings" and in various voluntary associations, (guilds,) still retained some efficacy.

The second lasting inheritance was the development of family life and national character, through the national Church. True it is that in no other country of Europe had the conversion to Christianity left behind such deep-reaching, such lasting, and such steadfast results. This fact is only concealed, in appearance, by the subsequent position of the higher clergy, and by the unfaithfulness of the Danish Thanes, in whom the new Christian principles of belief had not yet availed to get the better of the old spirit of Odin-worship. But so far as the Christian was interwoven permanently with the Anglo-Saxon element, it manifests itself as regards both the high and the lowly, in a moral atmosphere of goodwill, of truthfulness, and of fidelity, which also found expression in the mild rule of the Anglo-Saxon land-owner, in striking contrast with their greedy successors.

It had been possible, upon such foundation to establish anew, by means of kingly authority, a powerful State-system. But what the dynasty of Cerdic, so sadly dying out, was no longer able to effect, was destined to be carried out through an alien Conqueror.

ADDENDA.

*1) In relation to the authorities and literature of the Anglo-Saxon period, the most complete survey is afforded by Lappenberg, "Geschichte von England," Bd. I., Introduction (Hamburg) 1834. The laws of the period, in

Reinhard Schmid—"die Gesetze der Angelsachsen," second ed., 1858. A collection, brimful of historical data, is published by W. Stubbs: "Select Charters and Illustrations of Constitutional History," second edition, Oxford, 1874. A careful special history of the period is given by Lappenberg (as above). Vol. I. A legal history, by Conrad Maurer in the "Münchener Kritischen Ueberschau," Bd. I., II., III. English researches, by Kemble, "The Anglo-Saxons in England," 1849. Sir Francis Palgrave, "The English Commonwealth," 1831-32. Very acceptable recent additions relating to this period are given by Freeman, "History of the Norman Conquest," vols. I., II., III., and by William Stubbs, "The Constitutional History," vol. I., chap. i.-viii.

*2) Compare Lappenberg (as above) I., page 63. The small influence exercised by the Roman elements of culture is shown also by Mommsen, "Römische Geschichte," V. cap. Britannien.

*11) The scheme of local administration during the entire continuance of the Middle Ages involves numerous obscure points, But in the result, it is clear that the extensive settlement of colonists on any land they liked, the commendation of free peasants to a civil protector (Hlâford, Lord), and the extension of the Shire-court to the free peasant, had formed the foundation of the Shire-system in England. On the other hand, it is still the State-power (the king), that conveys authority to the land-owner, and which the Shire-court extends to the Liberi Homines, and to a power of inflicting punishment on them. To this twofold relation the Norman feudal supremacy, later on, allies itself, which takes over the seignorial courts, and with equal facility, recognizes, restricts, or abolishes them.

*22) Compare Kemble, "Anglo-Saxons," vol. II., cap. 8.

*31) The extraordinary attempt by E. J. H. Woorsæ, "An Account of the Danes in England," 1852, to refer back the national development of the English State-system to the Danish nationality is already discredited in England. Those Northmen who, from the 8th to the 11th century harassed Europe, were swarms of the great Teutonic combined race, which, from Norway, Denmark, and Sweden, went forth from the Continent in quest of a home. The Anglo-Saxon population called them Danes, from the nearest-lying shores, without inquiring closer about the far-off region whence they were pouring forth. The highest computation of the Northmen remaining behind in England amounts to some 200,000.

*34) A striking description of the decisive battle is given by Freeman, "Norman Conquest," vol. III., 450-507.

II.

The Anglo-Norman "Court-Days" and Assemblies of Notables.*

TABLE OF KINGS.

William I, 1066-1087.	Henry II, 1154-1189.
William II, 1087-1100.	Richard I, 1189-1199.
Henry I, 1100-1135.	John, 1199-1216.
Stephen, 1135-1154.	Henry III, 1216-1272.

STATE and Society enter at this period upon a new phase. The Anglo-Saxon communal life seems suddenly transpierced by the violent wedging-in of a race, originally of northern stock, which, while implanted on the soil of Normandy, had got to adopt French language and customs. The Prince, till then known as "Duke of Normandy," surrounded by a victorious army, gets proclaimed "King," in a tumultuous assembly, amid the "acclamations" of the Normans and the Saxons present, and is crowned by the Archbishop of York.

The old controversy as to whether William the Bastard** conquered England, or by what title he got possession has, in unequivocal terms, been disposed of by the Conqueror himself. On the announcement of the death of Edward the Confessor, and the further intelligence that Edward had, by wish of the Thanes, appointed, as his successor, his brother-in-law, Harold, and further that the latter had been crowned king, Duke William sent envoys to Harold

for the purpose of asserting his claims to the Crown of England. He refers in that intent, to a deed of gift ("Grant") from Edward and to the formal engagement Harold had entered into in 1065, while on a visit to Normandy, to the effect, that William should become Edward's successor, and eventually share the kingdom with Harold. Certain promises, indicating some such intention, seem to have been forced from the Duke's guest, and likewise that, through ruses, Harold had been inveigled into swearing, upon a craftily-concealed relic, to keep the engagement thus entered into. Harold's accession to the Throne was treated, consequently, as a treasonable proceeding, and an act of perjury, and the wily pretender keeps up, in each successive step of the transactions, especially in view of the Papal See, the semblance of a firm conviction in his own undoubted rights. In his own land, he succeeded in inducing the greater part of his vassals, after some demur, to afford him a twofold war-levy, both in men and ships. The summons to arms was issued to the adjoining counties, inviting knights and mercenaries to join the expedition, giving assurance of high pay, rich rewards, and English estates. In consequence thereof, numerous lords from Brittany, with a train of followers, as well as fighting men from Maine, Anjou Ponthieu, and Boulogne, and with ever-eager Flemings, join company. Hence a fleet, such as had never up to then, been brought together; and a "host," amounting to 60,000 men, was collected, which landed, without difficulty, on St. Michael's Day, 1066, and a fortnight later at Senlac, close by Hastings, effected, after a sturdy struggle, the decisive overthrow of the Anglo-Saxon army.

The maintaining of a personal right of his to the Throne, was certainly the only mode whereby William could secure the lasting submission of his new subjects, and afford him, against the arrogant claims asserted by his followers, a strong bulwark. By obtaining the Papal blessing he had astutely

out-manœuvred his competitor. It was not, consequently, the "host" of Normans that had gained possession of the land, but Duke William, in his own person, as the heir-presumptive and legitimate successor to King Edward, and, furthermore, with the supposed assent of the people at large. The consequences of such mode of action were:—

I.—A VAST CHANGE OF OWNERSHIP IN LAND, AND A NEW SHAPING OF THE RELATIONS OF OWNERSHIP.

Decisive in that regard was the position assumed by William, as legitimate successor to Edward. While King Harold and the Saxons, who had paid him homage and fought by his side, were treated in the light of "rebels," there was readily discovered in the Anglo-Saxon laws, a principle of law that involved the most direful confiscation of property. In consequence of the resistance continuing, the suspicion of taking part in the rebellion was made to extend to the population at large, entailing, by reason of such rebellion, a consequent forfeiture of possession, the individuals only being admitted to prove their non-complicity. The Angli not involved, or less compromised, are allowed, by the king's favour, to resume their lands on "Redemption," whereupon the favoured person receives a Royal "Breve," which, thenceforth, as a Title of possession, is regarded as necessary, and all-sufficing. The technical expression for this is, *inbreviare*. According to the circumstances of each *inbreviatio*, it is granted upon moderate, high, or very high "fines." The "Redemption" may apply to the whole, or to part of the estate. In view of the theory and language of the great Doomsday-book, the "Redemption" wears the aspect rather of a gift from the king, whereby the new possessor of the whole estate "grants" to the previous owner, a specified portion of such estate. At a subsequent period, jurists were able

speciously to derive from such "Redemptions" the conception of a "loan," or "tenure," of the whole estate.

In consequence of such principles, a wide-spread change of ownership resulted, as may be collected from Doomsday-book, which will soon claim our attention.

About 600 persons, corporations, lords, spiritual and temporal, and *tenentes in capite*, appear to have been thus placed in "tenure." Among the lords temporal, some thirty or forty possess large groups of estates, after the manner of the Saxon great Thanes, but widely scattered throughout the several counties. About 400 men, directly serving the Duke, are endowed, in different proportions, with single, or with several Knights' fees. Among the 150 lords spiritual, the ownership of the Bishops and the greater Abbots, resembles that of the lords temporal, who have received the most extensive "tenures"; the majority of this class receives also minor "tenures."

The second category comprises 7,871 *subtenentes*, partly Normans, and partly Saxon Thanes, on their ancient holdings. For these latter the "Redemption" serves as a recognition of ownership, with the new burdens of war-service attached. The rest of the population remains in their possession, occasionally precarious, and which, through the new system of tenure, has grown encumbered with new burdens. The majority comprises 108,407 *villani*, or ceorls; 82,119 *bordarii*, agricultural servants and cottars; 25,156 *servi*, thralls, and of those approaching somewhat to a condition of freedom: 10,097 *liberi homines;* 23,072 *sochemanni;* 7,968 *burgenses*.*

There had, doubtless, from the outset, existed an intention to hamper all the great owners with the cumbersome Knight's service of the Norman feudal-system, but, by reason of the ill-regulated apportionment of the war-burden in Anglo-Saxon times, the needful groundwork was lacking. Hence it becomes apparent that at the first attempt to enforce it, on occasion of

an impending invasion (1085) the king abandons the purpose, levying instead a heavy contribution, from every plough-land, (*hydagium*), and hired, in all haste, bands of mercenaries. In conjunction with this scheme, came into force the vast plan to assess, by device of a land-register, whereby, in case of all future levies, the number of the fighting men might be definitely fixed, and all other dues fully exacted. This land-register—Doomsday-book—was completed 1086,* and on such foundation, the share of service each greater land-owner had to bear, was fixed by the Exchequer, whereby the number of fully-equipped men each had to supply, was determined. The Knights' fees thus fixed, do not represent knightly manors, with limits defined, but determinate portions of the profitable free-hold. The Knight's fee, as such, is not a manorial estate, nor a plough-land of definite dimensions, but each larger free-hold estate has to bear a certain, and almost equal, value in degree.

All further bearings of English feudal law have got fashioned in accordance with this device. When the king granted investiture to one of his tenants, there existed, in the use of the traditional form, a reference to a traditionary legal relation in a twofold aspect. The person infeudated submits himself to the feudal lord, saying:—"I become your liege man," just as was customary in Normandy; and the Anglo-Saxon admitted into possession, cannot, in this regard, lay claim to any wider right, than the *Francigena*. The property infeudated, is granted in like manner, and, as of course, in the measure of the right, the previous holder possessed, hence, with the burdens and services constituted from the relations of the Anglo-Saxon folk-land, laen-land, and the conditions of transfer applying to the bôk-land. Where both relations were not covered, the Crown endeavoured to carry into effect conditions the most favourable to itself. From the financial and legal stand-point, new principles get evolved, which establish, through an interweaving of Norman and Saxon

traditions, and after some divergence, one uniform law. From these points of view, one can obtain an insight to the peculiarities as to this feudal law, the heavy fines on every taking of possession ("reliefs"), and the principles of feudal ward-ship, marriage, and *escheat.** In the course of about three generations, consequently, a newly-fashioned right of ownership gets developed, on which even the lowliest vassal finds imposed, in tolerably equal measure, the burden attaching to ownership, and implanted as a legal doctrine, the principle, that every real estate is, directly or indirectly, bound to the king in fee. On the ground of such new conditions of ownership continues unaltered:—

II.—THE COUNTY AND DISTRICT ADMINISTRATION IN THE SAME OUTLINES AS IN ANGLO-SAXON TIMES.

The County (*comitatus*) is maintained, as the chief district in the State-scheme of administration. Meanwhile, the Ealdorman, or Earl, under the new aspect of things, gets practically ousted. The small number of Earls nominated from the king's household, still retains the highest titular dignities. The County Reeve (shire-gerêfa) alone actively employed, is, thenceforth, under the designation *vice-comes*, nominated by the king, mainly from among the Norman Barons, as a temporary official for the duties of the Court of Law, the maintaining of the peace, the summoning to arms, and for the carrying out of the king's mandates. The financial scheme prevailing everywhere, places him directly under the Royal Exchequer, where he is sworn into office, is placed under its disciplinary law, and is subject to annual renewal in office, and always liable to dismissal. In strict subordination to higher authority, he is regarded by the common people below him, as a redoubtable personage. As representing the king in the Court of Law, he holds the ordinary County-court with the Thanes, in whose place the Crown and inferior vassals

now take their stand, giving, in conjunction with the other *liberi tenentes*, co-operation, as men of law. The scope of his jurisdiction is at the outset the same as through the past; only questions pending in regard to Crown feuds being reserved for the personal decision of the king.

In sub-districts, the Hundred-court still holds on. Despite its lessened importance, it keeps the small group of free-settlers strictly to this form of court, inasmuch as the right to take part in the district assembly still hinges on the practical maxim of the "*liber et legalis homo.*" For slighter offences on the other hand, the *vice-comes*, by reason of a new regulation, was empowered to make the turn of the Hundred twice a year, and to hold a court. This *turnus vice-comitis* now constitutes the inferior Royal Criminal and Civil Court for the assembled people (court leet), combined with an annual revision of the list of free-men (*visus francplegii*).

For the local administration, the system of Baronial Courts, according to Anglo-Saxon tradition, is recognized. Through the feudal-system the principle is established, that for each sub-tenant, a jurisdiction is owing in respect of the estate sub-infeuded, and such power of the court gets now extended to minor free rights of ownership, so far as relates to the scope of the war-service. A country seat having jurisdiction over sub-vassals and free-settlers, is now termed, in Norman parlance, a "manor," and the Manorial-court itself, a "court-baron." The continuing jurisdiction therewith over the household servants, and the labourers bound to the estate on laen-land, constitutes a Domestic-court in the narrowest sense of the term (customary court). The ancient jurisdiction of the Baronial Courts, on the other hand is not extended, but, in regard to the new infeudations, is, as far as may be, withdrawn, and made over to the *turnus vice-comitis*, from which, subsequently, further new infeudations are transferred to the Town and Estate District-courts (private leets). The attaching of

conditions to all relations of dependence advances, on the Continent, under such organization, in continuous progress. The peculiarity of the Anglo-Norman feudal-system, consists, however, in its advance towards centralization, which the traditional Royal rights expand into:—

III.—STATE PREROGATIVES VIRTUALLY ABSOLUTE.

The War-prerogative gets extended, through the duty of feudal-service arising out of possession, in accordance with the kingly granting-out, and through the severity of the feudal military control, by means of "felonies" and "fines." Decision as to war and peace, becomes wholly independent of the assembly of the people, in consequence of the personal Oath of Allegiance exacted from the Crown and sub-vassals. All active war offices remain under personal control of the king, whose resources, paid troops, and fortified places, are so bountiful, that these rightful claims are at once both actual and real. The maxim of William I. that every sub-vassal gives his feudal-oath to the king, and that every oath of fidelity to a private owner of a fee, detracts from the homage owed to the king, established, under such condition, complete unity in the organization of the military feudal-system. In addition to this, the ancient obligation incumbent on the *liberi homines* to obey the general summons to war, was never actually withdrawn. It is renewed by Henry II., at an Assize-of-arms (1181), placed under the control of the *vice-comites*, and serves, on occasion, for the further strengthening of the kingly power.

The power of the Courts of Law was virtually narrowed by the solemn guarantees given for the continuance of the *leges Eduardi*. In the parlance of the time, the *lex terræ* was thereby understood, comprising the whole range of law, criminal and private, customary and real, of the native population. This led to a transference, as far as possible,

unaltered, of the Anglo-Saxon scheme of Courts of Law. The difference, however, between the traditional rights of Anglo-Saxons and Normans led to manifold conflicts, the decision of which, by the jurisdiction of the courts, was conditional, and depended, in great measure, on the judges, and, in the County-court, on the *vice-comes*. This position of the judge was often partial, and, upon the separation of the nations and the divisions of interests, it became to be generally regarded as such. The further development of the principles of law, by custom, appears thereby broken through. The needful unity of law was only to be contrived by assigning to the County-court a higher position. Already under Henry I., there are, on this account, commissaries of court named by the king, and, from the reign of Henry II. they get appointed from time to time. In guarantee of the ancient procedure of the court, they receive their instructions, in conjunction with a number of "men of law" in the County. In reality, however, they become gradually the sole guides of the law, bringing their own interpretations, and get organized into a body of officials learned in the law, whose determining authority, from the fact of their previous practice in the *curia regis*, gets silently recognized. The County-courts lose thereby, gradually, the function of "declaring the law." On the other hand, there remains to the local functionaries, the determination of the question of "fact," which certainly had its difficulty in those times, especially in the matter of "challenge" and "ordeal." Already under Henry II. a determination towards removing the disarray prevailing in such a crude system of evidence, was manifested, by substituting free commissaries, bound under oath (*recognitiones juratæ*); and this reform in the system gets extended, in certain degrees, according as grand and petty juries applied to cases of criminal procedure. The Civil-prerogative, in close connection with the criminal

courts, gains, through the feudal-system, and from practical necessity, an extension almost unheard of in the Middle Ages. The right traditional, originating from the ancient prerogative of war, to issue injunctions of peace (police ordinances), acquires fresh energy from the new feudal-prerogative. The responsibility of the "tithing," through its *præpositi*, gets rendered more stringent and strictly controlled, by means of a yearly revision of the "frank-pledge." The ancient responsibility of the Hundred, in regard to petty thefts, was revivified, a power of inflicting imprisonment, in respect of secret murderous acts was added, involving a penalty of forty-six marks, and such imprisonment got further extended. Its real activity was quickened by a system of civil penalties. The feudal-system introduced military discipline, to which the ruler gives effect, in lighter cases, by infliction of fines levied on movables (*emenda*). The value of the movables thus engaged, is subsequently "redeemed" by grace and favour of the feudal lord (*misericordia*, *mercy*), generally for a smaller amount, and in this guise is known as "*amerciamentum*." But since the military power of the king was applicable directly in regard to sub-vassals, and in like manner to all the smaller settlers, so does this disciplinary right extend, in many cases, from the highest holder of a feud down to the humblest villain, and to the settlers of entire Shires, Hundreds, and Tithings. Anyone questioning this right was so easily convicted by the court presided over by the king's commissioner, that the accused party usually preferred acknowledging to the offence (*misericordia*), so as to escape with a slighter penalty. As a rounding-off of this scheme, we come upon the feudal-system of the distress (*districtio*), and the sequestration of the feud. This right of "amerciament," has become the special weapon of the kingly prerogative. It hence became possible, under such conditions, to inaugurate a right of issuing "ordinances,"

in lieu of the "resolutions" of the *consilia optimatum* and, in this wise, to establish the mode of governing followed in an absolute state, by means of ordinances, carried out by "amerciaments" and fines.*

Kingly prerogative in matters financial comprised, in addition to his traditional rights, consequent on the feudal-system, the heavy fines on every change of ownership; the "aids" traditionally afforded on occasion of dignities granted, or in cases of pressing need; the revenues resulting during wardship, with manifold extensions consequent on "devices" of the Exchequer; as well as numerous civil penalties, and fines on account of kingly grants and favours.** From the fines levied from vassals who were bound to service in war, to the *auxilia* in cases of pressing need, it was (*per consequentiam*) expected as a duty, on the part of vassals not so bound, to pay *auxilia* or *tallagia*, according to an estimate made, at discretion. For the administration of the resources thus expanded, the Exchequer was established as a permanent institution, combined with a body of clerks, a strict system of control over revenue, and a stern disciplinary power over all the king's bailiffs. The combination of the Exchequer, Courts of Law, and civil control administration in the persons of the County-bailiffs, brought all the king's officials into permanent dependence on this general controlling-power of the Exchequer. The resources of the king hereby gained in extent and amount, rendering them, from a financial point of view, independent of all classes.***

The kingly power over the Church, comprised a right traditional of consent, on the king's part, to clerical provisions, and to an active share in the appointment of Church dignitaries. Herewith is found combined the duty of the ecclesiastical feudal estate to equip bodies of men for war according to the terms of the feud, as also payment of "aids," and, later on, the so-called "scutage." On the other hand, to the Papal

See important concessions were made, by the adopting of the Roman Liturgy and Ritual. The rich endowment of the Church is not only maintained, but extended by many new offerings, and by the foundation of monasteries. Ecclesiastical jurisdiction over clerics, and in regard to matters ecclesiastical, is finally recognized in all its traditional extent, and it now becomes severed from the temporal jurisdiction. As an indication of the legislative authority possessed at this period, this step is taken, towards the close of the Conqueror's reign, by means of a general warrant (or word), addressed to the *vice-comites*, (Charters, p. 85,) but with the notice that it has been procured: *communi consilio, et consilio episcoporum, baronum, &c.*

These kingly prerogatives thus developed at this period, and in every direction, afford in the result a complex representing the powers of the State as central-point in—

IV.—THE CURIA REGIS.

Norman feudal parlance having introduced the designation, as indicating the position of the kingship, according as each is employed, in its own connection, may signify :—

The *Curia* in the sense of Norman " Court-Days."

The *Curia* in the sense of King's Courts.

The *Curia* in the sense of the King's Government—

(1.) *Periodical "Court-Days,"* were held on the three great Christian festivals, since the time of William the Conqueror, in substitution of the Anglo-Saxon "gemôtes of the people," but with an entirely altered character, inasmuch as, from the close of the Conqueror's reign, the last Anglo-Saxons were pushed out of the great offices and the Bishops' sees. With the actual system of Crown-vassalship, organized on a military footing, the Norman kings rule the land by means of ordinances, and letters of grace, without affording the *barones* any other influence than through the offices and

commissions held by them, subject to revocation. In fact, from the first century of this period, no share in the framing of the laws is found to exist in any class. The so-called laws of William I. are simply proclamations, charters, and official notifications, as indicated sufficiently by the style: "The king wills, orders, commands." Under William II. no such ordinances are to be met with. Henry I. begins his reign, with a charter promising, at any rate, great things, the import bearing:—"I give unto you anew the laws of my father, otherwise the laws of Edward, with such alterations as my father, with consent of the 'Barons,' has made." In the next following generations, only single ordinances of the king are met with. The assumption as to the existence during the first century of the Norman period of an assembly possessed of a legislative capacity is based upon an erroneous antedating of documents. But a wider survey of the new relation prevailing between State and Society becomes necessary in order to explain such an aspect of things.

(2.) *A Curia Regis*, in the character of a Court of Law, would necessarily have been bound up with the Parliament—had such an one, in the sense of the Anglo-Saxon Witenagemôte, existed. The king was bound, at any rate, to guarantee to his Crown-vassals a *judicium parium*. But in this sense the whole six hundred Crown-vassals are rightful members, and find their ordinary court of justice before the Royal *vice-comes*, in the County-court. There exists only a right of reservation to bring such cases before the *curia;* in other words, the king may, in important cases, name from among a large number of the *tenentes in capite*, a special commission to declare the law thereanent. We find, in fact, the kingly jurisdiction exercised only under guise of commissions, but even then only in reference to matters concerning powerful and highly-favoured Crown-vassals, while ordinary cases are tried before the *vice-comes* and the County-courts. In such

combination, it becomes evident how, in England, the king's jurisdiction might extend itself beyond all the limits of the mediæval constitution, and how also a direct exercise of justice could, through his immediate determination, be exercised by means of rescripts; and, further, how this very personal character of the King's Court is maintained as being, in the character of a Court of Law, "*ubicunque fuerimus in Anglia.*"

(3.) *Finally, Curia Regis*, in the sense of a supreme department of State, might, mayhap, have developed out of the permanent feudal courts, had any such existed in England. But as the "Court-Days" of the king are mere assemblies for parade, inasmuch as the kingly jurisdiction is exercised by commissions, so is each and every element for the fashioning of a kingly State Council found to be lacking; for, according to the administrative-system of the Middle Ages, such a scheme could not easily have existence. In the first century of the Norman period there is only mention of a number of great officials, not as existing side by side, or contemporaneously, or as having functions of a like cast. But the important offices bear so very much the character of dignities to be held subject to revocation, and on the other hand, the few hereditary offices have to discharge such unimportant duties, that in no wise could a departmental organization of a standing character be fashioned therefrom.

Out of the relations of ownership so contrived, State and County administration gained ground towards apprehending the law-making capacity possessed, and which was so indispensable for fashioning the distinction of ranks.

V.—FORMATION OF "ESTATES."

As distinguished from the Continent, the State-power in England was strong enough to keep the ecclesiastical and temporal holders of office, personal right to title, and hereditary right of possession, in their definite limits, and thereby to

establish the nobility and gentry on the footing of a class with privileges, as distinguished from a right hereditary, in the following degrees:—

The prominent class of *Crown-vassals* comprised, at the original partitioning after the Conquest, those Barons, especially, who already on the Continent, possessed the position of counts or seigneurs, with estates that amounted to, from 40 to 800 manors. Considering the relatively small proportions of English Knights' feuds, and the progressive diminution of combined estates through sub-tenancy, it may be inferred that these were, from the outset, smaller than the dukedoms and earldoms of the Continent. Still more significant was the disjointed position of the ownership, arising from the fact of their estates being scattered in different and widely-distant counties. The landlords could not consolidate themselves, as regards either time or place, since through the stringent law of "lapse" (from want of a feudal heir, or through forfeiture), the same estate often reverted to the Crown more than once in the course of a century. The peculiarity of such a development is founded on a difference of principle, inasmuch as the position of owner in England is not based on the French system of seniority (the transfer of the duty to render military service, from the small to the great ownership), but on the civil protection of the Hlâford; and, further, from the fact that the kingship does not allow to prevail any extensions of the manorial, civil, and criminal jurisdictions, or any privileged position before a Court of Peers, or any exemption from military service. It is also based on a difference in the later development. Since Henry I., the great Bishop, Roger of Salisbury, is specially to be regarded as the originator of the new official nobility, whose prominent members not only include the holders of Bishops' sees, but further, such as through estates granted, or through marriage, get also included (like the Bassets, Clintons, Trussebuts, &c.) in the higher nobility. Already,

at the beginning of the 12th century, the great nobles of the conquering host, in consequence of unfortunate attempts at insurrection, were forcibly extruded from their original ownerships. Under Henry II., the official nobility of recent growth comprised, already apparently, a majority of the great lords whose descendants boldly took the lead of the Barons at the time of Magna Charta. This striving of the ruling-class for an established position, receives in England its impulsion, not on the basis of independent lordships, but as a consequence of membership in the highest Council of the Crown. A personal summons of this kind is limited to the eldest born. In like manner a heavy burden of war-service, and of taxations, leads to a narrowing of the right of precedence to the first-born, and thereby lays the foundation, at a subsequent period, of a firmly-established peerage hereditary.

The next class of the population comprises the *smaller Crown-vassals*, in their gradual blending with the *sub-vassals*. The smaller Crown-vassals are distinguished from the great vassals by the measure, but not by the right, of their possession (tenure). They are likewise *tenentes in capite*, qualified, as rightful members of the *Curia Regis*, to sit in judgment on any Crown-vassal, immediately upon being summoned. Many find, in influential offices of dignity, a position corresponding, even outwardly, with that of the great vassals.

The large number of *sub-tenentes* (7,871) in Doomsday-book are, on the other hand, in the main, Saxon Thanes, and "free" followers engaged in the household, amongst whom a formal sub-infeudation gets developed, apparently, only by slow degrees. As "sub-infeudation" as now constituted is the only form admissible of the transfer of a feud, there are, consequently, numerous cases where Crown-vassals become, at the same time, sub-vassals in some newly-acquired estate; and even the holders of the largest feuds and benefices do not disdain becoming sub-tenants to

other lords. The relations of ownership become thereby, especially after the Crusades, so jumbled together, that any idea of a sub-tenant being a lower class of vassal must be discarded. The formation of an exclusive guild of knights had, meanwhile, rendered the knightly dignity as a common bond of union, for all vassals bound to serve in war. All priority in rank of the smaller Crown-vassals over the sub-vassals became, indeed, ever more problematic, in proportion as fresh holders of the small Crown-feuds were admitted, by consent of the king. A comparison with the Continent shows, that the decisive point in this regard lay in the fact of the transference, and the partitioning of the Knight's feud. In England, the inalienability of the feud was not maintainable, practically, because the character of the feud extended over the entire ownership of the land held. The transference was further developed by reason of the fiscal principles held by the Exchequer, to which every person acquiring possession, provided he was capable of paying, was equally acceptable. Further, from the facility afforded of obtaining, in consideration of a money-payment, the king's consent to every possible kind of transaction. The time of the Crusades, particularly, gave rise to manifold and comprehensive transfers, mortgages, and parcellings. At the close of the period, on these very grounds, the two classes gradually got moulded into a single class of knights; and already, at the beginning of the next epoch, the statute *quia emptores* enjoined that, on every alienation of a feud, the new possessor becomes, directly, vassal of the Crown.

The majority of the remaining free-settlers on land, farmers and cottagers, appeared, from the Norman point of view adopted by the class of knights, as being merely "taillable," an adjunct to the soil. The "ceorls," *villani*, were, from the manner of the organization of the local civil authorities, still further ground down, so that, in regard to the land-lord, they are placed in

a very precarious position, without any claim to a protection of their occupation. In reference to this lowest grade of the population, the State did not interfere with the manorial rights, such as had, upon the Continent, called into being a servile peasantry. The overbearing insolence of the classes bound to feudal service in war, has now banded together the small tenants—the farmers, the land-less men, and the theowes, under the opprobrious designation of "villains." Those somewhat better situated, on the other hand, are in Doomsday-book inscribed under the name of "*liberi homines*," "*sochemanni*," and "*burgenses*." Many amongst these were ancient allodial owners, who were now gradually more and more subjected to the burdens of the feudal-system, which leads further to the enforcement of the consequence that even this ownership, could only be maintained by "redemptions," the small owner having to bear the burdens of the vassal-owner, the Saxon, the burdens of the Norman. Through many generations the arrogance of the war-vassals weighed heavily on this third class. That which exercised most influence, however, on future progress, was the fact that the kingly owner, during these centuries, did not allow of the existence of any hereditary or permanently ruling-class, so that the advancement of every class to the higher grades of Society remained open alike to all. Important for the further development was the circumstance that, in connection with money matters in the State-administration, from the beginning of the 13th century, a money-payment was introduced in lieu of menial services and payment in kind. The combination of these facts renders comprehensible the following result :—

VI.—THE TRANSFORMATION OF THE ANCIENT WITENAGEMÔTES INTO THE NORMAN "COURT-DAYS,"

as assemblies of notables, merely deliberative, combined with the decline of all previously existing conditions

whereon the power of the Anglo-Saxon Witenagemôte was founded. The non-existence of a parliamentary system, without that cohesion which implants State and Church in the active life of Society, shows itself, in striking manner at this period.

Such cohesion was still to be met with in the Anglo-Saxon population from the lowest to the highest, in Shire, Hundred, and Tithing alike. But there lacked the element of unity and guidance, since the great Lords and Prelates of Anglo-Saxon stock had been more and more extruded from the "surroundings" of the king. Further, a capable ruler as a claimant for the Crown, belonging to the ancient dynasty, was wanting. The desperate up-risings of the Anglo-Saxon population in the north were all to no purpose. The crafty Conqueror knew well how to deal with such isolated revolts of the people, and from that time forth the ruling dynasty found a reliable support, on the part of the Anglo-Saxon population, against the rebellious Norman lords, as being their common enemy. This was a support which Henry I., through his marriage with the heiress of the ancient Royal House, knew well how to turn to lasting account.

The Norman elements were, from the outset, deficient in such cohesion. It was not the emigration of a whole race that had achieved the Conquest, but a straggling jumble of nobles eager for the seizure of land, of plunder-loving followers and mercenaries, many of whom soon hied back to their homes. The great nobles who remained behind with their followers, speedily spread themselves over the newly-gained soil. Certain needy free-booters possessed themselves, by main force, of a piece of land. The numerous "*invasiones*" noted in Doomsday-book, are founded on such forcible possession, without "*breve*" from the king. The element of allegiance appears, in the jumble of race that had settled on French ground, to develop only with slow growth. The history of

Normandy and the counties of Southern France, affords an insight to the struggle constantly going on with numerous revolts against the feudal lord, conspiracies amongst those who were next-of-kin, and, now and again, desperate up-risings of the down-trodden peasants. Similar experiences were encountered by the new dynasty on English soil. From the year 1074 already, the great nobles, in consequence of an ill-fated revolt, forfeited their vast estates, and, after rebellions, repeated on a small scale, the great up-rising in 1173-4, showed, as definitive result, that not one of the great lords had retained undiminished the grants just as they had received them at the Conquest.

This deficiency of cohesion was most sensibly felt between the lords and their followers from the Continent, on the one side, and the native population on the other; or, to employ the language of the records, between the *Francigenæ* and *Angli*. According to the tenour of William's proclamations, both races were to possess equal rights, and this "equality," as a principle of government, was always adhered to. But, in social intercourse, the *Francigenæ* comported themselves, through a long period, as the conquering and ruling race, and, as regards the relations of ownership, they had, in fact, become the dominant class after the last Saxons had been extruded from the great feuds and the high offices of the Church. Amongst the lower vassals, the Norman horse-soldier, and the Anglo-Danish Thane, remained about on a level. But the Thane, on his ancient patrimony, must surely have regarded with deep hostility the grasping *Francigenæ;* and still more hated by the population was the foreign petty nobility, which began to take shape from among the followers of the *Francigenæ*, out of horse-soldiers and peasants scrambled together, who have now grown into being owners of land, on English soil: "uncouth upstarts, half-crazed through their sudden elevation, and astounded as to how they have got to such

a height of prosperity, and thinking they might do anything they liked." (Ordericus Vit. II., cap. 8.) Of any kind of fealty on the part of such vassals, nothing can be told, during the first generation. And in like manner may it be predicated of the clerical portion of Society, inasmuch as foreign Prelates had ousted the Saxon, and addressing the population, as they were wont, in a tongue to them unknown, had conduced greatly to deteriorate that of the country.

This internal dissolution of all moral bonds deprives the great vassals of their hold on their inferiors. True it is, they were, as through the past, owners of the same estates, and were summoned to Court, as in Anglo-Saxon times. It was the most opulent and splendid Court of Christendom, where, in long and magnificent cavalcades, the Norman Lords and Prelates showed, from time to time, followed by their sub-vassals and servitors, wearing the colours and badges of their masters; but there is wanting, to the great Lords, that which, in France and Germany, invested them with political power—a firm hold on their sub-vassals and tenants. At the outset, there is also wanting to the higher clergy, a sympathetic connection with the lower clergy and the people, which, in the course of the next generation, was established anew.

The policy of the first three kings of the Norman dynasty corresponds with this state of things. They had to be prepared to meet the attempts at resistance of the new great vassals, since a want of discipline appertained to all feudal military organizations, and they had already, while on French ground, made unlucky experiences with regard to the fealty of the vassal-class. They had, consequently, as regarded their ownership, to rely at all times on their strongly-fortified places, on their numerous mercenaries, and on as bountiful revenues as they could secure, and, like the later "*ancien régime*" in France, they thought to make up by the splendour of their surrounding for their lack of political power. The

Conqueror, from the very outset, accordingly poses as a splendour-loving lord. "Thrice in the year he wore his Crown, whenever he was in England; he wore it at Eastertide, in Winchester; at Whitsuntide, in Westminster; at Christmas, in Gloucester. And then were present all the great nobles of the whole of England, Archbishops and Bishops, Abbots and Counts, Thanes and Knights." This statement of the Saxon chronicle, in many ways varied by contemporaries, depicts the full amount of what we know about the *Curia Regis* under the first reigns. However, it is known that the Dukes, in Normandy already, held thrice yearly, at Easter, Whitsuntide, and Christmas, a solemn Court, and combined therewith the business of accounts, and of the Courts of Law. Such solemn celebrations are called, accordingly, in England also, "Court-Days," *curia de more*. The summons to Court was addressed to nearly the same Prelates, Counts, Court-functionaries, and lords, as to the Anglo-Saxon Witenagemôte. What is wanting, however, to such Court-Days, is a veritable control over affairs of State. "The Royal order (says William of Malmesbury) summoned to the *curia de more* all the nobles, so that the ambassadors of foreign nations might wonder at the splendour of these assembled throngs, and the pomp of these festivals." So far as names and forms are concerned, it is certainly not without moment, if the most recent describers of this period regard these "Court-Days" somewhat in the light of substitutes and successors to the Witenagemôte. An express alteration of the State-structure has, in fact, been accomplished. Both sections of the population recognized, as of yore, only one governor, surrounded by a dignified *consilium optimatum*. The conditions, however, which gave expression to the voice of these great nobles, and the great events which had transformed them into deliberative assemblies, with determining voice, were entirely changed,

and, in truth, in all three spheres wherein previously the "resolutions" of the Anglo-Saxon assemblies of the people had a marked significance—to wit, in the region of the fashioning of law, as well as in regard to administrative measures, and to provisions ecclesiastical.

As regards the *laws bearing on jurisdiction*, the Norman kings were made aware that not by mere ordinance could they alter, or set aside, the national maxims of law, the *lex terræ*. Even Charles the Great had not ventured so far as this in respect of the conquered German peoples. But even the carrying-out of that principle became practically impossible, from the moment that two sections of people with different law and procedure came in presence of each other, and as being possessed of equal rights. As to the Norman Crown-vassals, the "common law" previously existing in England was not their law, and for the Anglo-Saxon Thane, the "retinue" of the Norman king did not, in any wise, represent their "assembly of the people." The two nations laid claim to a continuance of their own (native) law, but out of the inter-weaving of the two sections of the population, the position of the kingship, in the character of an Appellate-court, seemed inevitable. A decision by majority of votes was, from the out-set, wholly foreign to such assemblies. It had now become, from the very nature of things, inadmissible. In regard to the assurance that to the Anglo-Saxons their ancient law, "the so-called *leges Eduardi*," was to be maintained, the king might well take counsel with his Norman great Lords, but on their concurrence the lawful successor of Edward, might not make that ratification depend. The same position repeats itself in the numerous further conflicts in which the king, now with one, now with the other part, took counsel. The decision, however, had to depend on the king, and this position had to endure, until in substance, a blending of the two national laws was effected. The determining bodies transform themselves

in such a condition of things, silently, into bodies deliberative. In these transitions towards absolutism, the old forms will be clung to for hundreds of years, even just as the history of Rome, and the *ancien régime*, demonstrate, in the most marked manner. And this is precisely the case with the Anglo-Saxon period. The national conception of law, to wit, that for the changing of the "common law" a co-operation of the *meliores terræ* is needful, is not by any article of the Constitution declared void. It remains subject, however, to the will of the king, as to what body of advisers he will consult. No one has the power to determine the selection of these *optimates*, no one the right to decide whether or how the lords are to be consulted, or how far their counsels shall be given effect to. The documents bearing upon these deliberations were kept amongst the king's archives, and not till several generations later, under the control of great lords, were these records drawn up in a set form and duly registered, so as to secure their authenticity. While Anglo-Saxon times have bequeathed to us a considerable number of "resolutions" of Witenagemôtes, in the original, and with carefully-appended signatures of the principal parties, there is only extant, from this period, the proclamation issued at the beginning of Stephen's reign, recorded with the like care, just because there was lacking, on the part of the lords, a constitutional right, to control the legislative proceedings. Hence, in the first centuries of the Norman period is met with, occasionally, the *consensu baronum meorum* which crops up, whenever fundamental changes in the hereditary "common law" are in question. The Charter 4 William I., (which now only exists in a mutilated form,) wherein the king modifies and confirms the laws of Edward the Confessor, contained, most likely, the clause referred to. In the subsequent Charter of Henry I. we find, at least, that the additions introduced by his father were, with the consent of the Barons, *consensu baronum*. An essential altera-

tion in the "common law" was certainly also included in the ordinance of William I., separating the spiritual and temporal jurisdiction, and hence the special introduction of the words that it was done: *communi concilio et consilio episcoporum et omnium principum regni.* The type of a formula is shown by these two main events. In the reign of William II. one does not come upon any ordinance containing such clause. The solemn charters issued on occasion of the accessions of Henry I., of Stephen, and Henry II., make mention of the consent of the *optimatum* on grounds easy to understand, since there is a question of the accession to the Throne, of a successor whose title bears the character of being founded in usurpation. Even here, the formula does not afford a kind of assurance that admits of being tested. One perceives the first approach towards rendering the consent one of a strict character, in the assembly of notables held under Henry II., where the Assizes of Clarendon, and of Northampton, were resolved on. But these again have disappeared. Under Richard I., and John, only revocable charters, and orders, are to be met with.

Consequent upon the internal break-up of the legislative assembly, there comes into mutual operation the omission of that regular connection between the proceedings in the Courts of Law, and of the "resolutions" about law which, in the Anglo-Saxon Witenagemôtes, was a matter of tradition. The right reserved to the king of appointing a *judicium parium* for Crown-vassals, took now the form of a commission, nominated by the king, and which, at the King's Court, or on occasion of "Court-Days," might exercise its powers, as did occasionally happen. But in the very *causes célèbres*, mentioned by historians, facts and circumstances were in question, of a complicated nature, and which could only be tried in the County. The king enjoins the holding of a Court in the respective Shire, nominates a Prelate, or a great vassal, as his representative (*justiciar*), in conjunction

with a fitting number of Crown-vassals, for the discharge of the "finding," and with a summoning of the men of the Shire, to decide upon the state of facts.*

From the outset, the second branch was of an entirely different character. The participation of the "assembly of the people," in what is now-a-days called "*the administrative measures*," and, in the most important State-proceeding, had been throughout of a relative kind, dependent on the times and the conditions of power. In consequence of the expansion of the kingly power, the urgent motive for any such participation was removed.

In the sphere of the military-system, the personal summons of the king had taken the place of the "resolutions" of the "people's court," in connection with matters of war and peace. The feudal levy is no general call to arms, but a levy of bodies of men, summoned by the feudal lord. The vassals render service, *intra et extra regnum*, on personal summons from the feudal lord, and under penalty of losing their vassalship, or of incurring heavy fines. Only a century-and-a-half later, after Normandy was permanently severed from England, could the question come to the front, as to whether the bodies of men rendering feudal service, were in duty bound to serve, beyond seas.

As regards the province of law, Anglo-Saxon kings already had exercised a right of issuing "ordinances," as far as the administration of justice was concerned, though not where there was any fundamental change in question of the *jus terræ*. The Norman kings, in their character as Judges of Appeal, could not draw such a distinction. A number of most important rescripts, relating to criminal and civil jurisdiction, were, however, at this time, issued, under the shape of simple ordinances, orders to Royal councillors, and official instructions to the itinerant justices, and to the *vice-comites*.

As bearing on the province of the keeping of the peace the Anglo-Saxon kings already were wont to issue individual civil regulations, in respect of which, to secure the more ready execution thereof, they sought for the assent of the Witan. The Norman kings kept so tight a hand over their *vice-comites*, gerêfas, and itinerant justices, that no such ratification was needed. The system of the Anglo-Saxon "pledges" (surety of the land-lord for the tenant, and of the district civil officers for the villains) is, therefore, enforced with unmitigated rigour by means of "fines." The further exaction of a murder-penalty, amounting to forty-six marks, for every murdered Norman, was an innovation against which the Normans had not certainly anything to object, and the Anglo-Saxons were unable to object. The periodical holding of general Police-courts, through the Sheriffs (sheriffs' tourn), and the periodical revising of the inhabitants' list (view of Frank-pledge) are also grounded on Royal ordinances and official regulations. In like wise, the expansion of the criminal law was derived from the so-called *placita coronæ*, immediately from the prerogative of the king, as "*conservator pacis*."

As regards, lastly, the province of finance, the king stood as little in need of the assent of the Normans, in respect of the ancient revenues of the Anglo-Saxon kings, as he required any assent on the part of the Anglo-Saxons, in reference to the new feudal revenues. The "Dane-gelt," which had been introduced in the later centuries of Anglo-Saxon times, in cases of urgent necessity, was apparently levied at different times of public need, according to the measure of plough-land, yet with numerous grounds of exemption, and hence rendering it unsuitable as an expedient for a general levying of imposts. The main thing was that the new revenue from the feudal-organization flowed in abundantly, and that, out of the prevailing notion

of the grant of land as coming from the king, there was further derived a duty on such subjects as were not liable to "scutage," to pay "aids" (*tallagia, auxilia*). For generations to come, the ordinary needs of the Crown were amply cared for. Only a century later, when vassals, liable to service in war, were subjected to the so-called scutage-money (*scutagia*) in lieu of feudal service, there arose a constitutional question as to whether the king might, by personal ordinances, change the legal feudal relations, whereby the dawning of a right of taxation first makes its appearance.

If in this sphere, now and again, there was any question of a co-operation and assent on the part of the Prelates and great Lords, and sometimes even of other classes, such can only be regarded as being exceptional cases, in regard to which already in Anglo-Saxon times, great weight was attached to the "acclamation" of the "bystanders," (*Umstand,*) as, for instance, on occasion of an accession to the Throne, or of a coronation, that happened to be open to discussion. But all cases of succession to the Throne during the early centuries of Norman times were irregular and questionable. William II., Henry I., and Stephen, got their more than doubtful title to the Crown solemnly confirmed, in all haste, by their adherents among Prelates and vassals, were acknowledged with acclamation by the people present, and had these facts recorded as acts of State; "with the consent of the assembled people" (*consensu omnium episcoporum, baronum et universi populi*), just as this took place in Anglo-Saxon times, relying upon some exceptional right tacitly reserved in cases of need; but just as little now, as through the past, could it be inferred that kingship by election ever existed.*

The participation of Shire-assemblies in ecclesiastical legislation assumes an altered position in consequence of the "separation of Church and State," now introduced. The Conqueror had every inducement to meet this natural

endeavour, on the part of the Church, to secure its own governance. The sanction of the Pope still remained the only incontestable title to the Crown, but the lower clergy was the class who influenced, in great measure, the obedience or resistance of the masses. The Conqueror makes, consequently, those concessions which already, according to Anglo-Saxon relations, could be made without consent of the *optimates*. England receives the Roman liturgy, and binds herself to the ritual observances of the Roman See. The wealthy endowment of the Church with estates and tithes is not only maintained, but extended by further gifts and numerous monasterial foundations. The separation striven for on the part of the spiritual authorities, presently involved an entire withdrawal of the ecclesiastical jurisdiction from the temporal. The co-operation hitherto existing on the part of the Bishop and the Ealdorman for the holding in common, of Courts of Law, on appointed days, for clerics and laymen alike, was not only opposed to the spirit of the Roman Church discipline, but also in another aspect. On the temporal side, since the Conquest, the Earl had been withdrawn from the conduct of the County-court; a co-operation of the Bishop and shir-gerêfa could not possibly prove acceptable now to either party. The separation, so popular under such circumstances, is declared, consequently, by means of the above-named circular-rescript of William I., ostensibly *consensu optimatum*. The far-bearing consequence of these changes was, however, that the ecclesiastical bodies, when determining a point of law, based themselves not on the "common law," but directly on law ecclesiastical (*leges episcopales*), further, on canon law, the decrees of councils, and the decretals of the Pope. There arose thereby a civil and criminal jurisdiction, independent of, and more far-reaching than the State-power, as well as a superior control over the entire body of the clergy, which must, inevitably, lead to a

conflict of authority with the temporal power. The question as to the manner of the installation of Bishops, in the time of Henry I. (as later on, in Germany, by means of the Calixtine concordat), was settled, so that the Pope, with a ring and staff, imparted the spiritual power, and the king, on infeudation, imparted, with the sceptre the temporal power. A settlement, right in theory, but which, admittedly, led, in Germany very soon, so far, that the curia, with its united and prompt habit of business, took precedence of the cumbrous and disconnected State authority, and centred in itself a directing influence over all nominations.

If this result did not straightway come into being in England, the determining cause was to be discovered in the fact that the Anglo-Norman kings found themselves in possession of all the powers of government which the German emperors lacked. The Conquest had given William I. a feudal supremacy, in the fullest degree, over the greater ecclesiastical possessions. He did not, in truth, allow of the humiliating fiction of a "Redemption" being applied to Church property. The Church had to be exempted from a presumed participation in the "Rebellion," and from a forfeiture of the ownership, through rebellion. But the powerful position of the Conqueror, in respect of his Norman chaplains, whom he, by grace and favour, had named his Prelates, was sufficient to carry out, in principle, the subjection of ecclesiastical property to the feudal war-service, with some few exceptions. The problem of the equal apportionment of the war-burden, in respect of which the later Anglo-Saxon military-system was hampered, seemed thereby solved, and it was now the most urgent interest of the temporal-vassals to insist on the ecclesiastical possessions taking their share of the feudal requirements in this regard. The kingship found, in this direction, the entire body of vassals always on its side; consequently, the appear-

ance in arms of the levies, and their obligation to acquit themselves of their feudal services; and, further, their duty to appear as men of law before the Feudal-court; the punishment of felonies through feudal penalties, and confiscation of the feudal revenues, is maintained. Further comes into play the unlimited power of the king over his justiciars, *vice-comites* and lower bailiffs, who have to lend a strong hand, in case of need, to the Ecclesiastical-court. The possibility is added, however, of this protection being withheld in case of a conflict; but, above all, the unlimited *amerciaments* of the Norman kings, which, with arbitrary penalties, extend even to the spiritual dignitaries.

In spite of the concessions to the Papal See, William I. hence felt himself, in respect of the Church, still the uncontrolled master. Even a Papal remonstrance (1079), to the effect that (1.) the Peter's-pence was not punctually paid, (2.) that William had not acknowledged the Pope as his feudal lord, there follows the rather bluff answer—ad 1, yes; ad 2, no (*unum admisi, alterum non admisi*). The Conqueror also does not put up with any provisions of the clergy in their synods, against his will. No Royal official must, without permission of the king, be excommunicated by the ecclesiastical body, and no Papal legate without permission of the king, is allowed to set his foot on English soil.

Concurrently with this separation of Church and State, a fluctuating relation arose which led to excesses, now on one side, now on the other, which were ultimately removed by compromises, but soon led again to conflicts on other points. Henry I., in consequence of his usurped succession to the Throne, being obliged to rely on the support of the clergy, soon remedied all rightful complaints straightway, and kept within the limits of his power with caution and dignity. Under the usurped accession of Stephen, on the contrary, there followed, in consequence of unjustifiable acts

of violence on the part of the king, sturdy opposition from the clerical power, meddlesome behaviour of the Papal legates, arbitrary substitution in the benefices by foreign clergy, an increasing practice of appealing to the Papal See, &c. Under Henry II. there follows straightway a re-establishment of the kingly powers, but thereafter the outbreak of a serious conflict.

The main aim of the compromise at this conjuncture was the filling up of the vacant sees, and especially the nomination of the Primate of Canterbury.* The split among the clergy, which had come about in the reign of the Conqueror, occasioned by the nomination of foreign bishops, had by this time, disappeared. The long-continued opposition to the introduction of celibacy, the ill-will manifested against the Papal legates, and resistance against the filling up of benefices with foreign clerics, make it apparent why the English clergy were disinclined to see the bishoprics filled through the intervention of the Papal authority. Deference for the views held by the clergy resulted in the fact that the king, on occasions of the "Court-Days," or at the clerical synods, always lent ear to the Prelates there present, and, as occasion prompted, to the lords temporal. In this connection, a "*concilium*" and a "*consilium*" is found frequently mentioned on occasion of the nominations, without leading to the conclusion, however, that they had any right to an independent election.

To sum up, these transformations make clear, that even in the sphere of ecclesiastical legislation, no scope had been left for any decisive co-operation on the part of the "assembly of the people," and hence the result, on the whole, shows that in the first century of the Anglo-Norman time, a "Witenagemôt," possessing a determining power, and having a constitutional right of signifying assent, had altogether ceased, however much this may seem in contradiction with the opinions till now obtaining in England.

The Norman "Court-Days" have, in later centuries, from different points of view, been made the subject of party contention. During the Stuart-period, it was accounted of importance to balance, as against the exalted claims of the kingship *jure divino*, a Parliament possessing, to say the least, as high and ancient a claim. It was of no little account, for the art and science of heraldry, that there should exist Parliaments-in-arms, with their glittering array of shields and scutcheons, and shows, and processions; for it pertained to the office of herald to discover a progenitor for the newly-created lord, who had to be more than a mere holder of a Knight's fee, or a freehold, so as to be planted as fitting ancestor, at the foot of the genealogical tree. The parliamentary factions of a later date were chiefly interested in possessing some such heraldic tree. A view, widely held at the time of the "Reform Bill," in 1832, aimed at showing that the Norman kingship was, out-and-out, of parliamentarian growth. An essay by Allen ("Edinburgh Review," vol. 35) met with general acceptance, and aims at proving that, "the name, and most probably the constitutive elements, of the Anglo-Saxon 'assemblies of the people,' were completely transformed on the advent of the Normans; but that their powers remain distinctly the same, and have continued even to the present Parliament."*

The thorough investigation of the question, by means of a committee, appointed by the House of Lords, in the year 1819, and subsequent years, the five Reports of which, "On the Dignity of a Peer," much outweigh all previous researches, has arrived, after careful sifting of all the documentary data, at denying that, under William I. and II., any traces could be found of the existence, or organization of an assembly invested with powers of legislation. The charters of Henry I., of Stephen, and Henry II., however, go to prove that the assurance of the continuation of the laws of

Edward was looked upon as the "law of the land," and hence, that it may be conjectured therefrom, that there did exist a kind of constitution, possessing a legislative capacity, whereof, under certain circumstances, a group charged with the framing of laws, formed an integral part. The real essence of this conception will be found to be at one with the above view, as set forth.

For the assemblies of notables with power of legislating, a parliamentary body of a wholly new complexion must hence, subsequently, have got constituted; and such body was not bound up with the old "Court-Days," which latter, especially amid the wild confusion of Stephen's reign, had, about the year 1139, fallen into abeyance. The first attempts indeed, during that period, at resistance, and in favour of emancipation, resulted inauspiciously. In the conflict about the succession to the Throne, on the death of Henry I., Stephen of Blois, to outbid his rival, the Empress Mathilda, had granted out in truly reckless fashion, Earldoms, Crown-feuds, and State-prerogatives. Forthwith, instead of the administration of the kingdom being conducted strictly, as heretofore, there ensued the *pêle-mêle* confusion of the Continental feudal-system, private wars, fortified castles, violent enforcement of the power of jurisdiction, and of the right of coining, exercised by the greater and inferior Barons alike; a wild battling of the vassals among themselves, under pretence of siding now with Stephen, now with Mathilda. The withdrawal of the active interference of the Exchequer, and of the *vice-comites*, does not lead to a setting-free of Society, which still lacks all coherence in the matter of independent "self-government," but rather to wild, individual violence, which, for full fourteen years, (like the subsequent interregnum in Germany,) prevailed, until at last, by intervention of the clergy, a compromise is effected as to the accession of the son of the Empress, Henry II., whereby the setting aside

of the pseudo-earldoms, the razing of 375 castles, the re-establishment of the control of the *vice-comites*, the full restoration of kingly rule, as a means of "redemption" from the condition of helpless confusion, was hailed joyfully by the whole land.

VII.—PERIOD OF TRANSITION. ECCLESIASTICAL CONFLICT WITH THOMAS À BECKET.

The first lasting blow at the powerful position of the king, arose out of a conflict with the Church. A century after the Conquest, Church and State arrived at a turning-point in their mutual relations, the position of the Church being rendered, thereby, much more popular.

What the Church lost by its subjection to the civil and military power, was won back again on the ground of her moral influence, for to the ancient vocation of the Church, a new one was adjoined, whereby she became, in the scission of the two nations, the natural mediator. The *esprit de corps* among the clergy, had advanced far enough to maintain the Church, amid such a division of the nations, as a unity which, now nearly at the acme of her position of power, no longer wished to allow a series of State claims, as against the "law of God," to prevail. Under these circumstances, Henry II. came into conflict with the Primate of the kingdom, in respect of the kingly powers, as heretofore acknowledged. The king was hence compelled to propose the framing, by the hand of one well qualified in law, the *constitutiones* of Clarendon, a body of maxims which appeared unquestionable, as traditional law, so that the Bishops even, as well as the temporal Crown-vassals, acknowledged them. For the solemn decision of these precepts, elaborated in a Council extending over fourteen days, for the solemn confirmation of which body of doctrine an exceptional "Court-Day" was summoned, whereat both Archbishops, twelve Bishops, ten Earls, twenty-nine Barons, and still other

spiritual and temporal lords, are mentioned as being present. Archbishop Thomas à Becket, after some endeavour at resistance, was forced to yield assent, with a promise to keep these Articles *legitime* and *bonâ fide*. As, however, in the heavy strain on his duties, as prince of the Church, and as vassal, under the formula *salvo jure ecclesiæ*, he continued his resistance, and under the authority of the Pope, the king, thereupon introduces a decisive precedent, and thereby, by means of a well-arranged court of his spiritual and temporal Crown-vassals, procures, on the 17th October, 1164, the sentencing of the Primate to the *misericordia regis*, which, thereafter, gets modified, in the usual fashion, into an *amerciament* of £500. The victory so hardly gained is lost again through the vehement behaviour of the king, and the disastrous issue of the struggle results in the martyrdom of à Becket. At length, when peace ensued, Henry was compelled to relinquish certain of his prerogatives, and the break-down, in this particular, of his Royal power, could not be restored.*

Simultaneously, and in further connection therewith, are found introduced popular reforms, for the better securing of the rights of the subject. If Henry I. is to be regarded as organizer of the administration, especially as concerns the finances, so must Henry II., through the agency of a well-trained body of officials, be considered the organizer at once of the administration of law, finance, and the army. About a century after the Conquest, there occur, coincidently, three modifications: the further centralization of the administration through the itinerant justices, the formation of a body of Judges, and the first beginnings of an Upper House, comprising Prelates and Barons.

A body of *itinerant commissioners*, deputed by the Court, instituted already by Henry I., becomes, from this time forth, a lasting organization. Such a body was needful for purposes of administration, especially in matters of finance, for the

Royal revenues had, in the confusion prevailing under Stephen, suffered manifold encroachments. These commissions are found available, further, for the levying of the *tallagia*, and also by way of exercising a scrutiny, periodically, over the official business of the *vice-comites*. In connection therewith we find a considerable displacement of Sheriffs in the year 1170, whose posts were, from that time forth, filled up by officials of inferior class from the Exchequer.

On the other hand, an employment of these itinerant commissioners takes place also for the conduct of civil suits, inasmuch as the greatly varying decisions bearing upon feudal inheritance of the private feudal-owner in regard to his tenant, called for a definitive and uniform practice. Just as urgent was the necessity to withdraw from control of the detested *vice-comites* the more serious cases involving penalties, and, to carry out by means of commissaries, a more effectual and reliable administration of the criminal law. The itinerant justices, consequently, had to transact a series of business matters, for which new principles of jurisdiction had to be fashioned. In the year 1178 there was constituted, in order to deal with these juridical matters, a kind of standing commission (*bancum*), consisting apparently at first of, partly, justices in eyre; and partly of the officials of the Exchequer. The ancient and inform *Curia Regis* now assumes distinctive shape as two permanently-appointed bodies of officials, the King's Court and the Exchequer. The king's mode of acting by means of writs, in reference to these bodies, was conducted by the Chancellor, who, belonging to both bodies, issues the official papers as *officina justitiæ*.

In further connection with these proceedings we come upon a repeated summoning of the Prelates and of the highest Crown-vassals to extraordinary meetings, to advise concerning matters of State. This first came about on occasion of the constitutions of Clarendon, and on the

sentencing of Thomas à Becket. The unfavourable result of the clerical conflict occasioned several times the summoning of such extraordinary "Court-Days," in which, likewise, important reforms of the administration of the temporal law procedure were submitted, for advice and subsequent adoption. (Assize of Clarendon 1166, Northampton 1176, Assize of Arms 1181.) The king does not, even as in Anglo-Saxon times, disdain to proclaim the king's peace, with advice of his Council. At this conjuncture innovations are introduced whereby the popular fundamental notion as to the existence of a power of law-giving takes fresh life. Instead of such occasional meetings the whole body of the Prelates, the Earls, and the great Barons *ad hoc* are summoned, and in the resolutions of the Council, this *consilium optimatum* is especially mentioned. According to what maxims such summonings were effected is open to discussion, but the elements composing the body of Crown-vassals, comprising many hundreds of owners, and part-owners, of small Knights' feuds, show, that the king had as much freedom of action in regard to the summoning of such nobles, as he possessed for the constituting of the *consilia optimatum*. These assemblies were in nowise "feudal Parliaments," but nothing more than assemblies of notables having no permanent standing, and which, for the term of a generation, or even longer, drop out of view. But for a while already the great Barons had met together, whenever important advice on matters of State required. The right of the Barons had anew gained a consistence, in definite outlines, and even such extraordinary "Court-Days" certainly furnished important precedents in excess of the now approaching

VIII.—MAGNA CHARTA.

To Henry II.'s powerful, and yet, in the end, changeful rule, succeeds Richard, the Lion-heart, adventurous and

unfixed of purpose, but a true reflex withal of his time, and hence cherished in popular affection. The Regency established during his crusade, is found speedily at variance with the great Barons and with the king's brother, John. During the absence of the king, once again England beheld one portion of the Barons in party strife with the other. With the return of the king from captivity, his personal rule is, meanwhile, renewed; he holds a "Court-Day" (*colloquium*) after the old fashion, and sits in judgment on his brother, John; imposes on each plough-land a tax of two shillings, and, through his never-ceasing strife on the Continent, at last loses his life. For the effectual co-ordination of the internal administration, the almost continuous absence of this knight-errant from English soil, could but prove advantageous.

The reign of John, however, now succeeding, seems once again to re-unite the worst characteristics of Norman rule. This king, erewhile a disloyal son and a treacherous brother, brings about, through the murder of his nephew, Arthur, who possessed a nearer right to the Throne, the forfeiture of his feudal ownership in France, and leads thereby to the lasting separation of Normandy from England. He involves himself in a conflict, begun in violence, with the Papal See, and ends it by abject submission. He demeans himself in the administration of the State more harshly than any one of his predecessors, and by his cowardice and cruelty, his greed, and his arbitrary dealing, alienated, in turn, all classes of the nation. He thereby brings on at last a crisis, in which all the elements of resistance against absolute rule contrive to combine, in common action.

Above and amid these resisting forces now stands the Church, which, through the issue of Thomas à Becket's ecclesiastical conflict, has exhibited a power equal to that of the king. The time has now approached wherein Innocent III., from the height of his Papal ascendency,

pronounces, at the great Lateran Council, the Church as being the Universal Monarchy of the Middle Ages. At rupture with this power, John is reduced to seeing himself excommunicated publicly, deprived of his kingly office, and the absolving of his subjects from their Oath of Allegiance, proclaimed on English soil. The temporal vassals, meanwhile, adhere to the king. In the year following (1212) a formal sentence of deposition is issued by the Pope, and charge is given to King Philip, of France, for the carrying-out of the same. The fear of the French invasion, and of united action on the part of his own vassals, now prompts the king to make unconditional submission. On May 15th, 1213, John resigns his crown into the hands of the Pope, "makes over to the Church and the Pope, his kingdoms of England and of Ireland," to receive back the same from the Church, in the character of a feudatory, whereupon absolution is conferred through the Primate, Stephen, named in that intent by the Pope. Stephen, despite his elevation through the Pope, becomes the patriotic leader of the national-minded clergy, and undertakes, on occasion of a subsequent outbreak, the leadership and mediation, demeaning himself, in a very arduous position, as a steadfast and pure character.

The ecclesiastical opposition now stands, in its powerful relations, as the only united portion of vassaldom. Since the Crusades, and in consequence of them, the self-importance bound up with the military calling, had powerfully developed. The equality asserted in this class, throughout all Christendom, had nurtured an *esprit de corps* which, before the walls of Jerusalem, had matured a general code of honour, from which even princes themselves could not withhold observance. While now the great Crown-vassals and the inferior class of Knights had begun to feel themselves as a united body, both were deeply offended by the arbitrary

imposing of taxes by scutage-money, which John arbitrarily raised to two marks, and kept up from year to year, and by the levying of feudal "*auxilia*," without heeding whether it was a case connected with a day of honour, or one arising from a pressing need, and, further, by the levying of a tax on movables, which put the vassal on a footing with subjects who were taxable by the Exchequer, in direct contravention of assurances given by the king's predecessors. Under the same reign the Exchequer, and the administration of the *vice-comites* and bailiffs, with their never-ending system of "amerciaments" and "fines," attained to the highest pitch of exaction. In like manner John acted, in his character of father of orphans, in unexampled fashion, and in his shameful profligacy spared neither wives nor daughters of his great vassals.

Meanwhile, the free socagers and burgesses, not bound to feudal service, had arrived at a greatly altered position. By the king's licence, and on condition of payments, alienation and partition of feudal estates had come into operation on a considerable scale. Marriage and death, acquisition through an heiress, sub-tenancies, and even parcellings-out through purchase, were allowed, as such, in order to procure the necessary outlay for the Crusades, and conduced to bring about a more extensive settling on the land, of free-men. Money and business matters, developed through the Crusades, had enriched London and the sea-port towns, and since the time of Richard I. had conferred on a large number of "burhs" important privileges, together with a certain amount of independence. These classes also found themselves (far different from previous times) in a condition of mind fitted to render them ready to make common cause, conjointly with the spiritual and temporal Crown-vassals, against despotism.

But it was, above all, the progressive blending of the nationalities which had, imperceptibly, cut the roots of

absolutism. Five generations in succession had already lived under one Church, one king, one administrative system, in equal peace and under like control. The fact of living on a common footing had rendered marriages between the *Angli* and the *Francigenæ* a matter of daily occurrence. There arises, gradually, a new insular population, which, through the definitive separation from Normandy, had attained to the consciousness of its own individuality. In this new complexure, however, the Anglo-Saxon element was in the ascendant, not merely through number, but from the characteristic qualities it had uninterruptedly maintained, in family custom alike, and language. The simple, moral earnestness of this family life, ennobled by the action of the Church, showed itself, in the long run, as compared with the sparkling, vivacious Frankish life, as the sturdier element, which in Church and State, in community and family, assimilates the foreign race, and, despite many and lasting differences of language and brotherhood, gets consolidated with every further generation, into a substantially Germanic nationality. While upon the Continent, those of Romance stock, and the Romanized Celts, crowded to the Courts of the great, the Saxon Thane and Ceorl had remained, through troublous times, firm and fast in his homestead. While the pliant Northmen had, on settling in Normandy, after a few short generations, adopted the language of their wives, and in life and manner had become Frankish, the Norman race on English soil, despite its prominent social position through centuries, had not, into the prevailing English speech, succeeded in introducing one-tenth of their own language; in the English "Our Father," but three words at most, as philologists have clearly shown. To sum up, it is from the characteristic features of family life, as influenced beneficially by the National Church, that the whole question as to nationality is determined.

It is these elements that are brought together in the great historical event of June 15th, 1215, which, under the name of Magna Charta, may be regarded as the groundwork of the present constitution. A few months after the humble submission of John, and when the feeling of the country had manifested itself in the armed throng that had been brought together against King Philip, there had taken place meetings of nobles, and sustained by expert advisers of a majority of the Prelates. By Archbishop Langton himself, the temporal lords were led to adopt, as a precedent, the then almost forgotten charter wherewith Henry I. had inaugurated his reign, so full of promise. The project of a like charter is accordingly drawn up with all care, and taking due account of all the needs and requirements then prevailing. About Easter-tide, 1215, there was collected, at Stanford, an army consisting of 2,000 Knights, with numerous followers, horse and foot. It is a characteristic fact, that among them there is scarcely one name to be found, dating from the distinguished Norman families belonging to the first centuries after the Conquest, but of numerous Barons from the Northern Counties, and especially of a large number of relatives (or members) of the official nobility, who had, since the reign of Henry I., risen to high offices of State. They choose Robert Fitz-Walter, Earl of Dunmore, as "Marshal of the Army of God and Holy Church;" are absolved from their feudal fealty by the Canons of Durham (May 5th), but do not gain a firm stand against the king and his troops until, on an understanding come to with the citizens of London, they have seized this important stronghold. In this state of things, terms of peace are entered into, on the meadow of Runnimede (15th—19th June, 1215), where the king, with a small following (eight Bishops, and fifteen Barons and Knights), on the one side, and the vassals, fully armed, on the other, treat with each other, the Earl of Pembroke acting as mediator. The project, now

revised and completed by a council of experienced men, is acknowledged by the king, by the affixing of the Great Seal, and, with all due formality, is declared to be the Royal Charter.

As regards the Church, Magna Charta leaves everything undisturbed, just as under the charter previously obtained, on January 12th, 1214, according to which, from thenceforth, in all churches, cloisters, cathedrals, and convents, "freedom of election is to prevail," as concerns both higher and lower clergy, so that in case of a benefice falling vacant, "the electors may exercise free canonical election, and, on election completed, they have to ask for our consent, which we will not withhold, saving a *rationabilis causa*, rightfully proved against the same, in consequence whereof we should not give consent."* (Stubbs, "Select Charters," 288.) The special articles of Magna Charta, therefore, comprise only the limits of the temporal prerogative, which, in conjunction with the civil and fiscal administrative system of the times, may be clearly apprehended.

The feudal prerogatives of the Crown hitherto in force remain untouched, but arbitrary interpretation, and the extravagant demands of the Exchequer, are reduced by a reverting to fixed amounts—the *relevium*, on change of ownership, in a Knight's fee, 100 sh.; of an Earl's, 100 lb. silver; a great Baron's, 100 marks. The feudal lord shall not "waste" the estates during usufructuary feudal wardship, but keep them in fit order; feudal heirs shall be married as befits their condition; the widow shall have her widowhood, and shall not be forced to marry again. When "aids" (*auxilia*) are demanded from the feudatory, in addition to the three cases firmly established by tradition (ransom of the king from captivity, the knighting of the eldest-born son, and marriage of the eldest-born daughter), or, when in lieu of a feudal service in war, there is required a payment in money

(*scutagium*) thereupon, an arrangement shall be made with the body of Crown-vassals, whose consent shall be asked, in an "assembly" whereto the greater Barons *majores barones*, by name, and the lesser Barons, *collective*, are to be summoned by the Sheriffs. (Articles XII. and XIV. of the Charta.)

Legal limitations of the Prerogative of Justice.

The ordinary business of civil process is not any longer to follow the Court, but to have its fixed abode. Civil assizes are to be held by itinerant justices. Arbitrary and disproportionate fees are to cease, and from no one is justice to be withheld. No *vice-comes*, no Baronial-reeve, or local Court-reeve, shall henceforth exercise any criminal jurisdiction over the *placita coronæ*. The fundamental point however, lies in the comprehensive Article XXXIX.: "That the body of a free-man be not taken or imprisoned, nor that he be disseized, nor outlawed, nor exiled, nor any way destroyed, nor that the king pass sentence upon him, or imprison him by force, but only by the judgment of his peers, or by the law of the land (*per legem terræ*)." This is the repeated guarantee of legal protection according to the "common law," and by means of a court established conformably with custom,—consequently the frequently repeated assurance of the *leges Eduardi*, now more distinctly defined in its present form, and demanded by the great vassals, and hence by them also guaranteed in turn to the *liberi homines* of the kingdom.

The legal restrictions of the police jurisdiction next bear on the vital point of arbitrary procedure: all fines (*amerciaments*) are to correspond with the measure of the offence; for determination thereof, there must concur the co-operation of the free-men after the manner of the "finding" of a court (*per sacramentum proborum hominum de vicineto*); on occasion of their being carried into effect the free-man shall retain the needful means of living, and the labourer his imple-

ments of labour. The *comites* and *barones* also shall be fined (after assessment made) by the members of the court. Further, to all the subjects in time of peace, free passage by land and water is assured; to all merchants, freedom to transact all business free from all evil tolls and impositions. There shall be one weight and one measure throughout the kingdom.

Legal limitations of the prerogative in matters of *finance*, are comprised already in the above-mentioned principles concerning feudal aids in money, and fines on change of ownership. So, in like manner, in future shall it be, with regard to "*auxilia*" from the City of London. To the chief town, and all other towns, and harbours, their traditional liberties shall be guaranteed. No town, and no free-settler, shall be required to build bridges, where this has not been so of yore. Provendering and wainage without consent of owner, shall only be allowed on due payment in money. Further abatements of the rights of the Exchequer are promised, for benefit of creditors, on settlement of the inheritance. A special group comprises, lastly, abatements of the forest restrictions, wherefrom, soon afterwards, a special *Charta de foresta* was drawn up.

The marked difference from the liberties of the three estates on the Continent consists in this, that the Prelates and vassals do not think of themselves merely, but, at the same time, of extending the needful securities to the classes under them. The liberties guaranteed to the Crown-vassals are, by "the private feudal owners to be acknowleged in favour to their own vassals (*erga suos*)." To the towns generally their ancient liberties are guaranteed. The right of the Exchequer over those not bound to serve in war (*tallagia*) remains still undisturbed, but already an approach is made towards bringing the City of London on a footing of equality Where the object of the security

permits, the free-hold is named in conjunction with the feuds bound to service in war; side by side with the war-vassals are mentioned the *libere tenentes.* Many clauses concern generally the *liberi homines,* without reference to the manner of tenure, and therewith the tenant-farmers are benefited. Some clauses are made directly in favour of *villani.* Such securities are apparently inserted, subsequently, by advice of the Prelates.

According to modern notions, what is most striking, is the absence of what is now-a-days called "Parliamentary Rights." No right of assent to the issue of Royal ordinances, no right of assent to the levying of taxes, and no guarantee of periodical assemblies for the treatment of grievances; but only a promise, that in regard to the two positive changes in the legal conditions of feudal ownership (demand of money in lieu of service in war, and money aids, except in the three feudal cases), the Crown-vassals assembled shall be heard, and their consent given. More than this did the English vassals-in-arms, combined with the Church, and upheld by the outspoken sympathy of the land, at the very height of their pretension, not as yet lay claim to. The fancy picture of an assembly of the haughty Barons of the kingdom in the 12th century, vanishes, in such a combination of circumstances, and equally as the legal records of the time, so does the course of events during the succeeding centuries make it manifest that the rights of the English Parliament, as at present possessed, were acquired much later on, and after manifold vicissitudes.* In like fashion, must one regard the much-considered guarantees for the carrying-out of the Magna Charta. Inasmuch as the granting of an individual and revocable letter of grace to the Prelates and the Barons could not suffice, a way was next determined on to give to the Charta, by means of a solemn oath, the character of a Peace, concluded according to feudal custom. But as any

oath of King John was rather worthless, and might be set aside by dispensation, and as all the legal restrictions secured, in respect of the administration connected with the organization of the King's Court and of the Exchequer, were easily infringed, the establishment of an Assembly of Barons is conjoined to that of the Crown-vassals, with the expressly granted right of feudal forfeiture over the Crown possessions. The Committee of Resistance is established by Article LXI., with the following regulations. Twenty-five Barons, among whom the Mayor of London, shall be elected as Conservators of the Charta, and on cases arising, shall, by election, and by a majority of votes, determine. And in case the king infringe any article, any four of them shall apply to the king, or to the chief judge, for remedy, and, in case of refusal shall summon the *communa* (most likely all the vassals) to require obedience. "And these Barons, with the commonalty of all the land (*cum communa totius terræ*), shall distress the king all the ways they can (*distringent et gravabunt*), to wit, by seizing his castles, his lands and possessions, and by what other means they can, till it be redressed according to their own liking, saving the person of our lord, the king, and of the queen, and of their children. And when it is redressed, they shall obey the king as before." This clause is so far in conformity with the system of the mediæval feudal government, as the latter is founded on the mutual relationship of feudal protection and feudal fealty, and hence contractual. The vassals thereby express the fundamental notion of their relationship, as it existed in Normandy and France, but with one important difference. While on the Continent the individual vassal regarded himself as competent to pronounce upon the question, as to whether the feudal lord had infringed his duty of protection, and often enough upon the smallest occasion sent his notice of renouncement: here, the nobility acts corporately. Only the Barons collectively, and

represented by duly-appointed persons, are declared empowered to resist, but any feudal action on the part of the individual is not sanctioned. In fact, there is contained in this harsh clause nothing more than a recognition of the customary right of distress as it pertains to the king, and in its contrary application, in the case of the vassals at large, as against the king. A contractual right of distress was so much bound up with the legal customs of the Middle Ages, that the Committee of Resistance almost loses thereby its apparently revolutionary character.*

The Magna Charta contains strangely little of constitutional law, but affords already the main features of the State development in England. "The Norman nobles were now obliged to choose between the island and the main-land. In England, they could not entrench themselves in walled castles against the king, but, from the fact of the impossibility of individual resistance could only, as a body, resist the exercise of arbitrary power, thus striving in their own behalf and that of the people, for common rights and securities, and in this wise, they succeeded in founding the Constitution (in contradistinction from the feudal lords of the Continent) on an equal footing of legal protection for person and property alike. These nobles, who for generations had endured the arbitrary rule of the absolute kings, together with the burdens of the State, began, for this very reason, to regard it as their duty to act in this wise." In this sense Magna Charta was a pledge of reconciliation amongst all classes. Its existence and ratification, maintained, for centuries, the notion of fundamental rights as applicable to all classes, in the consciousness that no liberties could be upheld by the superior classes for any length of time, apart from guarantees of the personal liberty of the humbler. Inasmuch as this right of property and individual right on the part of the *liberi homines* was, under the Norman kingdom,

established for the benefit of the individual, and as the power of the kingship from the outset, did not allow to exist or to create an unequal (*jus iniquum*) right of the nobility, and burgesses, and peasants, all endeavour thenceforth is only directed against the strong bulwarks of personal rule, and so long as the endeavour takes this direction, the clergy and the people are found from that time forward siding with the nobles.

Instead of the previous ratification of the *leges Eduardi*, from henceforth the desire to have the Magna Charta ratified makes itself felt. The practical sense of the nation had laid so great weight on the fact, that up to the close of the Middle Ages, the confirmation of Magna Charta has been demanded and granted no less than thirty-eight times.

But the mighty up-rising of the nation is not as yet followed by the peaceful enjoyment of the hard-won liberties. To the great struggle for liberty, next follows the political apprenticeship of the Upper House, now in course of being developed.

IX.—FIRST ATTEMPTS AT A PARLIAMENTARY GOVERNMENT.

The first approaches manifested towards a centreing of power in the House of Lords during the succeeding half-century afford a proof that even a lawful up-rising of Society, in a moment of excitement, against the ruling power, could not wait to found political freedom, but that a free Constitution could only be achieved by continuous striving and getting accustomed to settled State institutions.

King John had accepted Magna Charta, but without any intention to keep it. Innocent III., always intent on assuring the power of the Church, released the king, at his entreaty, from the oath taken. The entire transaction was discountenanced and condemned by a Bull, which describes the document as an "unlawful, unallowable, and blameworthy

Act," declared the Barons worse than Pagans, and proceeds to put under ban those who took part in the rebellion.* The kingship was, in fact, merely taken by surprise, but even though in the person of an unworthy ruler, was still powerful. John withdraws, and, as controller of the revenues and of the fortified castles, he collects bands of mercenaries with the aid of his well-filled exchequer, against which the nobles of the land are unable to hold head, from want of money, and want of concord in their ranks. Despairing of the issue, the rebels invite over a French prince, with an alien army, to give their aid, and there ensues a doubtful contest, in the course of which John died (October 17th, 1216).

The lawful heir, *Henry III.*, was but nine years old, and the majority of Prelates and Barons decided in favour of his succession. For the first time since the Conquest, the reins of power were in the hands of a minor, for whom the great Earl of Pembroke acted as Protector. This is the first example in English history of a great statesman being called upon to carry out principles like those proclaimed in Magna Charta, in which he himself, in his character of intermediary between the conflicting parties, had acquiesced. In fact, at a Council, held at Bristol, Magna Charta is confirmed, with the unanimous consent (even of the Papal legate), but with the omission of certain articles. "The first charter," it says, "had contained certain grave and doubtful points, which the king hereby, for the time being withdraws, until he has treated thereof in full council."

Article LXI., containing a provision for the forming of a Committee of Nobles, for the upholding of the Magna Charta, is omitted. The Committee of Resistance had been constituted, but its establishment had led to a civil war, during which the Barons had paid homage to a foreign prince. The first occasion on which its powers were called into play proved disastrous, and forthwith led, in the altered state of things,

consequent upon the death of John, to a scission amongst the Barons. The article, therefore, from the want of a cause for its employment, was quietly omitted. Certain other articles, bearing on the restriction of the king's revenues (concerning demesnes, forests, protection of Jews), are also admitted, undoubtedly because of the Regency being at a loss for money.

Of great account is, further, the omission of Articles XII. and XIV., concerning the summoning of the Prelates and Barons, when "scutage" or extraordinary "aids" are called for. The reason of such omission, hitherto unexplained, was, beyond doubt, the following: according to this assurance, all the Crown-vassals (Barons) were to be summoned, the greater vassals by special writ, the lesser by a general order of the Sheriff. But where was the line to be drawn between the greater and the lesser? All Crown-vassals, from the times of the Conquest, were, through the fact of holding from the king, in equal ownership, all having a right to a *judicium parium*, and all were imbued with a kindred *esprit de corps*. The great vassals could not, hence, with any shadow of right, exclude their *pares* in feudal ownership from a right of assent, whereas the great Barons were unwilling to recognize the existence of a real parity between themselves and the tenfold larger number of simple Knights and petty holders. Still less were the great Prelates inclined to treat the minor clergy, and priests with cure of souls, or the crowd of simple Knights, as being on a like level with themselves. And yet, in the actual state of things, no mode existed whereby to lessen the right possessed by the smaller nobles to signify their assent. In Germany, such a mode had found acceptance, as the preponderance of the great Prelates, Dukes, and Princes, in the "host," in the Courts of Law, and at the declaring of the king's peace, was so great, that the smaller Prebendaries and Abbots were glad to keep away

from attending the solemn assemblies-general, and the smaller nobility were content with signifying their assent by one or the other member being occasionally present (*votum curiatum*). In England, the difference between the higher and lower nobles comprised such manifold grades, that the notion as to the existence of a general assent on the part of the assembly could not be entertained. Unless such a confusion were expected, from a like thronging together of the smaller nobles as is wont to prevail in Polish Parliaments, a *moderamen* must remain with the king. The great Barons who, under Pembroke as Regent, actually ruled the land, tacitly reverted, accordingly, by the omission of Articles XII. and XIV., to the traditional system—*i.e.*, to summons, by writ, of a group of Crown-vassals, prominent by their possessions, or office, or experience, or any other distinguishing quality. The older custom of the King's Court and Chancery remained in vigour, just as in Germany and in France the control of the king in regard to the summoning of the *concilia optimatum* remained for centuries, firm and fixed. That actual difficulty of drawing a line of demarcation (*census*) between the greater and lesser nobles endured for centuries, and one may infer therefrom why at the thirty-eight confirmations of the Magna Charta, the Articles XII. and XIV. have been constantly omitted.

The governance of the land came, consequently, into a position not unfavourable for a ruler, keen-sighted and powerful, inasmuch as, from the person of the ruler, not only were the Exchequer and the King's Court, and the entire body of the Sheriffs and local bailiffs, but also the summoning of the now inevitable *concilia optimatum*, wholly dependent. By a filling-up of the offices and of the *concilia* from a party-point of view, on the other hand, an unlimited government by party came into being, despite all the guarantees of the Magna Charta.

In these outlines the fifty-six years rule of the impotent and characterless Henry III. takes its course.

The next sixteen years (1216 to 1232) a government of nobles rules, in the name of the king, and conduct, in difficult circumstances, government affairs, in a sufficiently business-like fashion, sets aside the ascendency of the Papal legate, and also gets rid of the crowd of foreign mercenaries still besetting the land. For the procuring of the needful and extraordinary supplies in money, assemblies of the Prelates and Barons are repeatedly summoned, which, after some discussion, grant the required moneys. In the year 1227, Henry III. had, indeed, in the Council of Oxford, declared himself of age, without pronouncing, in express terms, the expected confirmation of Magna Charta.* For five years he allows, however, his wise advisers to remain in office, who succeed in procuring the necessary supplies.

With the disgraceful dismissal, despite his great services, of the Chief-Justiciar, Hubert de Burgh, begins a second period of the personal rule of Henry III. (1232-1252) presenting the picture of a wild contention between foreign favourites and personal hangers-on of the king, on the one side, and of the great Barons and soon, also, of the national-minded Prelates, on the other. Unwarned by the experiences, which already, under Stephen and John, through favouritism exhibited towards foreigners, had been brought into evidence, the king had made himself almost entirely over to the hands of alien favourites. The nomination of the Bishop Peter des Roches, from Poitou, calls forth a storm of indignation, in which the great Barons, already accustomed to the guardian-rule of the Regent, come to the front. In the Colloquium of Oxford, 1233, the Earls and Barons refuse their personal attendance, with the sturdy declaration, "that they will never obey the summons of the king, and will choose another king, if he dismiss not the Bishop of

Winchester and the Lords out of Poitou." When, on the third summons, the Barons appear in arms, the king proclaims, with hasty resolve, their banishment, with forfeiture of their estates. At the next Colloquium, the Primate of the kingdom threatens the king with excommunication unless he change his fashion of governing. This time the king yields, dismisses his ill-conditioned advisers, amnesties the Barons, and tolerably amicable relations are entered into with the great lords, who now signify assent to the required "aids." At this time (1236) there is, on occasion of a "Court-Day" held at Merton, a not unimportant principle of law deliberated on, which, by later jurists, is regarded as the oldest statute of Parliament. But the irremediable fickleness of mind of Henry III. speedily renders the situation more risky. An uncle of the king, with a group of relatives, form a new ruling clique about the Court. The Frankish-party gets possession of the great feuds, and, in order to set aside the resistance of the great lords against the alien ministers, the chief offices of dignity now remain unfilled, and the central administration is left to the conduct of a body of minor officials. At the Concilium held at London, (1238,) the great lords again appear in arms, and the king, after prolonged discussions, promises, upon oath, to conduct the government through a certain number of reputable men. At a new Concilium at London, (1240,) the Bishops appear already in the fore-ground, with thirty articles of complaint, touching violations of Magna Charta. The mad compliance of the king with the unmeasured demands for money, on the part of the foreign relatives of his mother and his wife, as well as of the Papal ambassadors, urges the spiritual great lords to head the resistance, both against the king and against the Roman Curia. At the Concilium of London, (1242,) to which was issued a solemn summons for the treatment of "affairs of State." (*ad tractandum nobiscum de*

*arduis negotiis, statum nostrum et totius regni nostri specialiter tangentibus**). After keen discussion, aid in money for the war against France, is refused. At the Concilium in Westminster Hall, (1244,) the nobles express a declaration in common, touching the manner of nomination to high offices, &c., which the king refuses, but promises, generally, observance of the liberties secured. In the following year, the great lords refuse anew an aid for the war against Wales. The next great assembly, held in London, (1246,) is for the first time spoken of by historians, as "*Parliamentum.*" Two years earlier already, in an official act, the event of the establishment of Magna Charta is spoken of, incidentally, as *Parliamentum Runemede.*** From this time forth the designation *Parliamentum* is often employed, but without ousting the older name: *concilium, colloquium, curia*, &c. A Concilium held at London, (1248,) again refuses an aid in money, and presents a list of grievances. In the following year, (1249,) already the great lords put forward the direct requirement that the Chancellor, Chief-Justiciar, and Master of the Exchequer shall be named "with their concurrence." By way of counterpart, Henry endeavours, on this occasion to win over the people by rules of administration conceived in a popular sense, personally assembles the Sheriffs in the Exchequer, recommends to their protection the Church, widows, the free-peasants, as well as a strict watching over all encroachments of land-lords against their hinds, &c. At the Council of London, (1251,) moreover, a charge is entered of high treason against the Chief-Justiciar, Henry de Bath. In the year following, the clergy also refuses the Papal demand of a tenth from their manors, for a crusade. This excited state of things urges on towards a violent solution.

With the year 1252 begins a third period of this reign, (1252-1266,) in which the king comes under the controlling influence of the Crown-vassals. The discontented great

lords find a fitting guidance in the person of the powerful Earl of Gloucester and of the brother-in-law of the king, Simon de Montfort, experienced alike in war as in state-craft. In addition to the internal and external developments going forward, was now superadded the vain striving, on the part of Henry, to obtain the crown of Sicily for his son, which involves him in heavy money obligations towards the Pope, while the fundamentally-bad internal administration at home, leads to chronic money difficulties. In the year 1253, the clergy does, indeed, once more grant a tenth, for a crusade, and the vassals, "scutage," for an expedition against Gascony—and receive in return a repeated confirmation of Magna Charta. In the following year, however, the Crown-vassals refuse all aid in money. At the Parliament held in London, (1255,) the king applies anew for an *auxilium*. The great lords on the other hand, require the strict carrying-out of the Charters, and the nomination of the Chief-Justiciar, of the Chancellor, and of the Master of the Exchequer, "who must not be removed without the advice of the general assembly of the kingdom." The matter is adjourned. On the re-assembling, however, the great lords declare "the king has connected himself with the Sicilian business, without the advice or consent of his vassals; they had not *all* been summoned, according to the requirement of Magna Charta, and would not, hence, give any answer, nor grant any aid, without co-operation of the others." In the following year the great lords and clergy yet again refuse an "aid," for the war in Sicily. In the year next following, (1257,) the king receives, indeed, once more an extraordinary "aid" from the clergy, on the promise of the inviolable observance of the Charters; three weeks later, however, both clergy and Barons, refuse again an "aid," for the war in Sicily. At the Parliament in London, April 10th, 1258, the Barons, at last, promise a *commune auxilium*, if the king will reform he

administration of the kingdom. The king promises, on oath, that this shall be done through twelve loyal men of his Council, and twelve others, who shall be chosen by the *proceres* themselves. The feeling of discontent had, meanwhile, risen to a higher degree, on the 11th of June, 1258, appear at the Concilium, held at Oxford, (which in the king's writ itself is styled "*Parliamentum,*") the Prelates, Earls, with near 100 Barons, and thereupon begin protracted proceedings and proposals, for the better shaping of the government of the kingdom which the nobles look upon like the Regentship, as at the beginning of this reign. Later history has assigned to this assembly the name of the "Mad Parliament," but the overbearing resolutions of this assembly offer, notwithstanding, the usual manifestations found existing in a conflict between State and Society. A Committee of twelve (two Bishops, one Earl, nine Barons), is, in conjunction with twelve members, nominated by the king, "out of his own Council," to come together, who, thereupon, again, name four lords, on election, who, on their side, appoint fifteen persons as fitted for carrying-out the business of State—somewhat like a Ministry of State. A Committee of twelve shall thereupon be further adjoined to control, as standing committee of the assembly, the Royal Government. For the special purpose of advising upon a proposal for aid in money, a still further Committee shall be selected (three Bishops, eight Earls, thirteen Barons). The further resolutions show similar schemes as in the great deliberative assemblies of Germany. Thrice annually Parliaments shall assemble, as Courts of Law, and there the advisers of the king also shall appear for the transaction of all business "concerning the State," in so far as pleases the king. Meanwhile, by an "order," it is appointed that each County shall choose four Knights, for advising and reporting grievances, at the next Parliament. In consequence of the manifold differ-

ences of opinion, the transactions are meanwhile protracted. A far-reaching dissension in the king's family itself, and mutual persecutions extending over years, have, in the interval, fostered a bitter and violent party-spirit. The governing body of the kingdom definitively elected, and consisting of fifteen members, drives away the near relatives of the king, protracts its stay in office, but comes very speedily into conflict with its powerful supporters at large. The "near 100 Barons," who took part in this Parliament, gave to the contending nobles such a preponderance, that the Bishops and Abbots found themselves, at the appointment of committees and otherwise, pushed into the background. Despite the regardful consideration shown to the Barons in the elections, the smaller nobles (*communitas bachellariæ Angliæ*), are angered, and address, soon thereafter, a written complaint, and an address of loyalty, which is directed to Prince Edward. The disunion amongst the Barons increases visibly, and with it, the confidence of the Court-party. In the Parliament at Winchester (1261), the king produces a Papal Bull, whereby he, with his adherents, is absolved from his oath in connection with the provisions of Oxford. The Bishop of Worcester and Simon de Montfort on the other hand, summon an assembly at St. Albans, to which also "three Knights from every Shire" are summoned. The king, however, on the same day, orders a "*concilium*" at Windsor, and directs the Sheriffs to order the Knights mentioned, to betake themselves to a conference with the king. To avoid open strife, the conflicting parties meet anew before the king of France, and submit to his decision, which proved to be entirely in favour of the king, declaring the provisions of Oxford null and void. At the Parliament of Oxford (March 12th, 1264), the Barons hold fast to their resolution: "The provisions solemnly sworn to are founded on Magna Charta, and they will stand by them to the end

of their lives." Immediately, thereupon, follows the "War of the Barons," under the leadership of Simon de Montfort. The king is conquered, and taken prisoner, at the battle of Lewes (May 12th, 1264). On May 25th, a proclamation of peace is declared, and in twenty-nine Counties conservators of the peace are appointed, with full powers. The new governing-body forms itself into a triumvirate, consisting of Simon de Montfort, and two of his intimates, and further a Committee of three. On the 4th June, writs are issued, in the name of the king, summoning the Prelates and Barons to a Parliament, to which four Knights out of each County are summoned. A rupture, betiding serious consequences, now ensues between the party-leaders, Simon de Montfort, and the Earl of Gloucester. At the urging of the former on June 20th, 1265, Parliament again assembles, in London, to which are summoned more than a hundred Prelates, but only five Earls, and seventeen Barons; the latter belonging apparently, to the Simon de Montfort party In these writs it is expressed, for the first time, "that the Sheriffs have to return to this assembly two Knights out of each county, from a number of towns, each two burgesses, and from the five sea-ports, each four men." But soon after Prince Edward succeeds in escaping from the custody of the Barons, (May 28th, 1265,) and surprises the rebels. After the battle of Evesham, in which Simon de Montfort was killed and cruelly mutilated, the party of the Barons was, in the course of a few months, completely broken up.*

The 4th Epoch now following (1265-1272), concludes with a reconciliation. In consequence of the victory achieved by the Conservative party, the king obtains anew the appointing to all Royal offices. To the Parliament at Winchester (September, 1265) all the Bishops, saving the five closest upholders of Montfort, are summoned, and also a number of faithful Crown-vassals. The estates of the

rebels were declared forfeit, and divided among the king's friends. The reckless proceedings, and the faithlessness of the king, gives rise afresh to an armed resistance on the part of the Barons. At the Parliament of Kenilworth, (August 24th, 1266,) a compromise is arrived at, through intervention of a tribunal of arbitration, consisting of twelve Prelates and Barons, with the Papal legate and Prince Henry as chief umpires—the so-called *dictum de Kenilworth.* At the Parliament of Northampton, this *dictum* is published and confirmed, and the adherents of Montfort are reinstated in their possessions, on payment of heavy fines. In the next Parliament, at Marlborough, important measures are enacted, which, by the subsequent practice of the courts, have been regarded as constitutional statutes of Parliament (*statutum de Marlebere*). On the 13th January, 1271, at a Parliament held in London, the lords who had been ousted from their estates, are rehabilitated, *per communem assensum.* In the following year, the king dies.

The changeful course of events during this period may be summarized, in their main characteristics, so as to afford a clear notion of the precedents, whereon, from this time forth, English parliamentary law has been framed. The progressive advance in this series of precedents comprised the following points:—

(1.) *The right of assent of the Crown-vassals,* for the levying of "scutage," and extraordinary aids, has been made out from more than twenty precedents, and this, both as concerns their assent to, and their refusal. The omission of Art. XII. and XIV., relating to the granting of scutagia and auxilia, found its set-off in the practice followed in relation to assent and refusal.

(2.) *In conjunction with the assent to the levying of taxes,* comes afresh into operation the participation of the great lords in the issuing of the king's edicts. The law-books

of the time hold that such a *consensus* is no longer to be regarded as a mere matter of form, but as a strengthening rather of the orders issued, even supposing the king presumed to alter the *Assize*, of his own individual order, or instruction addressed to the authorities.

(3.) *Attempts are made here and there to make the county committees take part in the proceedings of Parliament.* On occasion of every conflict hitherto arising between the great lords and the Crown, endeavours had been made to get hold of the chief offices of dignity, and to turn to account the powers of government, together with the right of granting the great feuds in favour of the ruling clique. The party-leaders of the opposition were not wanting in good will; but the direct transfer to the coalition for the time being in the ascendant, of all powers held by the king, renders the exercise of moderation, in relation to adherents and opponents alike, wholly impracticable. Hence it became a question of encountering a situation which, on occasion of such transfer, involved at any moment a return to absolutism. All the prerogative rights of the State had, up to now, seemed the outcome of a personal will. Ownership and privilege, as regards the ruling class, the situation of vassals and of towns, all normal and exceptional fashioning of superior rights (liberties, franchises), still depended on the personal orders and grants of the king. Certain limitations of this power were indicated in Magna Charta, but the legal provisions were still wanting that might ensure the carrying of the principle into practice, by the respective authorities. Against the determining personal will of the king, neither the Court of Commissaries, nor the body of officials connected with the Exchequer, afforded any effectual measure of protection. The discontented great lords were unable to set any bounds to the wasting of the State revenues, or to the mis-use of the Royal powers, without

themselves exercising those very powers. They were hence urged forward towards procuring some suitable remedy, and even the most skilled leaders could not prevent their adherents from the mis-use of such power, which soon brought itself home to the party in opposition, and to the lower orders, and incited them to resistance. The exercise of the State-prerogatives is looked upon by the party in opposition as an assumption, and every refusal of a favour is deemed by the party-followers as an offence, and as affording a sufficient ground for breaking with the party. On that account, the powers of the king get converted into a mere party concern in the hands of a triumphant coalition, and personal rule is followed by a powerful counter-rule.

The beneficial result upon the future, of a schooling of this sort, was shown in the growing conviction, that the well-to-do classes needed to be more fully represented, so as to afford some mainstay to the king's rule, as against the Barons and Prelates, now become once more powerful and conscious of their power. The anxieties of the holders of power extend in this direction. The counties are invited to declare through their representatives, their grounds of complaint against the Sheriffs. They are compelled to take their share in the assessment, and the levying of the taxes. The "Mad Parliament" affords them the right of choosing their own Sheriffs. In the year 1258, they are directed to choose two Knights (*vice omnium et singulorum*), as representatives of the county, that these may, in reference to deliberations about the *auxilia*, "appear before the council" of the king. The Report "On the Dignity of a Peer," recognizes this incident (1258), as being the first documentary datum of an endeavour to summon the delegation of the county as a corporate body. In 1261, Simon de Montfort summons, and so does the king at the same time, three such Knights of the counties to

deliberation, in common, concerning matters of State, which remained, however, inoperative. Only on 20th January, 1265, does the first precedent occur of a summoning of representatives of counties and of boroughs. The purpose of their participation was, certainly, expressed in terms general enough (*nobiscum tractaturi et super præmissis auxilium impensuri*). Still less did it contain any recognition, or assurance of the need of any such summons. As with the assemblies of nobles under Henry II., which were suspended for more than a generation, so was it in the case of these assemblies, no fresh summons having been addressed to them. The advisability of a further participation was, however, thereby recognized. The House of Commons, developing in the subsequent period, is already foreshadowed in broad outlines.

ADDENDA.

*37) The most important authorities are found in Schmidt, "Gesetze der Angelsachsen" (1858), p. 321-357, the original documents of the so-called *leges Wilelmi* in Stubbs, "Select Charters," p. 83-85. Political treaties and records of administration of the years 1066-1591 are given by Rymer, *Foedera* (1816-1830), and the vols. published by the Record Commission in XIX. century. The general history of this period: Lappenberg (continued by Pauli), vols. II. and III. The principal modern writings on this subject, are those by Edward. A. Freeman, "History of the Norman Conquest of England," vols. I. to VI. (1879), and W. Stubbs, "Constitutional History" (1874, vols. I., II.).

**37) According to an account given by Sismondi, "Robert the Devil," Duke of Normandy, on occasion of a visit to the Count of Flanders, fell in love with his daughter, and, as was wont in the Middle Ages, asked that he might visit the daughter of his host at night. In order to save the honour of the young countess, the beautiful daughter of a tanner, Harlot, was substituted, and found such favour with the Duke, as that he not only forgave the deception, but kept the tanner's daughter as his favourite to the end of his days. William the Conqueror, son of this union, has united, to a strange degree, the worst characteristics of human nature with the loftiest qualities of a sovereign. "Nobody loved him, nobody relied on any good qualities of his. The seeming good in him was never really good, but somehow always mixed up with his own selfish interests" (Vaughan). But his knowledge of human failings, and of the art of turning them unscrupulously to account, has never been surpassed by any ruler of those times.

*40) As in Domesday-book the landed possessions, at the close of the Anglo-Saxon period (*tempore R. Eduardi*), are indicated, the change of ownership may be passed in review.

Tempore Edwardi.		Tempore Wilelmi.	
Great Land-owners	1,599		
King's Thanes	326	Crown-Vassals	600
Milites	213	*Subtenentes*	7,871
Tenentes et Subtenentes	2,899	*liberi homines*	10,097
Ecclesiastici	1,564	*Ecclesiastici*	994
Sochemanni	23,404	*Sochemanni*	23,072
Burgenses	17,105	*Burgenses*	7,968
Villani	102,704	*Villani*	108,407
Bordarii	74,823	*Bordarii*	82,116
Cottarii	5,497	*Cottarii*	5,054
Servi	26,552	*Servi*	25,156

*41) "Domesday-book" was officially printed in 1783, in two folio volumes; and therewith four complete indexes and registers, in two volumes, under the Record Commission (1816); an explanatory introduction thereto, by Sir H. Ellis, "Introduction to the Domesday-book," 1833. The five Northern Counties, at also London, Winchester, and some other cities, are wanting in Domesday-book. The number of registered plough-lands amounts to about 225,000, the number of men given is 283,242.

*42) Down to modern times, tradition relates that William divided the land into 60,215 knights' fees. This report made known by Selden, in a note to Coke on Littleton, is founded on a very unreliable and obscure foundation, cannot be reconciled with a number of other data, and is now completely set aside by Freeman's "Norman Conquest." A code of Norman feudal law never was framed. The number of Knights' fees has never been completely fixed. There never did exist a systematical subinfeudation on a considerable scale. The probable number of feuds marked in the records of the Exchequer, hardly reached 30,000. The carefully developed feudal law of later times, was founded on the financial practice of the Exchequer and the legal dicta of the Royal commissaries on the basis of Norman feudal customs and Saxon common law.

*47) The system of civil fines (amerciaments), in consequence of the little dependence to be placed on the decisions of the courts, became at this period a matter of unlimited arbitrary dealing on the part of the civil authorities. They serve, in innumerable instances, in the carrying-out of the criminal law, under the general heading of breach of the "king's peace," of a disobedience to the king's commands (*contemptus brevium regis*) for the punishment of every act of disobedience, and every irregularity in judicial proceedings, any infringement of the rights of the king, and overstepping of manorial jurisdiction, &c. It is a strange contrast, when compared with the condition of the Continent, to meet in England with temporal lords, Prelates, the City of London, and entire counties under penalties for five hundred marks, a hundred pounds of silver, &c., amongst the Exchequer accounts, by reason of some overstepping of authority

or irregularity; and even entire counties and boroughs placed under Royal sequestration by reason of some failure in duty of their bailiffs, or by reason of the non-execution of kingly mandates, and so forth. The power of "amerciaments" became the individual instrument of the Royal right of ordinance. *Vide* on this important point, Gneist, "Engl. Verfassungsgeschichte," §§ 11. The extraordinary Norman mode of dealing, according to which disobedience against the brevia of the duke was treated as treason (Brunner Schwurgerichte, pp. 66-77), was not practicable in England since the *leges Eduardi* were valid, and because of the solemn assurance of the Charta of Henry I.

**47) On a level with the arbitrary dealing on the part of the administration, by means of civil penalties, is the application of the endless fines which the Exchequer built up with veritable ingenuity. Not only are fines payable for the granting of all kinds of liberties and franchises, but also for the renewal of the same, for the acknowledgment thereof in case of their being questioned, for instance, for permission to propose, to the Crown, the nomination of a Sheriff or Mayor, or for permission to refuse any particular person. The boroughs have in this wise purchased the main groundwork of their self-government. Endless are the fines, in legal proceedings, for every act of Royal jurisdiction, and for every abatement in the suit; fines for a favourable sentence, wherein the parties outbid one another, fines for merciful treatment, for the softening of the punishments, and for the detention in prison, fines for the granting of offices, guilds and rights of trading, &c. *Vide* "Engl. Verf. Gesch." § 12.

***47) The official guide to the administration of the Exchequer, *Dialogus de Scaccario* composed by an official thereof, Ricardus, filius Nigellii, subsequently Bishop of London (1178), affords data as to the early development of the scheme of administration and is also a noteworthy document, concerning the views of State, in regard to the officials, such as one would look for in vain elsewhere, during the time of the Middle Ages. The optimism displayed by the author who, in the organization as then existing, sees only the wisdom and the well-meaning intention of the ruler, is very characteristic, and is here found combined with a large measure of devotedness, wherein one may easily recognize the worthy nephew of Roger of Salisbury, the renowned minister of Henry I.

*62) The researches of the Lords' Committee possess the rare quality of a critical inquiry, supported by documentary proofs, combined with the due acquaintance with just conceptions of State law. Historians and essayists, however, of recent date still harp upon the notion of an assembly of Crown-vassals having existed, who were vested with powers legislative.

*64) The very vague and arbitrary designation chroniclers assign to the various assemblies (*concilia, conventus*), the statement that the king, on occasion of such, *edicta proposuit* (1107), or to the effect that he, on one occasion, *magistratus arcessivit*, may just as well be understood as referring to ordinary as to extraordinary "Court-Days," or to the summoning of the Sheriffs in the Exchequer, and proves nothing whatever as to the existence of a Parliament with a legislative capacity.

*68) The much-controverted question as to the election, or appointing, of

Bishops and Abbots, may be rendered clear, from the fact that influences were exercised thereanent according as time or place dictated. The election, which was originally exercised through clergy and laity, naturally led in such case to an early ascendency of the ecclesiastical *Witan*, who, as instructors and guides of the community, submitted proposals the best suited, which, thereupon, found acceptance through a "general acclamation." With the development of the kingly power, there comes into play an overruling influence as regards the large possessions and the extensive rights granted, which the Church owes to the king. Especially recognizable is the power of the king in the appointment to the Archbishoprics, and Bishoprics, stationed in the several Royal cities. With the strengthened power and feudal predominance of the Norman kings, such influence may be said to have been exercised by way of right of appointment. A right of confirmation was reserved, even by John's Charter of Liberties.

*69) The notion which antiquarians hold, as to the existence of a right to representation in Parliament, has overlooked the fact of the social chasm that prevailed, between half-a-thousand inferior Crown-vassals and the mighty Earls. The whole conception of the position of kingship, from a legal point of view, has been equally overlooked. In fact, no king, since the times of Charles the Great, was in circumstances so favourable as the Conqueror for fashioning his kingdom to his own strong will. William I. and his two sons, manifest, in this regard, an unswerving consistency such as history seldom presents, or under circumstances so favourable. Once brought into use, this mode of ruling developed and extended its principles through well-trained officials during the reigns of Henry I. and II.

*72) Consequent upon the truce with the Church, right of appeal to the Papal See is accorded. Through subsequent negotiations, the understanding is come to, that no cleric can be brought before the temporal courts for any offence, except in regard to some temporal "feud" he possesses, or by reason of some breach of the game laws. Both sides behave with becoming caution even as the situation comported. The king promises to allow appeal to Rome *bonâ fide*, and, furthermore, to abandon *malas consuetudines*, &c.

*83) To the lack of juridical and historical training in England must be attributed the fact that not even yet has the view been reached that the whole development of the Constitution in the 13th to the 15th century, would involve a contradiction were the notion as to a Parliament possessing legislative capacity having previously existed, to find acceptance.

*85) Only from the Stuart period has any deeper acquaintance with Magna Charta existed to which Chief Justice Coke was the first to append a practical commentary. Blackstone's Great Charter, 1759, is the first to afford a correct text of the original document which is now preserved in the British Museum. An excellent copy of the text, with variants, is given by Stubbs, in "Select Charters," p. 296.

*87) The mode of action followed by Innocent III. in regard to the proceedings connected with Magna Charta has never passed out of memory in England, as a reminder of the way in which the Roman Church was wont to subordinate religious and moral considerations to material interests. A recent Jesuit writer in

Germany, Victor Cathrein, "English Constitution," volunteers the remark:—"The declaration of the Pope has caused a flutter of dust, nearly all Protestant writers indulging, in this particular, in obloquy and invectives against Innocent and the See of Rome." The volume is not without interest, as showing how, from a clerical point of view, history is now being handled, even in England. As to the amount of influence exercised through the Papal See during the most thriving period of the Anglo-Saxon kingdom (as shown by the data furnished by Lappenberg, Kemble, and Palgrave), the writer does his best by a long dissertation, in which he falls foul of the author of this volume, to set this view aside. The Anglo-Saxon Church is held to have been always in the most praiseworthy and complete allegiance to the Roman See. The "silly attempts" of Henry II., in opposition to the Church, are severely commented upon. The submission of John to the sovereignty of the Pope is said to have been made *communi consilio baronum*. "Better had it been for the Barons if, instead of rebelling, they had appealed to the superior decision of the Pope in all the contentions that prevailed," &c. The mode followed amounts to an omission of the leading facts, and in marshalling what remains according to the Roman point of view.

*90) According to Wendover-Paris, III. 122, he is said to have torn up the Charter of Liberties, with the declaration that he was not bound to adhere to any act of State drawn up during his minority. This statement is questioned by Blackstone and other important authorities, or, at most, limited to the Charta de Foresta. Mayhap, the contradiction may be explained in this way, that the incident was true, but that the action of the young king remained ineffectual because the orignal of the Charter remained intact in the archives of State, and that, under this reign, there were, subsequently, repeated solemn confirmations thereof.

*92) A summons "*ad ardua negotia regni*" occurs already in the reign of John, (1205,) and again at a time of sore need (1213). At this period the summoning assumes an official form of summons.

**92) The next example of the word *Parliamentum* is in an official document four years later, in 42 Henry III. (*Vide* I. Peers' Report, 91-99, 461).

*96) A bountiful source of original data, combined with a just appreciation of the man who after death became so popular, and was revered as a martyr, is to be found in the work of Ch. Bémont, "Simon de Montfort," Paris, 1884, containing a thorough survey of the parliamentary proceedings, and of the position of parties in that period, with numerous misapprehensions, however, be it said.

III.

Further Development of the "Estates" into two Houses of Parliament.*

TABLE OF KINGS.

Edward I. 1272—1307.	Henry V. 1413—1422.
Edward II. 1307—1322.	Henry VI. 1422—1461.
Edward III. 1322—1377.	Edward IV. 1461—1483.
Richard II. 1377—1399.	Edward V. 1483.
Henry IV. 1399—1413.	Richard III. 1483—1485.

THREE generations had elapsed since the death of Henry II. without a more harmonious moulding of State and Society in England being effected. The reign of John had made it manifest that the nation, in its present phase of development, was no longer inclined to submit to despotic rule. In the generation next succeeding, it came into evidence, that Magna Charta did not avail to stave off despotism, since the high nobility was incapable, from the fact of their taking part in matters of State, to uphold the balance of power. In the strife so long kept up both sides had, unwittingly, recurred to similar expedients, in seeking to impart fresh strength and efficacy to the constitution now in growth, by adoption of a third "Estate."

The right form however which then, as now, could not, amid the whirl of conflicting interests in Society, be found

was to come from the loftier conceptions abiding in kingship. After hard experience the conviction gained ground, with the successor of Henry III., that the kingship must resolve on granting to the third "Estate" a share in the control of government, if kingship was not to lose, through the Committees of Barons, its own power, as under the inglorious rule of his father.

In that fluctuating fashion, so peculiar to England, there begins with Edward I., at the close of a stormy century, an epoch of onward progress in kingship, under Edward I., II., III. It opens under Edward I., the greatest ruler in England since Alfred, and continues, with a short intermission under Edward II., to perfect the fundamental principles of parliamentary organization, up to the death of Edward III. Just as when Anglo-Saxon rule was at full height, so in this century it is to kingly initiative that England owes the settled foundations of its free institutions, at that great period, so rife in creations, which Macaulay has depicted in such glowing terms:—"Then it was that the great English people was formed, that the national character began to exhibit those peculiarities which it has ever since retained, and that our fathers became emphatically islanders, islanders not merely in geographical position, but in their politics, their feelings, and their manners. Then first appeared, with distinctness, that Constitution which has ever since, through all changes, preserved its identity; that Constitution of which all the other free constitutions in the world are copies, and which, in spite of some defects, deserves to be regarded as the best under which any great Society has ever yet existed during many ages. Then it was that the House of Commons, the archetype of all the representative assemblies which now meet, either in the old or in the new world, held its first sittings. Then it was that the common law rose to the dignity of a science and rapidly became a not unworthy

rival of imperial jurisprudence. Then it was that the courage of those sailors who manned the rude barks of the Cinque Ports first made the flag of England terrible on the seas. Then it was that the most ancient colleges, which still exist at both the great national seats of learning, were founded. Then was formed that language, less musical, indeed, than those languages of the south, but in force, in richness, in aptitude for all the highest purposes of the poet, the philosopher, and the orator, inferior to the tongue of Greece alone. Then, too, appeared the first faint dawn of that noble literature, the most splendid and the most durable of the many glories of England."

Posterity is better qualified to re-construct the framework of the State-system, whereas the men of the period, and only from experience afforded from the past, were able to achieve the actual construction. But one recognizes in this legislating (even as in Magna Charta) the co-operation of that well-trained body of officials which, since the peaceful close of the reign of Henry III., had reverted to its normal activity, and, out of the records already existing, had achieved the building-up of the Constitution. The manner of the structure is found in the welding-together of the functions of government with the existing main elements of communal life, into that coherent system subsequently known as "self-government."

A certain cohesion between the counties, inferior districts (Hundreds), and towns, was already in being, thanks to the Anglo-Saxon judicial organization, to the reconciliation effected between the two nationalities, and to the incipient transformation of the King's Courts into the jury-system.

The needful unity in State-government, on the other hand, was realized through the vigorous development of the Royal prerogative, by the strict order observed in the Exchequer, through the respective departments of the King's

Court, and the fore-shadowings of a Privy Council, manifested subsequently to the reign of Henry III.

The deficiency lay in the incomplete union of the two organizations, which neither the control exercised by the Sheriffs and local bailiffs, nor the itinerant commissaries, were found sufficient to make good. In the period just preceding, an endeavour had been made to fill up this gap, by recurring to the co-operation of local committees, so far as actual necessity urged; in other words, so far as the Norman official, who, to the population at large, felt as a mere stranger, was incompetent to initiate local regulations in any other way than through sworn witnesses from the neighbourhood, through the "reeve and four men" from the villages, and through twelve men, as representing larger districts. In this wise, the recognition of Doomsday had been effected; in like manner, the determining of the rights of the Crown, the annually-recurring presentment of grievances, the new procedure as applied to stating the fact in civil suits, the question of fact in criminal cases, of the assessment bearing on military service, as well as the first experiment of assessments for a land-tax and income-tax. The main point now was, to ensure the permanent and systematic welding-together of these elements into the organized union of the central administration with the provincial, district, and town administration.

A *union of the military administration with the county* was already brought about through the appointment of the *vice-comes* for the summoning to arms of the feudataries who ever more and more commuted service, by "scutage," substitution being also recognized in the case of the county-levy, which now is organized by means of a thorough control, regulated by law. The St. of Winchester 13, Edw. I., c. 6, declares all *liberi homines*, from fifteen to sixty, bound to serve and bear arms. After the fashion of the Roman *comitia centuriata*, five

grades of *liberi homines* are formed, having incomes of 15, 10, 5, 2—5, and under 2 pounds. The welding-together of the two systems constantly aimed at, and steadily being effected, was to be fully achieved by the fact that from now, and in after centuries, all owners of 20 pounds value in land, without regard to their being feudally bound, were compelled to accept the dignity of "Knight." The troops for foreign service are now made up from the two elements. The majority of the horse-soldiers still consists of those bound to feudal service, and their followers, under the designation of Barons, Knights, Esquires, and Men-at-arms. The foot-soldiers, on the other hand, who are generally from three to eight times more numerous, constitute companies, under "Constables," or "Centenaries," and are divided into pike-men and battle-axe-men, heavy and light bowmen, mainly selected from the county militia. Since the Act of Parliament, 25 Edw. III., which disallows the employment of the national troops outside the kingdom, it was deemed expedient to provide such troops, partly through boards for enrolment of volunteers in the counties, partly, also, through engagement of mercenaries. The better discipline and skill of the troops thus brought together, has, in the main, proved victorious in the wars waged during one hundred years on French soil.

The organization of the *Courts of Law* becomes united with the county by means of the jury-system, now completely carried into practice. At the close of the last period, three principles were established which have now settled into fundamental laws:—

Separation of the "finding" from the question of "fact."

The "finding" limited to the judges learned in the law.

Formation of local juries, nominated by a representative of the king for the determination of "facts."

This separation of the question of "law," from the

question of "fact," now forms the fundamental principle of English jurisprudence, after a manner different from the *judicium parium* intended by Magna Charta. When the system was thoroughly implanted, the need of regulating the duties of the jury manifests itself, since the restriction traditionally assigned to the "Witan," or "men of law," seemed insufficient. For the "finding," the customary participation, which is only practicable in the case of larger ownerships, became certainly necessary. In regard to the question of "fact," all that was needful was a thorough knowledge of the neighbourhood, and personal trustworthiness; and, in this respect, the smaller owners were as suitable as they were indispensable. The participation in the "finding" might be regarded as being an important political right; the conjunction of the newly-formed body for gathering proof, was only looked upon as a newly-constituted and irksome service. The danger lay now in the overburdening, on the one side, of the poorer class, and, on the other, in their being rendered less trustworthy, and more open to bribery and timidity. Hence, the necessity of fixing, according to a new average, the measure of value of the property involving the liability to serve on the jury, and in such wise that only the freeholders of 20 shillings income from land are summoned to the Assizes. By 21 Ewd. I., sec. 1, and 2 Hen. V., c. 3, this rate is doubled; only persons having 40 shillings freehold (= one-tenth of amount of Knight's fee) are to be summoned. Thereby the fundamental principle for right of election to the Lower House gets established.

The *police administration* is placed in a new relation with the county, through the office of justice of the peace. Hereupon there is developed, during this period, a far-reaching organization for the guarding of the peace, (St. Winchester,) the controlling of trade, industry, and matters

sumptuary; and, further, in respect of morals, corresponding with the subsequent police ordinances that prevailed in Germany. The early development in England is explicable by the limited range of the manorial police and its restricted growth, as also from economic changes, especially in connection with the increase of farms, from which result manifold contractual relations arise. Immediately however upon a police administration, controlled by law, taking the place of the manorial, it becomes necessary that the organization should be constituted, by means of functionaries fully responsible, and with summary powers. Already, under Richard I., a first attempt is made to place, side by side with the Sheriff, representatives of the district, who, in the *capitula* of 1194, are designated as *custodes placitorum coronæ* (coroners). From that time forth, renewed attempts are made to establish local commissaries, amid much contention concerning the manner of their nomination. The matter is frequently treated of with Parliament, which demands an election out of the body of large land-owners, while the Crown holds to a nomination, preferentially, from among the functionaries of the law. Meanwhile, conflicts arose with the labouring-classes, which occasioned the Labourers' Act, 23 Edw. III., c. 1, and 25 Edw. III., c. 8. For the carrying-out of these enactments, new commissaries have to be named, who, four times a year, are to hold their sittings in each county. These police functionaries appointed, on nomination of the king, are found satisfactory,* and in connection therewith, after many attempts at a permanent formation, there follows, in the year 1360, the establishing of district civil functionaries, as a lasting institution, 34 Edw. III., c. 1.

"In each county shall be named, for the keeping of the peace, a lord, and, with him, three or four of the most reputable in the county, in common with some 'learned

in the law,' and they shall have power to restrain the breakers of the law, inciters, and all other peace disturbers, and to pursue, lay hold of, and take in custody, and punish them with penalties, according to the law, &c."

Certain criminal cases they only try collectively, in their quarter-sessions, conjointly with a jury. On the other hand, smaller offences, against trade, morals, harbour regulations, are specially reserved by the tenour of the statutes, and, under the continually-developing function of the justice of the peace, are now ranged the old local civil officers, as executive functionaries, (who, by reason of previous duties in the militia,) gradually obtain the designation "Constables."

The connection of the *administration of the finances* with the county is next brought about, by means of the communal taxation-system, already in existence. At this period is formed a local tax (*town ley*), a Hundred, and a County-rate, as well as an assessment through boards, partly elected, partly appointed from the district and the Hundred, with power of adjustment and appeal, through Boards of the Hundred and the County. Meanwhile, the time had arrived wherein, for the State-taxation, the permanent employment of similar district commissions could no longer be staved off. Inasmuch as complaints touching the arbitrary dealing prevailing in the matter of the assessment, *tallagia*, were incessant, itinerant commissaries of the Exchequer, in lieu of the Sheriff, were empowered to treat thereof with the Knights and the towns. But as now the Assize-of-arms (1188) introduced military duty, with fixed gradations of payment, based on property, Henry II. was unable to avoid employing, for this important new matter of business, a number of sworn Knights and men of Court, as local boards. As the levying of a Saladin tenth, (1187,) the collecting of the ransom-money for Richard I., and the levying of a

general land-tax under the same reign, (1198,) led to a new assessment by plough-land and income, the establishing of County Knights and others became already, from practical reasons, inevitable. This system continued under Henry III., and in that century led to the systematic formation of assessment boards.

As soon as the county, taken as a whole, was fully constituted, as far as military, judicial, police, and fiscal matters were concerned, the extension of the district-system was adjoined to boroughs so that the organization of the cities and boroughs presented the picture of a county on a small scale.

In regard to matters military, the boroughs remain thoroughly incorporated with the counties; only on the City of London, and a small number of towns, was there conferred, by charter, together with the right of a county by itself, a special urban organization in respect of the militia.

In judicial matters, a special "court leet" had already, in the preceding period, appeared as a special factor in the borough administration. To some towns there was granted, also a civil jurisdiction, after the new model of judge and jury. The police administration shows also, in the towns, a gradual repression of the "court leet," by means of the justices of the peace, whose official duty is also called into play within the special borough districts. The new municipal charters, since Richard II., include often, likewise, a separate commission of the peace, whose quarter sessions become an ordinary criminal court, for which the borough submits its own jury-list.

The number of boroughs is, according to this system, considerably increased. Under Edward I., fifty-four new ones are enumerated; under Edward II., sixteen; and under Edward III., twenty-eight; so that the number of important places, of those having a kind of urban administration,

exceeds already, at the close of the Middle Ages, more than 200.

On this foundation of county and local administration, the formation of the State bodies is fashioned as follows:—

The ordinary jurisdiction is firmly fixed in established judicial bodies, as Courts of Law.

The conduct of the highest business of the kingdom is consolidated into a corporate Council of State, CONTINUAL COUNCIL.

The participation of the Prelates and Barons in the government of the kingdom obtains a settled shape, by means of a periodical summons to the King's Council, wherewith combined, it constitutes a MAGNUM CONCILIUM.

The share of the *communitates* gets fashioned into a House of Commons.

This development of the "Estates of the Realm" limits itself, however, to the temporal side; that with respect to the Church, (part VI., further on,) in but slightly-changed form, remained as it was.

I.—THE THREE COURTS OF THE COMMON LAW

now constitute the limits, firmly established, of the personal rule, for protection of the individual, in the sphere of law. The Court of King's Bench was already, under Henry III. constituted as a permanently-established Court of Law, in which the king claims still the right of personally presiding, as *Curia coram Rege ubicunque fuerimus in Anglia.* The Court of Common Pleas has gradually separated itself, as a division for civil suits between private persons. The Court of Exchequer, originally the division of the Exchequer for contentious business in matters financial, was, in the course of this period, placed substantially on a level with the other two Courts of Law. The judges of the three courts now, also, undertake the conduct of the County Assizes. The

higher judges constitute a learned body, paid out of the king's personal revenue, subject to his personal disciplinary authority, which, as a powerful weapon to be exercised in case of a violation of duty, remains still in force notwithstanding their position as chief interpreters of the law of the land. "The common law reposes in the breast of the judges of the common law," viz., since the beginning of this period it is a judge-made law. Hand-in-hand therewith, is combined the training of a special class of lawyers, and their thorough education in the corporate bodies, styled Inns of Court, and Chancery.

II.—A BODY DESIGNATED COUNCIL OF STATE, "CONTINUAL COUNCIL,"

was constituted, when, at the beginning of the reign of Henry III., a Regency was found necessary. But when, in place of the Regency, Henry initiated his personal rule, in conjunction with his foreign favourites and a group of subordinate clerks, the Barons and Prelates demanded, on their part, the right of appointing to the higher offices "suitable persons," and after a vehement struggle, they succeeded in getting matters into their own hands.

The PERMANENT COUNCIL, or Continual Council, now instituted under Edward I., side by side with the Exchequer and the Courts of Law, was the personal creation of the king. It determined, as a joint body, questions relating to highest matters of State, and becomes the central point of the parliamentary-system now in course of formation. It is composed of spiritual and temporal Peers, who, as permanent officials, control the highest military, judicial, financial, and ecclesiastical affairs, with the assistance of the superior judges and subordinate functionaries, and from that time forth it becomes the constitutional centre of the highest State-government. Already, under Edward I., the designations of

those composing it are given. In subsequent transactions with the Parliament the five chief officials designated are: the Chancellor, the Treasurer, the Keeper of the Privy-Seal, the Lord Chamberlain, and the Steward. These five were regarded as the controllers of current matters of business. In the year 1384, the first records of the Council are spoken of. The salaries of the members, some of the principal features of the order of business are determined, by parliamentary enactment (1406, 1424, 1431). Since the time of Henry VI., the designation "Privy Council" is the one gradually brought into use. During the Middle Ages, however, no "President" of the Council is mentioned, since this office pertains to the king, who has the option to transfer the conduct of business on one of the members thereof.

III.—A PERIODICAL COUNCIL—MAGNUM CONCILIUM—

is now constituted as a Privy Council, with addition of a number of Barons and Prelates. The endeavour made through Magna Charta to summon the whole body of the Crown-vassals as an "Estate of the Realm" had fallen through. Much against his will, Henry IV. had been compelled to summon a select body of such Crown-vassals, in any political necessity, for the purpose of obtaining their assent to subsidies and advice upon matters of State. The summons issued in an uncertain manner, and generally from a party point of view, had led to constant conflict, and ended at last in the War of the Barons. Edward I. confers on these assemblies the fixed shape of a "King's Council" expanded, and summoned for the service of the Crown, through writs addressed, from time to time, to the most prominent among the Barons. To this body the king now assigns, in a constitutional fashion, the functions which, since Magna Charta, had been exercised by the Crown-vassals in an irregular way:—

As the highest *judicial* body of the Realm, instead of commissions from time to time appointed, as they were wont to be formed in the Norman period, from among the greater and inferior Crown-vassals.

As a body granting *taxes*, for the decision, in respect of extraordinary aids, and for assessment of scutage-money.

As a *deliberative* body of the entire administration of the Realm. In this aspect, the "Council" appears to be mixed up with the *concilium continuum*, charged with administrative functions, in the form of a Greater Council, with more extended powers.

As an assembly with determinate powers of *legislation*, in the place of the "Court-Days" and assemblies of notables, through which, in the period preceding, the so-called *Assisæ* were fixed.

Hence, since the reign of Edward I., the *Concilium* of the Prelates and Barons, became a member constitutionally fashioned, of the administration of the Realm, as Council of the Realm, wherein those summoned, by virtue of their office, either of clerical dignity or through tenure, take their stand side by side. By means of the thorough and usual co-operation in the "*ardua negotia regni*," the result was arrived at that the high nobility which, for two centuries, despite the oath of fealty, had ever been the great peril and focus of resistance to the Crown, from now forward became, in the ordinary course of things, the upholder of the Throne.

(1.) *The functions of the highest Court of Law* are most in prominence under Edward I. The Parliament under this first reign is understood chiefly as a judicial assembly, wherewith all other business gets connected. In this sense, under subsequent reigns, it is repeatedly promised that, "at least once a year," a Parliament is to come together. The existence of this Court of Law was derived from the ancient right of the king "to draw to the Court" the most

important and grave cases in matters legal. The current cases of law were, in fact, referred to the Courts of Law and to the Assizes. But the Court did not, through such referring, abandon its original jurisdiction in extraordinary cases, and the "Estates" themselves were concerned in maintaining the powers. Hence matters pertaining to civil and criminal jurisdiction may, on first and subsequent appeals, be brought before Parliament, and in this way has procured for the English House of Lords its position as superior Court of Appeal, as Peers' Court, and High Criminal Court of State.

As Court of Appeal, the GREAT COUNCIL can try appeals in respect of errors of judgment of the Courts of Common Law. A higher authority for revision of such judgments of the courts could not be recurred to. By a rescript from the king (writ of error), such appeals might be addressed, for ultimate decision, to the *Magnum Concilium*, such appeal, however, was but seldom allowed.

As Court of Peers, the Great Council proceeds in criminal suits, even against the members of the Great Council itself. The claim for a special *judicium parium* in favour of the great Barons, by reason of the throng of inferior Crown-vassals, could not be taken into account. Since, however, an established body and a positive limitation existed, the demand for such narrower circle was able to be carried out and could not be staved off, all the more because the Great Council began to consult the judges of the courts in the character of advising members and assistants in cases where the highest decisions on points of law were concerned. Hence the Great Council in regard to graver complaints against its members was called upon to pronounce judgment, and already in 15 Edw. II., the great lords pronounce in official form, "Therefore we, the Peers of the land, Earls and Barons, declare in presence of the King," and so forth. In 15 Edw. III. the

Barons demand that this principle shall be embodied in and made a lasting law of the land, and in consequence thereof a statute is enacted, "That no Peer of the land, Crown official or other, on account of his office, can be brought before the court, condemned to the loss of his worldly possessions, put in arrest or prison, rendered responsible or judged otherwise than through award of the Peers in Parliament." The inferior Crown-vassals, not summoned to the Council of the Realm, cease, thereby, from being *pares* in the judicial, and soon also in the political sense of the term.

The position of the superior High Court in respect of the high functionaries of the Realm originated in the fact that charges in respect of their office and dignity could not be entered before the judges of the Courts of Law, as mere advisers of the Council. These are referred as *placita* extraordinary to the "King in Council," the only fitting judicial authority in such case, which, from early date imparts to such decisions with suitable dignity, the character of strongly emphasized party feeling.*

(2.) *Its position as a body charged with assenting to the imposing of taxes,* granting of scutage-money, and extraordinary aids, had been already established by the numerous precedents occurring under Henry III. Edward I. had, in this respect, confirmed the traditional usage that the Great Council, acting as a Committee of eminent Prelates and Barons, makes such allowances in the name of the whole body of Crown-vassals. This right of assenting to the taxes, assigns to the Council a position no longer open to question, and gives a permanent hold on other claims possessed. This right, however, has now to be shared with the representatives of the Commoners, who, on this very score, gradually gain a preponderance.

(3.) *The position as highest consultative body of the Realm,* was also, subsequently to the reign of Henry III., dependent

on the actual position, for the time being, of the State-government, and its immediate attributions. In reference to decisions concerning war and peace, and in questions at issue with the Roman Curia, their assent is regularly asked for during the course of this period. But as the Great Council, in this respect, only represents a Privy Council with extended powers, the matters treated of are about the same as those of the State Council. Of course, only the most important have to be held over for the Great Assembly, but this does not exclude those of minor degree, and on account of this still rather wide range of business, the assembly bears the designation of *Concilium Magnum*, and not *Parliamentum*. The periodical meeting of the Great Council assigns to the Barons a further influence, in the following directions:—

On occasion of the examination and determination relative to petitions, whatever had to be carried out in the ordinary course of law and administration, passed through the hands of the Chancellor, of the Judges, and of the Privy Council. But where the amendment of a legislative enactment is concerned, or an extraordinary procedure, the Barons claim to take part in the matters reported, and in the decision touching petitions. In the stormy times of Edward II., this claim is given effect to; but the manner of satisfying it varies with the spirit of the ruler. In conjunction with the ordinary jurisdiction exercised through the Courts of Law, the king has further reserved to himself, as inherited from the Norman Curia, an extraordinary jurisdiction in certain civil and criminal cases, which is exercised in the "Continual Council," and, from practical reasons, is with difficulty dispensed with. The scope thereof has often been questioned. But since Prelates and Barons, as comprising the Great Council, found themselves also sharing this power, it was often acknowledged, and occasionally countenanced, but with the

observation that the Barons, while availing themselves of the power, frequently get into variance with the "Continual Council."

The endeavour to influence the appointment to the great offices of State manifests itself also at this period, and in difficult crises it occurs, that the king declares he will appoint such persons as to the Great Council are agreeable, reserving withal a right of nomination. On occasion of their periodical attendance at the Council, a claim asserted by the Prelates and Barons to fill up the vacant offices, does get tacitly acknowledged, and, under the House of Lancaster, becomes the rule established. Only in the reign of Edward IV. were Commoners, in principle, thoroughly acknowledged and summoned to the Council.

During the minority of a king, the *Magnum Concilium*, as a matter of course, exercises its powerful influence on the forming of the Council of the Regency, as at the accession to the Throne of Edward III., Richard II., and Henry VI. But even under a king ruling by his own power, the Barons insist repeatedly on having their Privy Council, as under the stagnating reign of Edward II. Still more perilous do matters become, on occasion of any questionable accession to the Throne, as under the weak-minded Henry VI., in whose case the strife of party is afresh bent on re-establishing the "Continual Council," and the periodical removal from, and appointment to offices, and the impeachment of ministers.

(4.) *As a body empowered to advise upon the framing of laws*, the Great Council, finally, takes the place of those assemblies, in conjunction with whom, under Henry II., a number of important Assizes were determined on. Without surrendering his right of issuing ordinances, Edward I. introduced a regular consultation, in relation to all important measures of law of the land, with his *Magnum Concilium*. The

ineradicable popular legal notion, that all changes in the *jus terræ* can only be effected *consensu meliorum terræ* enters anew into the life of the nation, into whom, now at last, a consciousness of a unity of right has been re-infused. The position of *optimates terræ* pertained to the Prelates and the Barons (as erewhile with the German nobility) from the moment their *status* as the highest court of jurisdiction got established. Their important influence may, also, be recognized from the language employed in the resolutions of law, which, under Edward I. and II., is French, as the living tongue of high life, and which begins to push to the background the Latin official language of the clerici. The more the power of legislating becomes the main point in the Assembly of the Barons, the more is a modification in the phraseology adopted observable, which, under "*Parliamentum*," indicated the law-framing of the assembly—under "council," its co-operation as a "State-Council," and under *Curia*, its decisions as a highest "Court of Law."

In mutual operation with these fourfold functions of the Great Council, is the gradually progressive building-up thereof. The summoning of its members from among a select body of the Prelates and Crown-vassals had, in broad outlines, been shadowed forth by precedents that had occurred up to the reign of Henry III. But whither such summoning led, when controlled by party-spirit, was shown forth fully in the War of the Barons. The endeavour made by Edward I., is, doubtless, to bring together a complete and efficient meeting of the Council, the foundation whereof, as regards matters of law and assent to taxes, was the body of the Crown-vassals. But, as concerned Parliament in the character of a Privy Council with extended powers, it was urgent to bring together men experienced in matters of State and War; and from this point of view, there was no obstacle to summoning men not possessing Crown-feuds,

nay, belonging even to alien families, as is apparent from a few cases (Beaumont, Grandison, and others). The Report of Sir H. Nicholas proves, for instance, that in the year 1399, among forty-five Barons summoned for the first time, twenty-four were not possessed of Crown-feuds. At any rate, the summoning to the Great Council is so much a result of kingly prerogative that, up to the end of the Middle Ages, no instance occurs of the Barons having refused to accept in their midst any Baron summoned by the king.

According to this point of view, there are summoned to the Great Council three groups: the spiritual Lords, the Lords temporal, and the members of the Directing Council.

In the group of the *spiritual lords* there appear two Archbishops and sixteen Bishops, in their twofold capacity, as heads of the Church, and as great vassals, duly summoned. The number of Abbots fluctuates for a long time, according to the purposes of the summons, but is especially numerous where a grant of "aids" is concerned. Many, however, depreciate the expensive dignity, and plead in excuse, that they do not possess war-feuds, and therefore, are not bound to follow the call of the *Curia*. Under Edward III., this ground of excuse is repeatedly recognized, and thence-forward the number of Abbots is fixed more certainly to twenty-five in number, about, to whom are added a few priors and heads of clerical orders. Up to the time of the Reformation in England, as well as in Germany, the number of clerical seats is greater, often doubly as great, as the temporal.

In the group of *temporal lords*, the Earls form the acknowledged heads of the body of Crown-vassals. In like manner, the holders of the great Court offices belong to the permanent class. The limitation is vague as to the unclassed Crown-vassals, who are now generally designated

as Barons, although the general meaning of the word does still hold on in the case of every War-vassal. In regard to the important significance, which, for two generations long, the assent to the taxes had conferred, undoubtedly the financial point of view was the most prominent. It may easily be discerned that owners of large estates, who, on change of ownership, were burdened with the great "Relief" of 100 marks, that is, thirteen-and-a-half times as high as the simple Knight's fee, had some preference shown them. Side by side with this nucleus, there appears double the number, or even more, of the inferior Crown-vassals, or Barons having no war-feud, who were conjoined, by reason of holding important offices of trust under the Crown, either in consideration of services rendered in war, or in the Courts of Law. The summons under Edward I. differs according to the discretionary authority exercised, as widely as from 40—111; under Edward II., from 38—123; under Edward III., from 24—96; under Richard II., from 24—48; under Henry IV., from 24—37; under Henry V., from 20—32; under Henry VI., from 15—42; and under Edward IV., from 23—37. In the reigns of the three Edwards the change is still so frequent that ninety-eight Lords are only summoned once, others, two or three times. To others, again, the summons is addressed for life, but does not include their heirs. How much the assent to the taxes influenced matters, may be inferred from the fact that the husbands of heiresses were usually summoned, as well as the owners of larger domain-lands. Sometimes, even, women are summoned; and in 35 and 36 Edward III. two exceptional cases occur, where seven Countesses and three Baronesses are summoned, with the requirement that they shall get themselves represented by men of confidence (for assenting to the taxes). This change becomes less striking, when it is observed that in

the Middle Ages there is never any mention made of a counting by votes.

The third element of the *Magnum Concilium* is formed of the members of the "Continual Council," who have, as such, from the outset, had seat and voice in the Great Council. But the influence of the great Prelates and Barons, and their importance as contributors to the taxes, was speedily felt, and with more marked effect than the mere official element. From the time when the members of the Great Council comport themselves as "Peers of the Realm," it becomes ever more the custom to summon such members of the Great Council, who are, at the same time, amongst those spoken of as "the remaining Peers" (*cum ceteris*), as already expressing the higher political and social position. The association of the Peers to the Privy Council, becomes gradually merged in the reputedly higher membership in the *Magnum Concilium*. Only in its functions as an advising and legislative body, does the Privy Council, in course of time take its stand, as with equal right, in the character of a *concilium in consilio*, as Lord Hale styles it. The matters for deliberation are drafted in the select committee; the proceedings are conducted by the officials of the Council; all the resolutions are drawn up in writing, by the officials of the Council; all the sittings take place in the Council-chamber of the king's palace, the attendants from the king's household being "commanded" thereto, as nowadays. At the close of this period, their position as simply assistants of the Upper House was decided.

Within the scope of this process of development, the *hereditary quality of the temporal peerage* has got fashioned; while numerous analogies go to show that a fixed ownership in land, acknowledged in the eye of the law, and remaining in the same family for six generations, matures into a

conception, in purview of the law, of a nobility hereditary. In this way, such process of selection has gone on developing in England with slow growth. In war, alike as in council, by personal service, and as a distinct class, the Crown-vassals were already, for a long time, a factor of great moment, which now progressively acquires an assured position, in the Council of the Realm. The assembling from year to year, for the customary handling of great matters of State, imparts the dignity and characteristic qualities which the consciousness of a membership inherited, fosters. This higher political position is combined at once with a local position, as warlike leaders of the County-militia, and as heads of the Civil-administration of the county. The conjunction of such relations takes growth, at all times, with ownership, and, according to the legal course of inheritance, as now established, the complex of these habitual services gets transmitted to the eldest-born son, or next heir, and only to him. The most important step towards a legal limitation of their position is the acknowledgment in the 15th century, under Edward III., of a qualified Peers' Court. After a century long of hard striving, an "Estate of the Realm," (*pares regni*) differing from the inferior Crown-vassals, ends by obtaining legal recognition. A further turning-point is happened on, in relation to the usurpation of the Throne by the House of Lancaster, which is fain, in the first place, to uphold the Throne usurped, on the fact of a recognition signified by the Peers, thus consolidated. Such an upholding, indeed, could only be found in a body established according to usage, and not from a mere group of adherents arbitrarily summoned. The Council of the Prelates and Barons has since then, and in that direction, won its way towards a firmer embodiment. The number of the summons becomes smaller, but more permanent, in conformity with the tendencies of a privileged class. The fact of the summons

being addressed only to such as are "of personal confidence," manifestly falls into the background. Without calling in question the right of the king to summon new members, it gets silently established as a lasting "addition" to a permanent body.

For the formation, however, of a nobility, the form of summons by writ hitherto prevailing, as a summons once for all, could not suffice. Just as little could the existing nobility by birthright be bound up with definite estates and possessions, in consequence of the alienability of feuds in England, and further, because thereby the right of the king's summons would become restricted, which could in no wise be tolerated. The new legal form whereby an "Estate of the Realm" hereditary, could come into effect, was only through "Patent" or "Charter" from the king. Since the Conquest, the only higher title of nobility, namely, that of "Earl," was founded on Patent. Since Edward III., the dignity of Duke, also was created by Patent; since Richard II., the dignity of Marquis, and later on that of Viscount. The dignity of Duke granted, since 10 Edward III., to Princes of the king's family, was in like manner, only a transient creation, inasmuch as those Princes did not generally possess any feuds of the Crown. After the precedent of these titles of nobility, in 11 Richard II. for the first time, John de Beauchamp of Holt, Crown-vassal, in consideration of his merits and of his noble birth, is appointed "Lord Beauchamp, Baron of Kidderminster, to himself and heirs male of his body, with all rights of a Peer." The title of Baron, possessing heretofore several meanings, is from now forth recognized as a title hereditary of nobility, similar to the higher titles already in use. Much as this first creation ran counter to the wishes of the great lords, it became decisive in regard to the hereditary position of the Peerage. The Crown-vassals, who, till now had been summoned by Writ, were placed in a new position. As now

the favourites of the king, the newly-created Barons, laid claim to belong to an "Estate of the Realm" hereditary, so from the more ancient and greatly honoured Barons, summoned according to usual custom, a like claim could not be withheld. In the 15th century there now exist, side by side, two modes of summoning to the "Council of the Realm."

The one by Patent or Charter, for Dukes, Earls, Marquises, Viscounts, and patented Barons, and recognized by their Patent as having the right hereditary, and, since the reign of Henry VI., more and more regarded as the customary mode.*

The other, by Writ, for Barons without Patents by custom; such custom was in the 15th century hereditary in the case of the more ancient and renowned; for the others, not. The mere personal summons which had already under the House of Lancaster, become infrequent, ceased wholly under the House of Tudor, and, already in the reign of Elizabeth, the Courts arrived at the conclusion, that the more ancient and traditional mode of summons by Writ was to be regarded as involving a right hereditary. In 20 Henry VI., the judicial position of the Peers is extended by the Upper House to widows and women, but not beyond, in accordance with the personal conception attaching to nobility.

This establishing of a hereditary nobility was achieved only at heavy cost, but, on that very account, it now ranks amongst the most durable of the institutions.

To this Great Council of the Realm—"is now conjoined,"

IV.—THE NEW SHARE OF COMMONERS IN THE PARLIAMENT.

In conjunction with the assemblies of Prelates and Barons charged with matters relating to law, taxes, and other subjects for deliberation, Edward V., on different occasions, summoned deputations from the *Communitates*, without formally binding

himself to the irregular course of incidents arising during the War of the Barons (49 Henry III.).

The king found, in the course of his enterprizes, urgent occasion for appealing to his faithful *Communitates:* "to bear common dangers with common exertions," and to take counsel with the king for the ordering of the means to carry on the war, and to levy money. Proved, with all certainty, is the summons for the first time issued, in 11 Edward III., November 24th, 1282, when, after the subduing of Wales, four Knights out of each county, and two Burgesses from different towns, are summoned with the injunction: "to hear and to do such things as are to be placed before them, on the part of the king;" thirty-two counties are to send their deputies to Northampton, the five northern counties to send them to York. In the following year, September, 1283, there are enjoined to appear at the Parliament at Shrewsbury no less than eleven Earls and Barons, two Knights out of each county, and two Burgesses out of twenty-one towns, to advise about the affairs of subdued Wales. In the year next following no further mention is made of the *Communæ*; in 16 Edward I., the Master of the Exchequer, "after the Barons have refused a subsidy," without further ado, made a demand for a *tallagium* from towns, and demesnes. In 18 Edward I., the Sheriffs are required to send two or three Knights, "with full powers for themselves and the *Communitates*," to advise upon, and assent to, the "resolutions" of the Earls and Barons. The towns are not this time summoned, inasmuch as the main object of deliberation concerns a law for the alienation of feuds. In 23 Edward I. (30th April, 1295) "in grave needs, on account of war" are now summoned two Knights, out of each county, and two Citizens, out of no less than 115 cities and boroughs, "that to do which by the *Commune Concilium* shall be resolved," whereupon a considerable grant of aid-

money follows. After this great Parliament at Westminster, whereat already 200 delegates from towns appear, the summons to the counties, together with the delegates from towns, has, under the same reign, been frequently repeated.

No official records had up to then recognized the necessity for any such summons. But what had upon one occasion been done, at a revolutionary epoch, under Henry III., was recurred to anew by a wise ruler, who recognized therein a political necessity. He wanted to consult the delegates of the counties and towns, and to obtain their assent to certain matters, so that they might the more readily be willing to grant to the king aid and subsidies. From this point of view the summons is for a while on a scale restricted, and the number of towns, especially, varies considerably. The deputies are still wont to receive special instructions, and they appear in the matter of assenting to the taxes, mostly by twos, from each *communitas*, so as to check each other. Their desires and petitions are generally, at the opening of the proceedings, received by the king, and at the close, he dismisses them with his thanks, and with injunction to be ready, whenever summoned anew. In the last year of the reign of Edward III., they are mentioned once in the preamble of a resolution, bearing on a matter of law. Thenceforth their importance, by slow degrees, expands, as slowly as does the development of the hereditary Peerage, in accordance with their growing importance as regards service to the kingship, and in the matter of taxes for State purposes. Exactly on that account the rights pertaining to the "Estates" are conjoined to, and correspond with, the services rendered to the king. The Lower House does not, as in the case of the Peers, find its mainstay in the Courts of the Realm, but it gains, contrariwise:—

First, a share in assenting to the taxes.

Next, in the administration, by way of Petition.

Lastly, a share in legislating.

(1.) *The assent to taxes*, on the part of counties and towns forms, in the earlier period, an unmistakably main purpose for their being summoned. For two generations it had been seen, that the ordinary revenues of the king did not suffice for the requirements of the land, and that, from time to time, there was needed a supplement, through taxes, by way of revenue "extraordinary." For longer than two generations, it was a settled matter, that such subsidies should be raised not only through "aids" and "scutages" from Crown-vassals, but that, in corresponding measure, the towns, free-holders, and farmers on domain-lands through their *tallagia*, or through *carucagia* (the plough-land=*carucata*, 100 acres) were to contribute, and, further, that movable property had to be adjoined, together with a fractional part of the income (a tenth, fifteenth, &c.). The time now arrived in which these assessments, respectively, might get fashioned into a general land and income-tax.

The way had been prepared for the merging of all special taxes raised on landed property, into one general land-tax, by a uniform tax on plough-lands, on occasion of the Saladin-tenth (1188), on the ransoming from captivity of Richard I., by the *carucagium* of 1194, and again under Henry III. It was no easy matter, however, to render this mode of taxation acceptable to the Crown-vassals, since the "*auxilia*" from feudal-vassals was one only allowed in the three fixed cases of "Honour and Need." But an appeal might well be addressed, successfully, to the patriotism of the highest Council of the Realm, without waiting for any such cases of necessity in the person of their feudal lord, since a manifest need of the country, was of as great moment as the cases of "Honour and Need" relating to his own person. The war-vassals were further assessed according to the terms of the feud, in an equal amount, (£20, and later £15,) while the lands

of the free owner were taxed according to the measure of plough-land and, subsequently, according to the returns from the taxing-committees of the counties. It was in accordance with the interest of the land-owners to abide by the tax, as once fixed, and just as much was it opposed to the sense of honour of the Crown-vassals to submit to be taxed by the Communal Committees. But, upon the whole, the assessment on the actual value of the plough-land was one more favourable to the Knight's fee; it was rendered more acceptable still, when the Knight's fee, in respect of its heavy feudal burdens, was brought down to a lower figure, the sense of honour being duly respected withal, from the fact that the Assessment Committee was appointed from among the Knights themselves. By these measures, since the time of Edward III., the establishment of a uniform land-tax was arrived at.

A supplementary tax, resulting from movables, (personal property,) had already for long years been well grounded, through the kingly claim to *tallagia* from peasants on domain-lands, and from towns. But it was to the urgent interest of such as were liable to pay dues, that the amount should not be appointed as heretofore by means of Commissaries of Court, in conjunction with the individual County Assemblies, but through arrangements arrived at in Parliament itself. From the unrestricted arbitrary dealing of the Exchequer, dating from olden times, there now existed manifold exemptions and abatements, secured by purchase. On the other hand, through commerce and industry, the income of towns had increased so abundantly that they had, in conjunction with the land-tax, grown to be a considerable well-spring of taxation. Undeveloped though the economic notions of the Middle Ages were, yet, even then, it had already come to be recognized that, side by side with the taxations of objects affected to personal use, there should exist a proportionate

personal rating, in other words, on the entire income of the individual. At the levying of the Saladin-tenth, and on occasion of the ransom of Richard I., this tax on personal property had come into use; John, after his way, had extended it to the whole population. Under Henry III. it had frequently been acted on, but with exemption of the clergy, and abatement in favour of Crown-vassals. Saving these exemptions the income-tax seemed suited to accompany and serve as a supplement to the land-tax, and this is what it has, since Edward III., become, with fixed amounts for counties and towns.

The extension of the land and income-tax to the clergy was, in the antecedent period, so far carried out as that the Prelates paid "aids" and scutage-money on account of their Crown-feuds, and, in common with the temporal Crown-vassals, submitted themselves to demands made, in so far as regarded these feuds. On the other hand, the clergy resisted the taxing of their other revenues resulting from clerical sources, such as tithes, offerings, fees for clerical functions, and so forth. Meantime, the Papal government had accustomed the clergy to a heavy charge upon their combined incomes, and had levied an impost on the wealthy English ecclesiastics. But when a general income-tax had come into use, in the case of the laity at large, there came a time in which the clergy, in case an income-tax had to be paid at all, inspired by a patriotic feeling, preferred to pay to the king for the welfare of the land, instead of handing it over to the Bishop of Rome. In fact, it soon appeared that the clergy when required to render a payment to the king did not offer any serious opposition, provided an honourable understanding was kept to, the clergy assented to being taxed through persons specially empowered, on special arrangements, and at the lowest possible fixed ratio, and this was carried into effect.

The levying of Customs-dues and Excise, on the other hand, was controlled, in many respects, by virtue of the civil authority of the king and of his office, as "Arbiter of Commerce," to regulate the traffic of Harbours and Markets. This often led to seizures, and to compromises with foreign and native merchants, while, as was gradually felt, the appraisements forced on the traders fell ultimately on the consumers. The conviction was gradually arrived at, that the levying of such imposts could not be severed from the assent to the direct taxes.

This was the position of the taxing interests throughout the land when, under Edward I., a stormy crisis happened, comparable with the course of events connected with Magna Charta, but with the substantial difference that, on occasion of the resistance manifested against the great king, one side acted loyally, and with full trust in the loyalty of the other. Edward had begun his reign under pressing financial difficulties, resulting from his father's bad administration, a state of things made much worse in consequence of his own frequent wars. The brilliant achievements attending his reign, brought him into a position to appeal successfully to the sense of patriotism of his Prelates, Barons, and Commoners, who, in the main, corresponded with his heavy requirements. In the year 1294, however, pressed by the course of the war on the Continent, and by reason of obligations contracted towards his allies, to employ more urgent endeavours, he has recourse to arbitrary measures. He demands from the clergy no less than one-half of their incomes, and only contents himself, after long deliberations, with some abatements of the amount demanded, as also with one-twelfth from Barons and Knights, with one-seventh from towns. While now in the year following the lack of money is being still more felt, Boniface VIII., through the Bull, "Clericis laicos," intervenes with

an absolute injunction against paying any tax out of Church revenues, whereupon Edward answers by seizing the possessions of the Archbishop's See, and declares the whole clergy "out of his protection." In this overwrought state of things, the Grand Constable, and the Marshal of the feudal "host," in accord with the feeling of the Crown-vassals, refuse their services for a campaign into Gascony. Both withdraw, after a violent dispute, and prepare for armed resistance. In his sore need, Edward now resorts to a seizure of wool belonging to the merchants, to a demand of heavy payment in kind, from the counties, and thereafter, to a call-to-arms of the whole feudal-militia, and of all owners possessing £20 incomes. It may hence be readily understood that the main part of the population was driven to resistance: the clergy under ban, the Barons-in-arms, and the two great functionaries refuse anew allegiance to their feudal lord, and break off from the army. The king, notwithstanding, does succeed, through personal intervention, in obtaining one-eighth from the Barons and Knights, one-fifth from the towns, and a proportionate amount from the clergy, with whom the amicable relations are kept up. In this perilous state of things, (August 12th, 1297,) the king is obliged to join his army on the Continent, leaving his son with a Council of Regency, which soon finds itself in a position to treat with the malcontent Earls and a strongly-armed body. Their claims aim at the renewal and supplementing of Magna Charta by a clause relating to a "general" right of concurrence, on the part of the "Estates," (*communitas*) to assent as regards all taxes. The Prince Regent, on advice of his Council, signed the proposal made to him (October 12th, 1297). In consideration of the situation at home and abroad, Edward, (November 5th, 1297,) ratifies these proceedings in a charter from Ghent, and with the resolve

expressed, to keep his kingly word. This *Confirmatio Chartarum*, in French and Latin text, represents, in fact, a fundamental law comparable with Magna Charta,—to the glory of the kingship, and in contrast with the events of 1215. The text in French, comprehended in the Statutes of the Realm, (I., 124, 125,) is the authentic one, that, namely, ratified by the king. The less complete Latin text is, apparently, the preliminary one concluded between the Prince Regent and the Council, but which has, subsequently, been cited erroneously in law cases, as a separate *statutum de tallagio non concedendo*. The amendments added by Edward, before signature appended, contain, especially, the addition, "with reservation of the aid-money" (sauf les anciennes aides et prises, dues, et custumes), have, of course, a certain amount of weight. The main thing, certainly, is that the right, constantly contended for since Magna Charta, in 1215, of signifying an assent to the taxes, had at last, after the lapse of a century, been achieved, and this on the groundwork of the land-owning classes, which, in fact, pay them.*

The individual tax-paying groups (Prelates, Barons, Communes) signify, their assent, for some time to come, separately. But from the time of Edward II. already, the endeavour is apparent to bring the direct taxation into accordance with occasion and amount. If this were sought to be done it became necessary to meet to take counsel: the king, as representing his domain-lands; the Barons, their manors and towns under protection; the clergy, for their possessions; the Knights, for themselves and their free-men; and the towns, for their *Communitates*. Understanding each their individual interest they are thus, by degrees, brought together; first, Knights and Towns, next Commons and Lords; afterwards, all the constituent parts of Parliament, whereby the assent to the taxing, passes through a course

similar to that resorted to in the framing of a statute. In 1378, the new relation is so far settled, that a *Magnum Concilium* of Prelates and Barons pronounces itself incompetent to declare any assent to taxes, without the Commoners.

When money lacked in later reigns, attempts were made to stave off the principle, by reverting to the old special pretension. But as the Lords, Knights, and towns hold together, such attempts fail, and at the close of the period there ensues an assurance, oft repeated, on the part of Richard III. For the principle of this assent to the taxes, the expression of Edward I. was of great moment, which refers to taxes non-assented to, for the "common profit of the Realm," thereby surrendering a portion of his personal rule, and obliging him to levy, in lieu, a land-tax, against which a number of objections are withdrawn, leaving a claim over, however, on behalf of the "Estates," for the examining of the purposes, and the means. The contractual nature of the "resolutions" concerning such extraordinary revenue of the king's, is not thereby abandoned. The "resolutions" bearing on taxation, have in no measure assumed the normal shape of the "resolutions" bearing on law. They receive not, on the part of the king, a formal assent, but are yet addressed to him in the shape of a formal document, which, later on, gets embodied in the Records of Parliament. The last instance of separate assent to taxes is in 18 Edward III. In later Reports both Houses are mentioned, in conjunction, with the observation "that they have advised in common." The old designations applied to taxes, *auxilia*, *scutagia*, *hydagia*, *tallagia*, are, for a while, mentioned side by side. The interests of the tax-payments are occasionally at cross-purposes, and experiments at taxing are sought to be made. It is more especially to the interest of the land-owner, who strives from time to time to ease his burden of money payment, by payments in kind, by poll-tax, parish charges,

and by a progressive income-tax. All these variations* remain after all but ephemeral attempts, as compared with the firm basis attained to in respect of dues leviable on the Knights' fees.

All the charges falling upon land get at last united into one general land-tax;

All personal charges, into a uniform income-tax;

And all Customs and Excise, into a general tariff, in such wise that the latter adapt themselves to a lasting revenue of the Crown, which, since the reign of Henry V., gets assured to the king, by way of supplement to the diminishing revenues from the domain-lands. For a considerable time after, the chief group of these indirect taxes is lumped together under designation of "tonnage" and "poundage."

(2.) *The share of the Commoners in the ordinary rule of the Realm* develops, under the guise of "petitions," grievances of the country, motions, and complaints—just as in German assemblies the *gravamina* of the country form the main part of their proceedings.

The decision in regard to petitions and grievances, lies within the province of the King's Council and the Great Council; they were taken in hand by "receivers," and reported on by "triers" and "auditors," and assigned to their respective departments. It was, at all events, an important right of the county communities, and of the towns, to bring their numerous, and often but too-well grounded grievances, before the highest officers of the Crown, and to the cognizance of the Prelates and Barons.

The first appearance of the Commoners is modest enough:—"Vos humbles, pauvres communs prient et supplient pour Dieu et en œuvre de charité," is the wonted formula. The King's Council, in the matter of their requests, is, substantially, their State-ruler; to the king pertains the judicial authority, the granting of new legal

remedies, and the redress of grievances, whether arising out of law or equity. With every new generation the proposals of the Commoners assume a greater importance, in conjunction with the growing importance of their landed possessions, and the taxability thereof. According to a celebrated saying of Delolme's, the grant of taxes, in constant connection with the grievances, was so effective "that it not frequently turned out that a proposal, in such suitable company, found ready acceptance." Already advancing more to the front, the Commoners request that petitions coming from all and every side shall be made known to them. In 12 Edward III., a share in the nomination of the "reporters" is conceded to them; but, on this head, the practice varies considerably. Under Richard II., the "humbles, pauvres communs" are, when occasion suits, already styled "right wise, right honourable, and discreet Commoners." In the 15th century, country petitioners prefer addressing their petitions to the "right honourable House of Commons" itself. The answer then usually followed, at close of the proceedings, after the money-grants had been assented to. The attempts made to invert this order are at first set aside, but at length, under pressing necessity, get acceded to.

A great difficulty seemed to have consisted in separating the grants of money, from the right of ascertaining how the moneys granted, got appropriated. A claim in this direction is first manifested at the beginning of the reign of Richard II. It is granted on one occasion, under reserve against its becoming a precedent; in hard times it is repeated, yet without leading to a systematic submitting of the accounts. The conflict on this score led on by degrees to the practice that the assent to the moneys applied for got postponed, if possible, to the last day of the session.

Since the growing influence of the Commoners has made

itself felt, their advice is often asked for, even in respect of general matters of State. This often occurs, with some reluctance, however, on the part of the Commoners, who foresee a demand for money, as a consequence of any "advising" of theirs. In 28 Edward III., they declare, in the matter of a treaty of peace submitted to them, "what to the king and grantz agreeable, shall be so to them." In Richard II., they refuse to give their opinion as to war and peace, but declare, after long urging, that they are more for peace.

A direct interference on the part of the Commoners as to the nomination of the great dignitaries of the Crown, and as to the direction of the Government happens merely as the expression of a revolutionary feeling, and only comes about under conduct of the opposing parties in the House of Lords. In 15 Edward III., there occurs certainly an extravagant petition, which aims at the nomination of the Judges and of Ministers in the Parliament, and which is granted, in the main, under protest of the King's Council. Through proclamations of the Sheriffs the king declares, after the close of Parliament, that this statute is null and void, as having been forced upon him, and two years later Parliament consents to the formal annulling thereof. Through the disastrous end of the reign of Edward II., and on the accession of Richard II., the Commoners were egged on to make exorbitant demands, by reason of the personal incapacity of the king, and on account of the members of the king's family next the Throne. Under Henry IV., it is the usurpation of the Throne which, in conjunction with the speedy unpopularity of the king, conduces to excesses. But all such infringements are made good under the same reign. Somewhat different was their behaviour under the rule of the Regency, during the minority and mental incapacity of the king, which, in the absence of a fixed law relating to the Regency, centred in the Great Council, with a certain

co-operation, however, on the part of the Commoners, dependent in a certain measure on the relations of power and party-influence about the Court. Moreover, a direct interference of the Commoners, in the dignities held, and in the proceedings of government, has generally resulted badly, and has, after a time, ended by being disavowed.

Of great account, on the other hand, becomes the application the Commoners' right of petition, to "presentments" against leading State-officials. In Norman times, the prosecution of an offence was bound up with the maintenance of the peace, as a common duty, therewith involving a right of presentment on the part of the community. The *Communitates* of the county making their "presentments" as public complaints, and the "Grand Jury," since Edward III., being the regular medium for such complaints, as a consequence, from the *Communitates* at large united in Parliament a right of complaint could not be withheld. As a *Communitas regni* they first begin to exercise the right, 51 Edward III., 1376. This occurred at a time of great malpractices in the administration under a king, become impotent from old age. Under Richard II., however, the impeachments become mainly violent party-struggles, and from then begin the great State-trials, leading up to sentences of death and banishment—and, on a change of parties, to retaliation. Under manifold modifications of form the complaint of the Lower House, after the manner of the presentments of a "Grand Jury" grows to be regarded as the ordinary mode of procedure. The powerful position of the party entering the complaint, and the high position of the party complained of, render it easy to understand these cases as being matters naturally reserved to the highest jurisdiction. They hence get referred to the king in the Great Council; that is, to the Upper House, as a High Court of Law. In accordance with the principle underlying the complaint, the

Commoners claim therewith, that a sentence shall only be pronounced when they bring forward a motion thereanent. The reigns of Henry IV. and V. have not given occasion for any such exceptional proceeding. Under Henry VI., "presentments" are, however, renewed, and assume, for the first time, in the trial of the Earl of Suffolk, the shape of a legislative act, under the designation "Bill of Attainder," which dispenses with the traditional form of a legal hearing. The Commoners have not, however, as yet, laid any claim to a share in the judicial business of the Council, and of the Great Council of that time.

(3.) *The share of the Commoners in legislation* has, finally, originated from the development of their right of petition. In cases where, for redress of a grievance, a new ordinance became necessary, this pertained till now to the King in Council, and in more important circumstances, since Edward I., with the assent of the Prelates and Barons in the Great Council. There is no question as yet of any concurrence of the Commoners. But the motion itself involves, in advance, a declared assent in the resolution to be passed. The increasing authority of the Commons confers, gradually, on this virtual approbation such a value that a formal mention of their "consent" begins to be made, as happened, once, at the close of the reign of Edward I. and, repeatedly, under Edward II. The turning-point is found in the long reign of Edward III., beset with money difficulties, which compelled him to summon full Parliaments no less than seventy times. The Commons, which up to then had only been occasionally mentioned in the parliamentary resolutions, are now seldom left out, their co-operation is referred to in the proposals to "law resolutions." The usual style now draws the distinction between proposal and concurrence; the king orders, on proposal of the Commoners, and with the consent of the

Lords and the Prelates. From such initiative there remained but one step to the full right of assent, the express recognition of which follows in 5 Richard II., and in Henry V. Since Henry VI., it becomes the custom to introduce the proposal of law, forthwith, as a project of law. The preamble to the statutes, as now existing, was first introduced under the Tudors.

On such foundation gets now further settled the notion as to the distinction existing between "*Statute*" and "*Ordinance*," in the language employed by the Laws, the Courts, and Jurists. Since the time Henry II. and III. had issued important Royal ordinances, with consent of an Assembly of Notables, one began to separate the more weighty law decrees, or "assizes," from the personal ordinances of the king. The laws of this period represent a conjoint action of the king with all three "Estates" of the ruling-class, in the sense of combined maxims, and in form, written declarations of joint decisions. Since 1 Edward III., English jurisprudence dates the so-called "*statuta nova*," as from this time forward only, does the co-operation of the three "Estates" become a regular one. They are cited like the written "recesses" of a Diet, in continuous chapters. The older ordinances, regarded as having equal value since Magna Charta, *statuta vetera*, were complied with by the Courts without inquiring closely into the characteristics of the authority issuing them. In conjunction with the now recognized right of assent pertaining to the Commons there develops under the long reign of Edward III. the further constitutional principle, whereby the ordinances issued with concurrence of the "Estates," exercise a stronger and more lasting efficacy, in so far that what has been by the king ordained *with* concurrence of the Lords and Commons, cannot any longer be altered *without* the other factors. The transition to the position of an "Estate of the Realm," with a concurrent right

of "consent," is manifested also by the fact that the Lower House advances a claim, relative to the shaping of the statutes to be resolved upon. In 14 Edward III. already, a number of Prelates, Barons, and Councillors, besides twelve Knights and six Burgesses, is nominated to deliberate as to such petitions and decisions, and to draw up the resolution, accordingly, which may suit as a lasting rule of law. In 51 Edward III. there occurs a petition containing the fundamental principle that statutes made in Parliament cannot be annulled in any other way, than with the general concurrence of Parliament, whereupon follows the answer: that they cannot be annulled otherwise. Once more, under Richard II., a representation is made by the Lower House (1390) that neither the Chancellor, nor the King's Council, can issue any ordinance contrary to the Common Law of the land, or in opposition to statutes issued previously, or against any issued in this Parliament, after the closing thereof. These proposals are, at different times, agreed to, and contain a new constitutional principle. This is the logical sequence of the Germanic *lex terræ*, which thereby comes anew into operation. If the *jus terræ* can only be altered through ordinance *consensu meliorum terræ*, the law of the land, so altered by such consent, becomes afresh *jus terræ* which can from now forth only be altered by consent of the Commons. The binding force of Royal mandates, by means of ordinances, or proclamations, remains untouched, but their application is restricted in case former statutes are to be, thereby, set aside.* Such a restriction upon the king through fundamental laws, even if in contravention with his will for the time being, is expressed by the Coronation Oath. Through its being more effectually carried out, the highly Conservative character of the parliamentary constitution comes into play, which leaves the power to the king of imposing laws, unchanged, but limits any alteration of the

law existing, by a strict condition precedent, in the absence of which, any personal expression of the king's will, is not to be regarded as a law. This accords so well with the permanent nature of State that it has endured through the long lapse of ages as the fundamental principle which from now forth may be looked upon as the leading maxim of Constitutional State-law.

This progressive development of the right of the Commons silently led to the—

V.—SEPARATION OF THE COMBINED PARLIAMENT INTO TWO HOUSES, WITH FURTHER DELIMITATION OF THE POWERS.

A separation of such kind was already a consequence of the advance gained by the Upper House, at the time when the Lower House joined company. The co-operation of the Great Council, with a deliberative voice, was already joined to the whole range of State-powers when in full operation. After they had answered to the summons *ad ardua negotia regni*, the Lords, together with the King's Council, withdrew, leaving the delegates of the Commons to themselves. In 8 Edward III., an advising body is mentioned as "separated" from the Lords; and that the Knights of the counties and the *gentz de la commune*, meet together and give an answer, "in common." In 25 Edward III., mention is made of a conference of the Commoners in the Chapter-House, and after that, the meetings of the Commons occur, undoubtedly, in a place assigned to them. In 51 Edward III., the first Speaker of the Commons is mentioned, who delivers, in their behalf, their joint declarations. Under Richard II., they assume the functions of a body consolidated, and, on the abdication of Richard II., are recognized as a portion of the "Estates of the Realm." In accordance with such course of events, the Throne, usurped by the House of Lancaster, could no longer rely

on hereditary right merely, but on a recognition by Parliament. The time has now arrived for mutual acknowledgment of the relations produced by these events; hence an explanation of the respective functions in the Parliament of Gloucester, 9 Henry IV., through a declaration in which already the precedence of the Lower House, on occasion of money-grants, is recognized:—

"It shall be lawful for the Lords to treat among themselves, in the absence of the king, respecting the state of the Realm, and about the necessary means of help. And in like manner it shall be lawful for the Commons to advise among themselves in respect of the beforementioned State, and means, &c. Saving always that the Lords, on their part, shall not report to the king any matter resolved on by the Commons, and assented to by the Lords, before the Lords and Commons have come to one opinion and concurrence in such matter, and then in the wonted way and form, to wit, through the mouth of the Speaker."*

Manifold doubts exist as to the manner in which the House of Commons got constituted through *elections in the counties and boroughs.*

The building-up of the *County representation* only became the object of legal pronouncement after the lapse of a century, as may be inferred from the course of its development. When Edward I., for the first time invited his faithful Commons to send delegations, it was natural that the counties then existing had to carry out their mission after the manner they exercised, constitutionally, their legal business. The deputing of County Knights, in the absence of a different rule of proceeding, would appear to have been treated as a mere matter of business, which was to be conducted in the Court of the County quite as easily as any other business. The then

existing County-court had made over its principal civil and criminal business to the itinerant Judges, retaining withal, the power of decision in petty civil cases up to 40s., for which the Sheriff had to find a fitting number of "men of law" from among the Knights and Yeomen, which latter were, by preference, selected for such matters. The county was further charged at that period with the ordering of the "Grand-Jury." In addition, the important administrative business relating to the Militia, the election of Coroners, and manifold civil duties had to be transacted. In the County Assemblies the king's mandates were notified; the taxes resolved upon by Parliament were made known; the Assessment-Committees were chosen; and complaints in the matter of taxes were heard, and reduced to writing. At any rate, there was a considerable amount of matter to be treated of, causing to assemble a "crowd of bystanders" from the district-town and neighbourhood. Twice annually the assembly assumed a more solemn aspect through the appearance, specially announced, of the Judges of Assize, and, concurrently, of the juries chosen for such assizes. In this wise, in conformity with the law as then prevailing, these assemblies were held thirteen times a year—every four weeks—and recent researches go to show that, in this intent, a special day in each week was fixed, so that, for example, when the assembly took place on a Monday, on every fourth Monday throughout the year the County-court met. No special invitation was hence issued for the ordinary meetings, and this explains why, in reference to the different matters treated of, the persons taking part were, as a rule, designated in vague terms as *milites* and *libere tenentes*. The Magnates, as a rule, only take part by proxy, which had been permitted them since the close of the reign of Henry III. An exhaustive inquiry by Dr. Riess* has thrown light on the obscure point of

the election rolls. From such building-up of the County-court it is evident that there did not exist from the outset any convoking of the assembly, nor any testing of legitimation. The assembly was open to all, and there was no occasion for the examining of powers, inasmuch as the proposals were brought forward only by persons of repute, and were adopted by acclamation. If any opposition arose, it could only emanate from a person of repute, since the counter-proposals had to be adopted by acclamation. For more than a century there is no trace to be met with of a counting of votes. As to the registering of votes, and the reports of elections, there is mention only made of a common assent of the assembly, reminding one of the ancient mode followed in the German assemblies. (See p. 29.)* It was clear that such a state of things might be turned to wrong account, especially by the Sheriff having conduct of the elections. About the special business relating to elections to Parliament, the Sheriff alone had any official cognizance. He was able to secure the appearance of well-disposed members at the next assembly. He could, without further ado, propose candidates, and so hurry on the proceedings as that the opposing party should have no opportunity to bring forward their candidate. He was in a position even to prevent an "acclamation" from taking place, and might return, that a certain person had been elected *nemine contradicente.* In consequence of such unrestrained action, he sometimes, on his own responsibility, inserted in the return the name of a person who had not been voted for by anybody. The small amount of political interest taken in elections during the first period afforded free scope for such abuses. Only in the following century, when the party-spirit prevailing amongst the nobles had taken hold of the lower-classes,

are complaints touching such abuses, heard of, and soon after, of measures being taken to remedy them. In 1404 already, a regulation is made whereby the proceedings connected with elections are to be notified a fortnight beforehand; this measure is, however, abandoned in the year following. At last, in 7 Henry IV., c. 15, appears the strict provision that the election is to be made known in the full assembly, and completed in presence of all specially summoned "men of law," as also of the others bound by law (suitors). The Sheriff is to get the indenture sealed by all who take part in the election. This record is to be attached to the "return," and has to be made over to the Chancellor, as being the official report of the Sheriff. An Act of Parliament, 11 Henry IV., c. 1., conveys, further, authority to Judges of Assize to examine each report, to fine the Sheriffs, for any violation of the law, £100, and to declare members wrongfully nominated, deprived of their daily salaries. In regard to the validity of the election, the king apparently decided in Council, or definitively, with advice of the Judges.

At this time, when party-organization was in course of being formed, there occurs further, a classification of those who are to exercise the franchise, by means of a positive "*census*," 8 Henry VI., c. 7, (1430,) "That in future only free-holders of 40*s.* income shall take part in the elections," and in a notification following speedily after: "only 40*s.* free-holders within the County."* The right of voting is thereby placed on a level with the rate ruling the service at the Courts, which at this period, in regard to Jurymen's service, stands equally at 40*s.* The application of the "*census*" to the customary service of the *Communitas* has proved, through the lapse of centuries, a lasting guiding-principle. From now forth the qualified voters appear, on the whole, classified and assured in their right. The Sheriff,

as commissary at the election, (and on that account not himself eligible,) convokes the assembly. He can require from every one taking part in the election a statement, on oath, as to the amount of his income. Now, for the first time, the rule as to a majority of votes, is recognized as being decisive in the matter of the election—*majeur nombre soit retourné.* In the election writs, under Henry VI., the Sheriff is expressly enjoined to report only such as have received the majority of votes from the qualified electors (*qui majorem numerum ipsorum habuit, qui* 40 *solidos et ultra per annos expendere possint*).

The mode in which, as tradition holds, the County Assembly is constituted has finally found its application in respect of the delimitation of the bare right of vote, as well as for the eligibility itself. First of all it was declared, as being of course, the elected, and the electors must be "resident" in the county, inasmuch as the County Community as such is to be summoned by way of delegation. But as an assembly of the *meliores terræ* is in question, it was from the outset, taken as a matter of course, that the Knights of the County should be chosen, without making any difference as to their being Crown, or sub-vassals, on grounds previously set forth. As, meanwhile, a considerable part of the owners of Knights' fees was wont to decline the honour of Knighthood, it became soon necessary to be contented with Esquires (*valetti*), and hence are the Sheriffs advised to let *milites* or *alios de comitatu* be elected (*e.g.*, in 1322.) The existing state of things is finally declared in 23 Henry VI., c. 15, "That only notable Knights and such notable Esquires and gentlemen of the County are to be elected, who might become Knights, (consequently possessed of £20 income from land,) but not any Yeomen thereunder,"—corresponding, therefore, with the qualification for the Justice of the Peace. For 400 years the rule was adhered to.

Still greater difficulties does the *representation of boroughs* in the Lower House encounter. At first, Edward I. (as well as Simon de Montfort) summoned twenty-one cities and boroughs, but soon after the number was greatly increased. A recent investigation* shows that under Edward I., in eight Parliaments, relating to which there exist fully detailed "Reports," 604 deputations from towns were present, an average consequently of 75. Comprising those who under the summons had not sent any delegates, the average is brought to 83. Under Edward II. appeared in 18 Parliaments altogether 1,083 deputations, hence an average of 60 or, reckoning those who had not sent up, 61. Under the subsequent reigns the number of summonings has, on the whole, increased; but through refusals and want of "acts of presence" the number shows, in fact, a diminution. What principle these writs of summons have been founded on has, up to now, remained in obscurity. It is unquestionable, however, that the smaller towns looked upon such summoning in the light of a heavy burden, by reason of the daily salaries connected therewith.** To a few, the exemption from the duty was granted, as a legal advantage. From the small town of Toryton it was actually contended, that it has been maliciously burdened by a summons (*malitiose ad mittendos homines ad Parliamentum oneratus*). The main purpose of getting more ample grants of money through the summoning of the towns, as also the general instruction to the Sheriffs, from "the cities and boroughs of the comitat" to induce to send delegates, go to prove that, under the summons, all towns were to be comprised; that is, all liberties which, by privilege, are exempt from the direct control of the Sheriff, either from the fact of their forming a "hundred" of their own, or an exempted portion of a hundred. A searching inquiry leads to the inference, that the fact of many towns having withdrawn from the right of election, was to be

accounted for by the form of the summons. London had, from the beginning, been honoured by a special summons, like that addressed to the great Barons, and, in the course of this period, ten other cities have received the honour of a special summons. Consequently, in the case of these towns, a refusal of the summons and the loss of their right of election could not occur. As to other towns, the writs of summons were addressed to the Sheriffs, to be transmitted to the local authorities (*ballivi civitatum*). To such towns as form a "hundred," the Sheriff sends the summons direct, and asks for a "report" thereon, which he sends back to the authorities of the Realm, with the "return" of the county. To those towns, on the other hand, which form only part of a "hundred," the summons, so far as is evident, was sent to the district authorities of the "hundred," (*ballivi hundredi*,) and there was not, in such case, any "report" returned to the Sheriff, and thereby the control of the proceeding in respect of the Sheriff and the authorities of the Realm was ineffectual. Hence these very towns succeeded easily in escaping the summons.* A comparison with Records extant, allows of this explanation being a feasible one, whereas all other conjectures made by Stubbs are based on an unstable foundation. The supposition of the latter, especially, to the effect that the borough elections took place within the County Assemblies, is difficult to uphold. It seems more likely that the Sheriffs in their "report" on the election, especially take note of the "reports" of the town local authorities, (*ballivi respondent*,) or that, in the event of an election not having been reported in due time, they send in their "report" with a *non respondent*. The "report" as to the town election, has been forwarded frequently at the close of the "return," and subsequently registered. It may hence be inferred that the town elections took place within each town, and were merely

treated as a communal affair. In towns where larger assemblies of Burgesses took place, the elections have proceeded from them; in towns where smaller committees had the control of the town business, these same committees had charge also of the town elections. Oftentimes the election wears the aspect of a magisterial act, probably in cases where a defect in the town organization makes itself felt. In so far as the organization in towns at this period is not definitively fixed, the result follows that the election takes place, in the main, after the manner of municipal proceedings. Later centuries show, as in Germany, a tendency, in many respects fundamentally oligarchic, as regards the administration of towns. The individual activity and co-operation called into play, as far as the administration of town affairs is concerned, is held to apply as a guiding principle, in reach and in extent, with reference to elections; so that even in small localities there is maintained a firm coherence of the electorate,—besides it is to be observed that in parliamentary boroughs the twofold number of town-delegates is not strictly adhered to. It not unfrequently happens that one delegate only is summoned for the small towns, but at times, there are three or four, especially in London and the Cinque Ports. Not before the 15th century, do the numbers get more settled. At the close of the reign of Edward the IVth, the number of towns amounted to 112, each with two members. In London, after some fluctuations, since 1378, four members have been fixed on.

The whole number of the members of the Lower House is, lastly, composed of 74 County Knights, as delegates of the 37 then existing counties, and side by side with them, certainly 200 delegates, from more than 100 cities and boroughs. This number in excess showed no incongruity, at a time when a counting of votes, did

not exist, and the proposals were made only by the more important members, and were either accepted by "acclamation," or set-aside by a counter-proposal. All elections hold good only for *one*, and, as a rule, a short Parliamentary session. For each new session, fresh elections are appointed. Members are in duty bound to attend, and have to give guarantees, through sureties, for their appearance. The members are also not permitted to absent themselves from the parliamentary session without permission of the king. The special personal privileges of the members begin later on; they date only from the time when the Lower House was placed on the same footing as the House of Lords, and any such privileges are derivable from the fact of their belonging to the "Highest Council" of the Crown.

Surveying the second century of this period, we perceive the vast progress of the influence exercised by the Lower House in every direction, one might be led to believe that a parliamentary government, in the modern sense of the word, already existed towards the close of the Middle Ages. The substantial difference from the Constitution of the 18th century consists, however, in the fact that the numerous open matters, in regard to which the king's prerogative right has not yet been defined, are left to the personal decision of the king. The actual State-rule is still centred in the king, and his Great Council, and his Continual Council. There is not, as yet, any parliamentary Budget, and no influence of the "Estates" is exercised on any joint-scheme of the State revenue and expenditure. The centre of gravity of the financial-system is found still in the hereditary revenues of the king; before the king, and not before the Parliament, does the Chancellor of the Exchequer, by virtue of his office, present his "statement of account,"—a kind of annual Budget,—as this report

is styled for the first time, in the year 1421. With the reserved right of the Crown there is still united the so-called "Prerogative," or notion of some extraordinary dictatorial power, which, in cases of urgent political necessity, may set aside the self-imposed restrictions of Right and Justice, and, through extraordinary measures, regulations, and ordinances, can levy aids. Despite the acknowledged authority of the law, Edward III., Richard III., and Edward IV. not unfrequently issue mandates with this clause, "Without regard to any laws opposing" (*non obstante*).

But the combined reach of this whole scheme is limited to the temporal aspect of State-rule, in face of which stands the Church, as a separate organization fashioned according to other principles.

VI.—THE ORGANIZATION OF THE CHURCH

after the times of Magna Charta had remained almost unchanged, but had to deal with the same population, yet regarded from a point of view entirely different, both in form and spirit. At the close of the preceding period the power of the Roman Catholic Church had reached its acme. A Supreme Head of the Church stands face to face with the temporal king, and claims, even in England, a suzerainty, with an annual feudal tribute. A clerical body, with power of legislating and assenting to taxes, and with a jurisdiction of its own, stands face to face with the temporal authority. At the beginning of this epoch, it is Edward I.'s endeavour to invite to the Parliament, side by side with the Prelates, the Chapters also and the Parish Clergy. The notion of a representation of the lower clergy, side by side with the Bishops of the English Church, had already been mooted and carried into effect by the great Archbishop, Stephen Langton, soon after the issuing of Magna Charta. With the view of restraining the Papal prohibition against the taxing of the

clergy, Edward I. wanted especially to confer on the lower clergy a position in the Commons analogous to that of the Prelates in the Upper House, so as to keep up in these classes a feeling for National communal life. He, therefore, issues, with the preliminary words "Præmunientes," an order to all Bishops to summon to the Parliament the Deans and Archdeacons in person; each Chapter to be represented by one, the Parish Priests of the diocese by two delegates, fully empowered. But though Knights and Citizens, in their character as Commoners have been welded in the Lower House into *one* corpus, the middle-class of the clergy and laity seem to get more and more estranged from each other. The clergy refuse to answer a summons to a Lay-Parliament, remain apart in assemblies of their own, and pass their separate assent to the taxes. A cohesion of the temporal middle-classes with the lower clergy could not be effected, on account of the entire difference existing between them in calling, education, and social interests—least of all with an unmarried clergy, like that of the Roman Catholic Church. The strong inclination manifested by the clergy to hold themselves aloof, is met by as strong a feeling on the part of the Commons in Parliament against submitting to clerical rule, and they pass at this time a number of laws against the real, or imagined, encroachments of the spiritual power. Under the general designation "Præmunire," a whole range of such encroachments is threatened with severe punishment. The first Statute 7 Edward III., st. I., is directed against appeals to Rome, in matters pertaining to the cognizance of the King's Court. The subsequent writs of "præmunire facias" threatening banishment of the Realm, heavy corporal punishment, and money penalties, form the introduction to a series of statutes against assumption of clerical offices prejudicial to the king or to any of his subjects; against the transference

of moneys abroad; against the bringing of sentences of excommunication from abroad, against exemption of clerical persons from the ordinary Courts, against tithes, and against the interference of the Pope in clerical elections. The Statute of Provisors 25 Edward III., st. 4, threatens especially, all persons accepting the Papal presentation to a benefice, with imprisonment, and forfeiture of all official income. The practical consequence of the latter expedient, nevertheless, only amounted to a compromise between the Crown and the Curia, whereby King and Pope, as a rule, carried their nominations, and in not allowing a free election of the Chapter to take place. In conjunction were a number of supplementary statutes against the introduction, acceptance, and carrying-out of Papal Bulls, and prohibitions against alienations in mortmain, (7 Edward I., st. 2,) &c. As a symptom of the public feeling it may be stated that in the year 1340 a layman is for the first time installed, by wish of Parliament, as Lord Keeper of the Great Seal, and that, in 1365, Prelates, Barons, and Commons resolve, unanimously, to refuse to pay the feudal-charge to the Curia, which had not been paid for thirty-three years, on the plea that "it had been promised without their consent." An aversion against the clergy is also manifested under Richard II., by the protection of heretics, (Lollards,) who, as forerunners of the Reformation, found their principal representative in Wycliffe. It was only under Henry IV. that the Church succeeded in obtaining from the State more stringent punishments against heretics, and this under continuous opposition on the part of the Lower House. Under Henry V., heresy becomes a crime, and is declared as being in contravention of the Common Law. It is not easy to determine at this period how deep-rooted was the anti-Roman movement. It was the National sentiment mainly which felt touched at the Papal claims, at a time of the seventy years captive position of the Papacy

at Avignon. Some keen-sighted, conscientious men of that time were aware of the wide-reaching degeneration throughout the Church; but their voice found certainly more echo in a feeling National, than in any mere conviction as to the fallability of any of the dogmas. At all events in this century, there were perilous questions pending amongst the temporal powers, which had to be fought out ere the spiritual controversies could be settled.

In the temporal organization also, the harmonious coherence of the different factors, was by no means so complete, as one might be inclined to conclude from the progress of the Lower House. Relatively speaking, the weak point lay at that time in the alliance of the great war-vassals with the *Communitates*, represented in the Lower House. If one remembers, how after the summoning of the Germanic imperial free towns under the "Estates of the Realm," the two bodies of princes of the Empire could never be induced to award to these citizens an equality in rank and significance, it can easily be understood, that the great war-like nobles have suffered most through the cession of equal rights to the middle-classes. On this head, there happened anew a fatal rupture.

VII.—THE CENTURY OF RENEWED STRIFE, AND THE WAR OF THE TWO ROSES,

which concludes this epoch, are founded on a social process, which repeats itself after the Reformation, just as in Germany nowadays, and in all times, and in accordance with a social law. To a period of social elevation and political unity and power there succeeds a relapse into a state of things wholly opposed, and into continuous strifes caused by social interests conflicting generally.

If by means of the *Communitates*, an admirable foundation was laid for the harmonious blending of classes, by

reason of the individual share taken in all matters concerning the State corresponding to the measure of their personal activity and to the extent of their assessment; on the other hand, there was manifested by the governing-classes, all the more earnestly, a spirit of exclusiveness and clannishness which delighted in exhibiting the old class distinctions, all the more vividly in contrast with the new order of things.

Although the inner life of an insular folk, thus concentrated, verged towards a peaceful development wherein feudal-militia and national-militia might get amalgamated; yet the old spirit of the Knightly-class, with its claims to exclusive honours, its contentions, and strifes stood out in contrast all the more vivid.

If the hard discipline of the Norman feudal-system had schooled the nation to military rule, civic order, and allegiance to the Crown; individual haughtiness and the spirit of opposition cropped up anew notwithstanding, under the reign of each weak monarch.

If the influence resulting from possession of large landed property has a tendency, in every development of Society, to lead to an arrogant assumption of the higher classes over the lower,—there came now added a prosperity, nowhere in Europe so apparent as in England, in the conditions affecting agriculture, which doubled the incomes of the great nobles and heightened the social influence of the mighty Peers of the Realm,* leading to the establishing of a kind of Court in the case of each one among them.

The power of the king having established an equality of right amongst the Barons, maintained the alienation and free purchase of land, and elevated the labouring-classes, thereby setting aside the remnants of thraldom,—the more marked became the tendency to render inalienable landed estates by way of entails (in abiding opposition to "common law" and judgments of the courts;) the striving of the trading-classes to

form exclusive bodies, by instituting "liveries' and "guilds," in fitting places, and even to introduce a city government by guilds, to limit apprenticeships, in alternate operation with numerous strikes of the working-classes, and with sanguinary cruelly-suppressed up-risings of peasants.

These social reactions are at last swept aside and all the more vehemently repelled in proportion as they had boldly pressed to the front; but such endeavours seem to be unavoidable in order to establish on a firm basis a new order of Society.

In conjunction with such variances in the social system a transition is made towards introducing a system of mercenary armies, which on the Continent, equally, had led to a perilous crisis in social life, and in the administration of States. In the English feudal-militia, as well as in the national-militia, there had always existed a war-like spirit. Both bodies contained excellent materials for the formation of paid troops, for the common soldiers were to be found among the sturdy Yeomanry, and the leaders amongst the war-like nobles, and the needful means were provided by the wealth of the land. For the wars abroad, (1338-1454,) there grew out of this, a system of free-booters and men-at-arms, which, when these men returned to their native land, became a standing menace to the country.

Out of these elements the crises were gradually evolved which, passing through three epochs, culminated at last in the most fearful catastrophe.

The *first* had been silently preparing already, under the glorious reign of Edward I. In spite of the financial difficulties which arise from the wars with Wales, France, and Scotland, this period is pervaded by a general feeling of harmony. This kingly rule with the patriotic co-operation of the Barons, so powerfully established, forms a striking contrast to the miserable personal rule of Henry III. Symptoms of the growing independence of the great vassals may however already be

discerned, in the most flourishing interval of this period. But directly after the death of Edward I., the foolish surrender of military strongholds, and of the appointing to the highest honours of the Realm, as well as the wasting of the State-revenues, through a favourite show that, under Edward II., the kingly guidance of the Realm has anew ceased. The provisions of Oxford seem again to return. The offended Barons meet in arms, and force the king to appoint a Council of Regency. But although the mightiest Earl of the Realm is at the head of the "Lords-Ordainers," there results, nevertheless, a splitting-up of the party, and after a series of persecutions on both sides, results, after a few years, in the downfall of the party-government. With the help of the Commons, they succeed in throwing off the yoke of the nobles. All measures of the Ordainers against the prerogative of the Crown are cancelled, and a solemn compact is drawn up: "That in Crown and State matters only the king himself, with the assent of the Lords, spiritual and temporal, can decide." When, lastly, the weak and helpless king, through the open revolt of his wicked queen, was forced to abdicate, and was murdered while in prison, this first crisis takes rather the character of a conspiracy of the Palace than of a serious alteration of the kingly order in the State.

The *second* important crisis is silently prepared under the model rule of Edward III. While at this period the Lower House is formed, and the national feeling is inspired with proud satisfaction by the splendid victories of the wars in France, and the Parliaments willingly grant supplies, on a scale till now unheard of, for the carrying-on of great projects: on French territory there has been achieved a new fashioning of the army, constituted out of the nobility and the county-militia. The heroic person of the Black Prince, assisted by the principles of new tactics and strategy, got the better, in many glorious battles, of the uncouth feudal-militia of France.

In spite of the splendid results of the fifty-years' reign, at the close of it there is manifested in the Parliament, even while the rule of the impotent king lasts, a spirit of resistance. In consequence of the early death of the Black Prince a Regency is instituted for his infant successor, Richard II. In the name of the king, but ten years old, the Great Council of the Lords has, in fact, the guidance of the Realm, and already the formation of contentious Court-parties begins to show forth. The personal reign of the king, so full of promise at first, begins somewhat frivolously, with extraordinary grants to favourites. Already in 10 Richard II., Parliament assumes a threatening attitude, and the king yields. In consequence of several parliamentary complaints, there happens at this time even a condemnation to death of the king's judges, in consequence of their having expressed themselves in favour of the Royal prerogative. But through the return of the personal energy of the king and the surprising of the opponents through the support of the Commoners, a reaction ensues. A Parliament, surrounded by armed men, annuls all resolutions against the Royal prerogative, grants a subsidy for life to the king, and offers to lend aid to secure a sanguinary retribution, as also for the institution of a committee which, after the close of Parliament, is to remain with powers above the Constitution (which almost immediately launch out in excesses, and later on, all ordinances, sentences, and regulations of the Committee are cancelled). Now there begins an immediate use of the armed power, for the appointment to parliamentary offices of trust, for the application of the laws of high treason against the conquered opponents, leading to the breaking out anew of the fiercest passions. But as King Richard only makes use of his regained power for vindictive retribution and the arrogant maintenance of the Royal prerogative against the clergy and laity, the ill-advised king is abandoned by Parliament, Church, and People, and succumbs before the attack of his

cousin, the Duke of Lancaster, who, landing at Ravenspur with a military escort of sixty followers, is in a few weeks at the head of the malcontent Barons, and an army of 60,000 men. The results of this reign are the serious encroachments of the Lords as regards the filling-up of offices, the temporary control of the finances by the Commons, and, in regard to both Houses, repeated accusations of the great officers of State, which in subsequent Parliamentary law are quoted as important precedents. But the close of the crisis so full of events, is the formal abdication of the king, forced on by armed power, and a formal resolution of both Houses of Parliament, which is notified in the most insulting form, of refusing their feudal allegiance, whereupon Richard's life is made away with while in prison.

The *third* epoch, the full development of the catastrophe is prepared anew in a generation abounding in war-like deeds, under the reigns of Henry IV. and V. The reign of this first king of the House of Lancaster began in the unsurmountable difficulties attaching to a usurped position, and surrounded by conspiracies, revolts, and dangers of all kinds. As the great war-like nobles looked upon this dynasty as their own creation, their mighty followers vied very soon with the old opponents of the House of Lancaster, in resistance against the new king. The records of the Council of this period afford a picture of the solicitudes which tended to shorten the life of the brave monarch. A king in this position, surrounded by Pretenders with equal or even better rights, had to be content, and to be on terms of peace with his Parliament. There is no question, therefore, (as under Richard II.,) of levying taxes without Parliament, not even in sore times of need in the administration. In 6 Henry IV. the subsidies are only granted under the mistrustful conditions attached of having the accounts examined. In 8 Henry IV. there follow thirty-one important articles,

which are all granted. The king is to appoint sixteen Councillors, and is to consult with them alone, and he is not allowed to dismiss them without clear proof of guilt. No official of the Courts of Law, or of the Exchequer, is to be nominated for life. The Chancellor and Keeper of the Privy Seal are to be "*responsible*" for the lawfulness of each grant, whether by patent, judgment, or in any other manner, which is to be issued under their seal and signature. In the next Parliament, however, the king sends a message to the Commoners to the effect that in the last Parliament a law was passed which had hurt his freedom and prerogative, and to the removal of which he requests their consent. The Commoners grant this and receive the thanks of the king. This new position of the kingship was full of serious consequences, especially for the above-mentioned established position of the Peerage. A kingdom where the Throne rested only on its recognition by the Parliament, could not treat the House of Lords as being an assembly summoned by its sole authority, by arbitrary rule, and free choice. The Commons also agree to this view, whereas the Lords signify their consent to the subsidies granted by the Commons, and recognize their right of taking part in the legislating when new statutes are framed. What could be urged against these mutual acknowledgments, which now follow in the Statute of Gloucester, 9 Henry IV.? Both Houses recognized *vice versâ* Henry as lawful King of England. From the proceedings which led to the establishment of this dynasty, it wore the appearance of being the creation of the war-like nobles, and hence the different concessions to the clergy, to whom further, in contravention of the tendency of the Lower House, assurances of more stringent measures being taken against heresies are given.

This precarious state of the kingship lies still hidden during the short, but glorious and popular reign of Henry V.

The great battles on French territory give to the activity of the State, at this time, an overwhelming impulsion towards the Continent, and legislation and "grievances" of the people in Parliament remain suspended at this time. To the splendid successes in war of the monarchy, in whom the romance of chivalry and the true faith of the Church once more are displayed with full halo, corresponds the ready co-operation of a nobility content with glory and plentiful booty, and of a nation proud of such deeds of high emprise.

The new dynasty seemed apparently so well established that after the early demise of the gallant monarch, a Regency for the child of nine months old, Henry VI., controlled by his two uncles, Bedford and Gloucester, men well versed in war and politics, could be safely established for a while, under circumstances of urgent difficulty. The numerous regulations of the Council, dating from this time, record the firmly-ordered course of State proceedings. The king, who, in the meantime, had reached his majority, was destined, by reason of his unfortunate disposition and dependence, to remain in a state of irresolution during his whole life. The dangers of a rule by nobles, without kingly guidance, become now evident in the bitter feud between the Duke of Gloucester and Cardinal Beaufort and his powerful adherents. This opposing party finds in Margaret of Anjou, not only the queen of its choice, but also a party-leader of virile spirit and womanly craftiness, and with all the characteristic talents of the House of Anjou. The murder of the Duke of Gloucester procures to the so-allied Court-party the rule over the land, but also the opposition of the Duke of York and his adherents. The deserved unpopularity of the Government then leads to the accusation against the Duke of Suffolk (1450), and to his murder. The party passions which are now inflamed on both sides

awake, for the first time in the House of York, the design of a succession to the Throne, to which this branch of the Royal House, according to the right of primogeniture, was nearer allied than the House of Lancaster. In the meantime, the state of things in the Realm at large had grown worse. Since the murder of the Duke of Gloucester everything had gone wrong; Henry the V.'s conquests were lost; the Constitution was carefully observed, but the administration incompetent; the Crown was in straits, the Exchequer empty, the peace of the country in jeopardy, whole districts in constant fear of robbers and rioting. The majority of the nobility still held firm, with the spirit of feudal fealty, to the House of Lancaster. In opposition to this party stands now the Duke of York, the greatest land-owner in the Realm, and the great family of the Nevilles, connected with him, the City of London, and apparently the majority of the lower classes. In consequence of the further division of the king's family, there have been formed two parties, equal in strength, striving for a like purpose, that is, to win for themselves the Crown, and the power of reprieve therewith united. With difficulty the parties are still for some years kept in check through their reverence for the kingship. As soon as this bulwark falls, through the hopeless impotence of the king, there ensues a raging strife, in which the two parties fight not against, but *for* the power of the kingship, a strife, in which deeds of violence, of self-defence and of vengeance, are soon confounded in one indistinguishable chaos.

The battle of St. Albans, (1455,) heralds the thirty years' War of the Two Roses. After a short period of seeming peace, the king, in 1460, falls as prisoner into the hands of the Duke of York, who holds the position of Protector of the Realm, and, further, with the assurance of the succession

to the Throne. Surprised in a dashing attack by the queen, the Duke of York is defeated. The victorious party, after the fashion of the House of Anjou, gives the signal for the execution of their captive opponents, and for gross acts of violence, which, in the following year, bring about the downfall of this detested reign. The character of the contest, from now forth, seems to take full development. The constitutional power of the King's Council, and the whole active element of State-government is shattered during this strife, wherein neither Church influence, nor any legal authority in the nation, was in a condition to determine on which side lay the right kingship. No solution was any longer possible through the Parliaments, for each one served that party in the ascendant, by which it was summoned, and passed its condemnation on the other. The war-like great vassals now appear with militarily-organized followings, which form regular battalions of extemporized troops, and which are increased tenfold by paid mercenaries. These aristocratic followings come now, unhappily, into conjunction with the returning veterans from the French army, and with the tactics there learned, to which now already is also added the use of heavy guns. The issue of the conflicts combining such heterogeneous elements, was dependent, in the main, on surprises and accidents, and slaughters that ran into butcheries, the outcome whereof could not be calculated.

The battle of Towton, (1461,) in which more than 100,000 Englishmen were pitted against each other, determines the victory of the Red Rose against Margaret of Anjou, and brings the heir of the House of York to the Throne. The internecine strife of the high nobility amongst themselves, renders Edward IV., (1461-1483,) after a short intermission, ruler of the land, at a period wholly demoralized. This wild strife took its special aspect on account of the

interweaving of all the great noble families with the Royal House, and from the centralization of all State-power in the King's Council and Parliament. The head of the House of York, imbued with statecraft, had borne off his victory at the cost of the great families of the land. Upheld by the House of Commons, Edward IV. declares the reigns of the three sovereigns of the House of Lancaster to have been usurpations. The Lancasters, Somersets, Exeters, Northumberlands, Devonshires, Wiltshires, in all, 151 Lords, Knights, and Prelates, are declared guilty of treason—not by sentence of a Court of Law, but by the short road of a parliamentary 'resolution" (Bill of Attainder). It has been computed that one-fifth of the landed property, through outlawry and confiscation, reverted to the hands of the king, who conducted his rule with pitiless severity. This is the first reign during which not a single statute of the Realm for the redress of grievances is enacted, but rather a kind of state of siege prevails, with a reckless dealing, exceeding all legal and civil powers of the Crown, and having withal the ready concurrence of the Parliament. The state of the kingdom was one of war, whereby the recurrence to courts martial is established, which has bequeathed to later jurisprudence a very difficult subject of discussion.

The kingly power acquired by Edward IV., in right sanguinary fashion, and heartlessly exercised, falls, after the murder of his sons, to the throne-usurper, Richard III., who seeks in vain, by popular concessions, to make amends for the heavy violation done to all divine laws and human rights. The almost incredible crimes committed in the course of the reign of this tyrant are psychologically explained through the spirit of the times, where the foundation for firm and honest convictions, and for moral principles has disappeared, in consequence of the degeneration of the Church, which answered Richard III.'s flatteries with a show of homage. Abandoned by the

greater part of his adherents, Richard is overcome by an alliance consisting of the remnants of the two parties of nobles, and relinquishes, through a conspiracy, the Throne gained by the like means, to the House of Tudor, in which Henry VII., through his marriage with the heiress of the House of York, unites the claims of the two lines of the Royal House. At the end of the strife, we hear of twelve battles fought, and of eighty princes of blood Royal who, either in battle, or by the hand of the headsman, or through murder, surrendered their lives.

Considering the complete want of contemporary history the dramatic master-works of Shakspeare must be taken as representations of the history of those times. They depict, in spite of some erroneous statements, as regards persons and period of action, the psychological character of events most faithfully, and it becomes truly astonishing that, after a time of such national prosperity, there should ensue such an interminable chain of human wickedness and crime. It is already pointed out above how this catastrophe had long been foreshadowed. Whilst the heroic personal character of Edward I. had accustomed the nation to a war-like spirit, and had consolidated the bounds of the Realm, the long and war-like rule of Edward III. had, through the wars in France, led the united nations to a consciousness of power, and had impressed them with a sense of their powerful position in Europe. In these strifes, in which the nation readily engaged all its strength, the feudal-system, in its military aspect, which, through the Anglo-Norman kingship was partly kept down and partly diverted into other channels, attained to a fulness of after-growth which found its development, amidst continual feuds and strifes, in a similar course as that which had become instrumental in fashioning the privileged and the lower-classes on the Continent. It is the last effort, after such a building-up of the "Estates," which

puts forth its strength in England once again, and comes at last, amid disorderly conflicts, to a sanguinary end. Through the insular formation of their "Estates," the memory seems to have disappeared from the minds of Englishmen, as to how far the remembrance of a romantic chivalry had imparted to these generations a peculiar impress, commencing with those of lowest degree and ranging to the highest. The re-awakened thirst for war, on the part of the newly-organized militia, assumed a specifically military character. Not by chance was it that the upright English reeve, since the time of Edward III., acquired the military title of "Constable." From those of the highest rank in the King's Council a commencement is made by summoning the newly-created Bannerets, as such, to Parliament. Indeed, for a certain time the members of the Upper House are classified according to military rank, as banneretti, barons chivalers, barons milites, armigeri, &c. In connection with this military *esprit de corps* comes the renewal, now and again, of the judicial combat and even of violent feuds between the war-like Barons. (A certain feud, protracted for many years, was brought to an end by the one party losing 150 men in fight.) In further connection therewith are found numerous attempts made for the formation of a hereditary nobility of inferior rank—after the fashion of the Continent. The use of coats-of-arms, as family symbols, had become a fixed custom during the French wars, and was regarded as a right hereditary during the reign of Henry VI. In the time of Richard II. a Patent appears, in which John de Kingston is raised to the "rank of a noble." Already in the 29 Edward III. a certain John Coupland was nominated as "hereditary Banneret," and, for a while, such a dignity was looked upon as a degree of nobility, so that under the Regency conducted by certain Barons during Richard II.'s minority, the election of a Banneret to be a member for the

county, is declared inadmissible. Then again, in connection therewith, stands the often-recurring precedence of the *generosus a nativitate* in the Parliamentary Rolls of this time. In 39 Henry VI. a county election is even declared void, because the person elected was not of noble descent. Of still greater importance was the endeavour to form a Court of Chivalry and Honour out of the *curia militaris* of the High Constable and Marshal. For a time the Courts of Chivalry exercised an actual jurisdiction, although in 2 Richard II. the Lower House protested against such power of inflicting punishment in criminal cases. During a period of popular concessions to the *gentz de la commune*, (13 Richard II.,) the assurance is given, that in any such Court no dispute is to be treated of which could be entered on before an ordinary Court of Law, but only "cases of tort resulting from breach of contract and other objects pertaining to records of arms and war, both within and without the Realm," and with the right reserved of appeal to the king. But as *jurisdictio extraordinaria*, such a Court of Chivalry could only interfere upon special mandate (writ,) and after expiration of the Wars of the Roses, such writs are no longer issued, so that of the former judicial body there only remained merely a College-of-Arms. The most dangerous issue, however, of the "*esprit de corps*" is the revival of the ancient system of retinue, under the name of "liveries," which the Seigneurs formed out of their functionaries of Court, sub-vassals, farmers, and neighbouring yeomen. Under the word "livery," was originally understood, the equipment of the officials and servants of a great Lord or corporate-bodies with clothes, combined with their maintenance. The clothing now assumed the character of a uniform and badges of service, and it became now an object of ambition to assemble the largest number possible of such men, wearing their master's

livery, as a sign of high lordly position. The liveries were, therefore, assigned to all who would wear them, and they became to such a degree tokens of connection that even princes and great Lords wore the badges, signs, and colours of one another, out of courtesy. With the formation of powerful Court-parties, these become emblems, wherewith the strifes of dynastic factions commence. In the same way the fortifying of the manor-houses and castles of the greater Barons, becomes more frequent, which in the time of Edward III. were allowed in great numbers, without causing any misgiving as to later consequences. In the wars on French soil, these companies became vivified with the newly-formed free-booters and mercenaries, and in addition to the freely-hired soldiers, the king takes into daily pay, as close corps, whole baronial followings. Thus are created, on French ground, those connections between the "Senior" with his heavily-armed Knights and errant serving-men, like to the feudal-system on the Continent, but without being firmly founded on ownerships. Thus we find, for instance, in a camp on French ground the following assemblage: an earl, with a daily pay of 6*s.* 8*d.*, with 100 horses=£5. 6*s.* 8*d.* daily pay; a Viscount @ 5*s.* personally with 50 horses = £2. 5*s.*; a Baron @ 4*s.* personally with 30 horses = £1. 14*s.*; a Knight @ 2*s.* with 10 horses = 12*s.*; an Esquire @ 1*s.* 6*d.* with 6 horses = 7*s.* 6*d.*; altogether 13 Earls, 44 Barons and Bannerets, 1,046 Knights, 4,022 Esquires, &c., 5,104 subordinate Officers, and Archers on horseback, 15,480 Archers on foot, 4,750 Welshmen, &c. These were the corps with which the renowned battles on French soil were fought. But in the course of a century, also, in these wars, a race that had sprung up amid that lack of orderliness and discipline, that is wont to get the better of all veteran armies in the course of a protracted war and camp service—

a race which, sundered from every home-tie, knew no longer how to find a settled abode in county or townlet of their native land, accustomed to camp-life and plundering, and spendthrift habits, the returning Barons found it more difficult still to tone down to home-life than the many thousands of their hired followers. In the sober community life of their own country, in the administration of the militia and civil tribunals, there was no scope for fighting and booty. And at the time when, after the unlucky issues of the contest in France, this rude element came streaming home to England, the factious spirits among the nobles found among these folks, who were accustomed to their guidance, a material quite ready to hand, out of which each wealthy and popular leader might form regiments, and, by combination, armies even, for the great war. It is these ways and habits of a class, which, according as time and place urged, disturbed the internal life in counties. These liveried bands lay the foundation for party-strife, while its acts of violence counteract the administration of the law, and the maintenance of the peace. The protection of the Barons, with their uniforms, their hats, and badges, takes in a throng of rowdy fellows, who scarcely knew how to contain themselves, and by their deeds of violence bore down their neighbours, and knew how to protect themselves from the pursuit of justice, by means of their allied strength, and through the protection of their powerful lords (by maintenance and champerty). This state of things leads during two generations to the constantly-repeated but useless prohibitive laws against Liveries, subsequently to the intervention of the Royal Council, and finally to the founding of the all-too-celebrated Star-Chamber.

Full of instruction for later generations is the desperate resistance against the order of Society as now established.

According to the fundamental principles bearing upon the relations of classes as established under Edward III., these attempts at constructing a new order of Society were truly a retarded and desperate effort which, the more it was restrained within bounds of the law, sought to break down all limits. The Peerage itself was in course of formation, and the hereditary class among them very restricted. The large-hearted Edward I. had not looked upon the marriage of his daughter with a brave knight as at all an unseemly one. The body of war-vassals had, since the Conquest, been formed from the fact that each free-owner having an income of £20 was bound to heavy cavalry service. In the like sense, Edward I. insisted that all owners of £20 income from land (as first-class in the land militia), were to become Knights, and, in spite of much opposition, this ordinance was recurred to again and again, as a fiscal expedient. In the judicial and civil administration, in the organizing of parishes, towns, and counties, and in the parliamentary representation of the *Communitates*, there could be found no motive for the shutting out of an exclusive class or of a chivalrous hereditary nobility. Between the county gentry of noble stock, and the mere land-owner at large, no class distinction could be established, and just as little ground of separation could there exist, as to refinements and distinctions in the matter of ancestral records. The real firm elements of coherence between State and Society remain intact amidst the wildest strifes now prevailing. Amid the din of arms the Courts of Law of the Realm, the itinerant Justices and Juries go on in their accustomed courses, and the jurisdiction of the Chancellor is exercised in reference to the newly-constituted sphere of Equity. The Liveries, according as time and place urge, occasion serious disturbances, which call for all the more energetic measures of repression. Strange to

say, at this period of demoralization among the higher classes, "the era of the great Lawyers had begun."

In making the political *résumé*, it becomes evident that amid the suicidal strifes taking place among the great nobles, it is the House of Commons that bears off the palm. So far as the great nobility is still too mighty to allow of any balancing of powers being thought of as far as it is concerned, it is through its own fault that it gets pushed back into the position of the *Magnum Concilium*, just as, subsequently, in individual cases, it stands clearly forth that deeds of blood and their retribution follow each other in wondrously certain flow.* "The age of luxury and atrocity" comes to a close, with the constitutional result of a balance of powers between the two Houses of Parliament.

Marking the social *résumé*, there stands established, as the firmest constituent of civil order, the relation of classes, brought about by means of the system of "self-government." If from the Society of that time one takes away the highest, (as, in fact, it does in the end well-nigh disappear,) there ranges directly beneath a thoroughly sturdy and well-to-do landed gentry which, as the main element in the Lower House, among the Justices of the Peace, in the Militia, and the County-administration, as well as with the Burgesses and Yeomen and with the notable men of the towns, in common usefulness, establish a lasting bond which, through family ties, becomes faster still. From the "third Estate" politically-qualified "reputable men" from the towns stand forth, who, as "Esquires" in the House of Commons, as well as in the Commission of the Peace, are placed on the same footing with the landed gentry. Through the fundamental principles of laws firmly settled in the preceding century, even down to the lowest stratum** of Society, there is established a standard of equality before the law which, while bringing to bear difficulties in the way of merit

and talent, does not interpose any kind of legal bar. The nation has thereby received an impulsion for the development of individual energy and capacity which has influenced the course of events in the following centuries.

ADDENDA.

*105) Among the data bearing on this period may be mentioned, in foremost line, the Statute-Rolls published as official documents, setting forth Resolutions of Parliament, from 6 Edw. I. to 8 Edw. IV. The next groundwork is found in "Parliamentary Rolls," reports of the Chancery officials concerning Proceedings in Parliament, now printed as "Rotuli Parliamentorum," vol. I.-IV. (1832). The Proceedings of the Continual Council are edited by Sir H. Nicholas, "Proceedings of the Privy Council," 7 vols., (1834-1837,) from 10 Rich. II. to 38 Hen. VIII. Concerning matters Judicial, Foss, "The Justices of England," 1848-1864, vol. III. and IV. For constitutional history, Hallam, "Middle Ages," c. VIII., Lappenberg-Pauli, "Geschichte Englands," vols. IV., V. But most of all, W. Stubbs, "The Constitutional History," 1874 vols. II. and III., whose chief merit and successful labours are displayed in connection with this period.

*111) The dispute as to the "election" or nomination of Justices of the Peace has frequently been raised, but the claim to election has been definitively set aside. Similarly, a claim to take part in the election of Sheriffs crops up anew, which, in the years 1300-1311, had actually been accorded, but was afterwards abandoned. All social endeavours aim at the electing of the judicial and police magistrates, because Society does not incline to execute the will of the State, but to control the State-power. The older German "Estates" and modern democracy are at one in such endeavour, and a prolonged political experience is needed ere the conviction is attained to, that the functionaries of the Courts of Law and the police authorities should not be elected.

*119) Somewhat of vagueness in the delimitation of this highest jurisdiction of the House of Lords remains, as a heritage from the prerogatives of the king, so long unrestricted. A certain vagueness prevails, also, for some time longer, in regard to legal procedure, as an inheritance coming from the Norman Courts of Law. Only by degrees has the procedure fashioned itself, by analogy, to the ordinary course in Criminal Courts, in such wise that the Lower House formulates its presentment, in the character of a Grand Jury, and the Upper House, as a Court of Law, sits in judgment. According to a precedent under Henry IV., at times when the Great Council is not assembled, a Committee of Peers may be summoned for the purpose of pronouncing sentence, and on such occasions the Lord High Steward, with great ceremonial, presides. This was, in reality, a falling back upon the ancient manner of judicial commissions.

Only after the Revolution in Will. III., the rule is declared that, in such cases, all the Peers must be summoned.

*128) Creation by "Patent" dates from 24 Hen. VI., but for a special case the summoning by Writ is in use up to now. In 22 Edw. II., for the first time, the son of a Duke or Earl is summoned during the lifetime of his father, and under title of a second Peerage. Such a summoning of the son, side by side with the father, is regarded simply as a personal honour, *ad interim;* such a Peerage merges in the principal Peerage, when this falls vacant, and does not establish any hereditary dignity.

*136) The chief modification which Edward I. introduced at the signing of the Charter of Ghent consists in this, that instead of the assurance "nullum auxilium levetur sine voluntate et adsensu episcoporum, baronum, militum, burgensium, et aliorum liberorum hominum in regno nostro," there is inserted: "Barons et toute la communauté de la terre." Dr. Riess, "Geschichte des Wahlrechts zum Englischen Parliaments," 1885, p. 10, infers therefrom that the assurance of the right of assent to the taxes is only granted to the Prelates and Crown-vassals, for, according to the form of speech used up to then, under the term "communauté," only the Crown-vassals were understood. "To the House of Commons nothing was granted." But such an equivocal mode of expression, as opposed to the clearly-expressed intentions of the petitioners and is alien to the character of Edward I., who never abused the release from his oath, subsequently granted by Papal dispensation, in respect of the Charta. The omission of the words *militum, et liberorum, &c.*, may be easily explained by the fact that a representation of the counties and towns had only begun a short time previous, and had not as yet assumed a distinct shape. The king did not want to have his hands bound by the enumeration of the *milites, burgenses, liberi homines*, in respect of any future summons. From such enumeration the most far-reaching consequences might have been drawn in view of which Art. XII. and XIV. of Magna Charta were omitted. If during necessitous times taxes were imposed without consent, this only arose from the conception of a dictatorial prerogative existing in cases of need which was regarded still as part of the Royal prerogative. (*Vide supra*, p. 154.) Characteristic in this particular is the assurance in 51 Edw. III.: "That the king was not willing to lay any burden on the people without concurrence of the Commons, save in cases of great necessity, and for defence of the Realm, and when he could with full right do it." Such a reservation of right, up to the end of the Middle Ages, all concessions were understood to comprise. The further reservation of the traditional aides, prises, coustumes, was grounded therein, that the king did not wish to relinquish his old Exchequer-rights over the settlers on his domain-lands, and over the tolls traditionally fixed, (*custuma antiqua,*) those namely on wool, hides, and leather.

*138) A clear survey of these transient experiments of taxation is conveyed by Stubbs II., c. 17, p. 518-531. One discovers therein the desire of the landed proprietors to alleviate their position, overburdened, as they deem, with taxes. The Poll-tax levied by the nobles exercising power under Richard II., gave the signal for a great uprising of the peasantry.

*144) The difference between Statute and Ordinance, or Proclamation, is based on the fact that the Ordinance is not recorded on the Satute Rolls, and that it can be altered by the sole will of the King in Council, without the concurrence of Parliament. Already under Edward III., the Lower House expresses the wish to make some temporary provisions by means of an Ordinance, as, for instance, in respect of the sumptuary laws, so that these, on circumstances arising, may be repealed or altered.

*146) The Statute of Gloucester was occasioned by the fact that Henry IV., by his personal interference in the proceedings, had already induced the Prelates and Barons to grant subsidies, and, relying upon this precedent, sought to exercise a pressure on the House of Commons. There broke forth a violent opposition of the Commons against such influence being exercised, and in this connection the meaning of the "assurance" given, is brought clearly out.

*147) Dr. Riess, "Geschichte des Wahlrechts zum Engl. Parl.," Berlin, 1885, p. 15, 599 and p. 36, 599, has, by his keen and searching inquiry, substantially promoted this view, and I find this part of his argument convincing.

*148) This is a reminiscence of the original unanimity prevailing. Even in the German Imperial Diet the claim is sometimes contended for that those who do not give their vote are not bound by the resolutions.

*149) The Statute gives the reason at the outset thus: "That elections of the delegates have of late been made from among too large a number of people living in the same county, most of them having small fortunes, but fancying that each had the like right to vote as the Knights and Esquires, which may easily occasion murder and rebellion, strife and dispute, between the gentlemen and the rest of the people, if measures be not speedily taken to improve this state of things."

*151) As there is great doubt existing as to the right of election of the cities, I have followed in my "History of the Constitution of England" (1882) the recent researches of William Stubbs. But I must admit that the objections made by Riess are well founded. I admit, according to these recent researches, that it was certain that the elections of the town delegates, as a purely communal matter, took place in the town itself. The clever explanation how, in consequence of the different wording of Writs of Election, so many small towns might withdraw from the Parliamentary elections is doubtful, especially in reference to the market towns, which under subsequent Governments have apparently been honoured quite arbitrarily, and without regard to their constitutions, with the right of election.

**151) The daily salaries of the County Knights have pretty early been fixed at 4 sh., those of the town delegates at 2 sh. a day. The question who was bound to contribute to this pay was the subject of an old dispute, which has never been decided according to any principle. The customs of the place remained unchanged, according to traditional usage.

*152) An exception occurs in the case of five distant counties only, in respect of which, in order to avoid loss of time, the Sheriffs were wont to address their summons to the local authorities. Strange to relate, the towns fully qualified to vote in these counties retained their position, quite

as much as those towns which, as representing "hundreds," received the summons direct.

*159) As a proof of the great wealth of the Crown-vassals of this time, one may adduce a complaint in damages, by the older Despenser, under Edward II., where, amongst his movable property, he enumerates 28,000 sheep, 1,000 oxen, 1,200 cows, 500 cart-horses, 2,000 pigs, and a corresponding number of agricultural implements, as also arms for 200 men.

*175) From the 19th of June, 1312, when, under Edward II., his favourite, Gaveston was beheaded by his political opponents, without trial, there begins an uninterrupted chain of acts of vengeance, during the strifes of the English nobility, which reminds one of the oldest time of Germanic deeds of blood, and which was carried out during the Wars of the Roses, with such fearful precision and completeness that no murder ever remained unavenged.

**175) An excellent development of the social conditions at the close of the Middle Ages is given by Stubbs, III., chap. xxi. The opposition of the labouring-classes, which, under Richard II., had led to the great war of the peasants, and which, when joined by the working-classes of the towns, was settled in a peculiar manner. The pestilence (the so-called Black Death), had, in 1348 and following years, swept off the population in such large numbers (the most recent account by Rogers fixes the decrease in population at a third), and had produced such a lack of working hands that the land-owners were glad to acquire the indispensable help by contracts of free lease and wages. According to Roger's "History of Labour," 1885, the wages at that time rose to one-and-a-half times the previous wages, while the price of provisions remained unaltered. He considers the 15th century as being the Golden Age of the working-classes.

IV.

Parliament during the Reformation.*

TABLE OF KINGS.

Henry VII. 1485—1509.	Edward VI. 1547—1553.
Henry VIII. 1509—1547.	Mary, 1553—1558.
Elizabeth, 1558—1603.	

THE internecine conflict waged by the great Barons, and the consequent decline ensuing, could but lead to a strengthening of the kingship. Barons and gentry alike, after the romantic dream of the conquest of France had passed away, directed their thoughts anew to the peaceful development of the island-state; and, further, the increasing spirit of independence among the lower-classes, lent itself rather to kingly rule than to a governance exercised by factious nobles.

With keen insight, the dynasty of the Tudors, beginning with Henry VII., recognized the situation. Even as the military organization of the great vassals had become the main peril of the monarchy, so in proportion did the keeping down of the great Barons become the leading idea of Henry VII.'s policy, resulting frequently in most pitiless measures of repression. "He held a firm hand on his nobility," says Lord Bacon, "and recurred rather to churchmen and lawyers, who, though having the interest of the people, were more yielding withal in his regard." The equivocal financial stratagems resorted to by his

Exchequer proved so far useful to him, that only once during the last seven years of his reign did he need to summon Parliament.*

In right kingly fashion was his policy followed out by his successor, Henry VIII. By the publishing of the State-papers, so full a light is thrown on the services rendered by him, that any new historical writer might feel prompted rather to superexalt them. Certain it is that, for the first time, the State-administration shows a well-devised forethought for the working-classes, in the regulation of wages and the price of provisions, by prohibitions against "desolating the land" by vast farms and pasturages, nay even by prohibitions against devices for the displacement of handicrafts; by earnest measures in favour of education, of industry, and the care of the poor, and even for the amusement of the people; by friendly countenance given to guilds, trade associations, and commercial companies, and with such means as the times comported. Indisputable, above all, is the service rendered by Henry in choosing highly competent officials to carry out his behests. The need of a firmly-settled administration, to which the House of Lancaster had not been able to attain, was made manifest to the nation. The aptness of the Tudors at understanding the legitimate claims of the people, and their respect for the legal institutions of the Land, rendered these sovereigns popular, notwithstanding their ever-prevailing harshness. That this dynasty should have set it as its aim and purpose to carry through the great event of the period, Church Reform, rendered ultimately the Virgin-queen, Elizabeth, an object of veneration to her subjects.

The quickness of apprehension displayed by the Tudors, as concerns both land and people, shows itself, above all, in the continuance and development of county and local administration.

Foremost appears, in full activity, that system which finds itself, since the time of Edward I., fashioned into what is styled "*self-government.*"

The organization of the militia begins now to assume an important significance. After the actual setting aside of the feudal Military-system, there gets organized the only constitutional "military" force of the Land, for which, since Henry VIII., special Lieutenants (subsequently Lords-Lieutenant) of the king are appointed, and by 4 and 5 Philip and Mary, c. 2, 3, a fresh and complete regulation for equipment and inspection is enacted.

The Judicial-system remains founded on the systematic co-operation of the King's Judges, and of Local Committees, at the Assizes and Quarter-Sessions. Incomparable is the mode of behaviour followed by all the sovereigns of this dynasty in regard to upholding of the independence of the Judge's office, and its maintenance in all its integrity.

In the sphere of Police-administration, the office of Justice of the Peace obtains an ever-increasing importance. With the Tudors, begins a codification of the model laws relating to labour, and the measures concerning the control and care of the poor; a careful police regulation of labourers' wages, and the regulation of trade; legislation against vagabonds and beggars; in regard to public-houses, licences, and the connected branch for control of morals; and, unhappily, after the Reformation, an inexhaustible series, also, of State enactments bearing upon the control of religion. The Justices of the Peace are further empowered to institute examinations concerning offences of every kind. As a further extension, there is combined therewith a superior control of the parish authorities, which we will shortly pass in review. It may be clearly understood how, through such new duties the political importance of the office has expanded, and therewith the political influence of the

classes, who, in counties and boroughs habitually, discharge the office of Justice of the Peace. The framework of this office is determined by a general form of the Peace Commission, in 1590, and has preserved its structure up to the present day.

In the region of financial administration, finally, not only does the regular co-operation of the local boards for assessing the subsidies, tenths, and fifteenths hold on, but it acquires a far wider significance through the further development of the communal taxation-system.

While the older institutions of the "self-government"-system thus remain in vigour, side by side, with the Reformation, there now gets brought into the connection, an offshoot of the Church constitution, (*parish*,) through which, together with a firmer organization, is imparted to the middle-classes also, a more intimate participation in the communal life. Above all, the parish affords the legal groundwork for the charge of the poor. Already, at the beginning of the Reformation, a compulsory duty, in this relation, is laid on every district. The entire disintegration of the Church organization for the charge of the poor, the dissolution of the monasteries, and the fluctuations occurring among the working-class at this period, called for a series of enactments which found, in 45 Eliz. c. 3, their completion. The charge of the poor is from now forth the legal burden on any parish, where the pauper was born, or has been living for three years. For the personal duty, the new office of "Overseers of the Poor" is established, who, in conjunction with the Churchwardens, have to provide for the employment, and, when the case urges, assistance in money for the needy. For the raising of the necessary funds, the Overseers are empowered to assess each householder in the parish, according to his income out of his real property, for the Poor-rate. Coincidently, the Highway-rate, so important

for the advantages of communal life, is instituted. The law for the regulation of Highways establishes the office of Surveyor of Highways, and graduates the communal burden according to the ownership in land, and the wainage, the working-days, and manual labour, in connection wherewith, the rates are levied similarly to the Poor-rate. Through these connected institutions the parish attains to a vigorous position, wherein the question of means is ever in the ascendant. From this duty of contributing to rates is derived a right of signifying assent thereto, locally, under control of the Justices of the Peace. In connection therewith is established a system of local assemblies (Vestries) to determine, locally, about matters economical.

The main purpose, it might almost be said the providential mission of the dynasty, was the urging forward of the *Reformation*, and the establishing of the Anglican National Church, which, finding its beginning with Henry VIII., originating from personal motives of his own, was carried-out with a sternness and energy unparalleled. Since the nation has begun to feel its unity under a settled dynasty, the insular dislike of the Roman Primate begins to manifest itself more strikingly. In England, it is mainly a sentiment of national independence which asserts itself, as against the Church universal,* whereas the German Reformation originated mainly from an intellectual movement, and from a conviction as to the erroneousness of the Roman Catholic doctrines, taking the State into account, only in second degree. The Reformation in England is, at the outset, a national political act of State, which, as a spiritual movement, makes its way, by slow degrees, only into the mass of the people, and, on that very ground, it is from the beginning external As the Roman Church in England had become, as to her possessions and her institutions, secularized, it is on this material basis, also, that she is contended

against, in regard to her possessions and her supreme Head. The renouncing of the supremacy of Rome becomes the next aim and purpose. Accordingly, the measures of Henry VIII. are directed mainly towards effecting a transformation in the relations of the powers, the direct subordination of the Bishops to the Royal State-rule, the secularization, on an extensive scale, of monastery property, and the making-over of the same, by way of grants, to temporal Lords; the thwarting of all influence of the Roman See, and, as a consequence, the declaring of the king to be the Spiritual Head of the Church in England, and, by way of sanction of such position, with the penalties of High Treason attached; all this, too, with the assent of a willing Parliament, and with but secondary considerations given to the new doctrines, which, in the Six Articles of Gardner, with but slight variation from Roman dogma, restrict the reading of the Bible "to people of condition."* The disintegration into which the Roman Church was lapsed, had, doubtless, then affected the Catholic world at large, had involved the Papal See in a series of intrigues and contentions with the great European Powers, had removed the solidarity, erewhile prevailing, amongst Catholics against heretics, and thereby afforded scope to the aims and endeavours of the Reformation. Accordingly, the style and manner of the English Reformation, at this period, exhibits much that is hurtful to the religious feeling of later generations.** In this Dynastic Reformation, it is not merely the temper of a despot that prevails, but a kind of anticipation of the system of "Richelieu," which, in compliance with well-considered reasons of State, always fells the heads of the opposition, so as to prevent the spread of the contagion. When in the first period of the Reformation, a resistance, on the part of the religious orders, was manifested, after deliberation

in the Privy Council, it was resolved to hang the Prior and three Monks of the Charterhouse in the robes of their order, *coram populo*, and the Clergy are found giving way. In the second period, the axe of the headsman falls upon the heads of Lord Chancellor Thomas More, and Bishop Fisher, on the ground of their resistance. Later on, there occur, from time to time, single executions, at "fitting places" in the county, and at "fitting times." The execution of two queens, which happened in connection with the Reformation, is carried out with the strict formality, due to process at law, and after sentence pronounced. It is also from reasons of State that the most faithful and highly-qualified subject of the king, Lord Thomas Cromwell, is sacrificed to the hatred of the Clergy and the Barons. Through political foresight, it was contrived, that the civil wars, resulting from the Reformation, got localized and easily suppressed. So crafty a Reformation, however, could not withhold the nation from the hard struggle for the attainment of the highest human truths, but could only postpone it to a later generation. Such a system could, hence, only terminate in half efforts and vacillating measures at the close of this reign, conformably with the everlasting truth, that no mortal can assume to himself to become a Reformer in matters spiritual, without true conviction of heart.

The dogmatic Reformation, under Edward VI., assumes to itself the task of supplying the spiritual entity up to now lacking. Such a structure, to have any permanency, could only be raised on serious convictions, which, drawn from the Holy Scriptures, adopted and sealed by the steadfastness of their originators by force of moral truth, might find a firm hold in the popular mind. The spiritual framers are Ridley and Archbishop Cranmer, whose characters (despite their yielding submissiveness) leave little doubt as to their

wish to act aright. The like way of thinking dwells in the Regent Somerset, and in the youthful king. The Protestant doctrines of justification by faith, of moral self-dependence and responsibility, now find acceptance from honest conviction, superinducing a peace of mind apart from the intervening aid of the Priest. The Book of Common Prayer remains a lasting memorial of the national sentiment of the time, "of learning and refinement, moderation, and decision." (Ranke.) The differences in doctrine in regard to the Sacraments, the abolition of Confession and celibacy, reform of the ritual and liturgy, are set forth in the Forty-two Articles. But it could not be gainsaid that, after all that had been brought about, the majority of the people looked on what had been done more in the light of a change of rule than as a change of religion. Henry VIII. himself had threatened any denial of Tran-substantiation with the penalty of death. Novelties in ritual and liturgy are ever unpopular. The mass of the population had been taught to believe other doctrines of faith; many were disquieted in their conscience; others, again, were impelled to further extremes; amongst the well-to-do classes, the interest they had in the newly-acquired ecclesiastical property, militated against any spiritual qualms of theirs in regard to the innovations. This confusion in the general mind coincided with hard times of need, which required a strong controlling hand. At a time when a kind of Monarchial dictatorship was urgently demanded, a mere weakling ruler was at the head of affairs, whose inclination towards personal rule was in contradiction with his capacity for it. Affairs abroad, so unluckily conducted, were further traversed by still more urgent affairs at home. A frivolous aristocratic government is re-established, and excites a bitter feeling in the rural population by reason of encroachments on commons for the benefit of the landlords, by pressure exercised in mainfold ways on the yeomanry farmers, and the working-

classes, coincidently with the prevalence of famine and epidemic. Added to this, the unjustifiable confiscation of the property belonging to Hospitals and Guilds, and the dishonourable alienation of many domains of the Crown in favour of the actual holders of power.* Once again, the work of the Reformation is thwarted by worldly interests, in a way detrimental to both alike, and in an unhappy hour, by the intrigues of party-rule, led by the nobility, the Duke of Northumberland, who had so rapidly attained to a position of eminence, possessed by restless ambition, hurries the Regent to the scaffold, and assumes the Regency, with the far-sighted scheme of bringing the succession to the Throne into his own family.

The Catholic Restoration under Mary may be understood from the political state of things prevailing. In the selfish Council of Regency, established at the Death of Edward VI., no man, family, or party, was to be found worthy of engaging the public confidence. The youthful Jane Grey, "Queen of Nine Days," had to expiate the crime of blood of her father-in-law, Northumberland. The well-grounded conviction of a need of monarchical order pointed therefore, unanimously, to the legitimate heiress to the Throne, the daughter of Henry VIII., already so hardly-smitten by fate. It is true that in the newly-elected Parliament the adherents of the Papacy still constitute a dwindling minority. But a majority, to which the doctrines of faith remained still as an open question, sacrifices the Reform of Edward VI. to the wishes of the queen after a fashion so reckless, that the decidedly Catholic tendency in the Second Parliament already gets the ascendant, and the Sheriffs are especially enjoined to return men "of the wise, grave, and Catholic sort." The Second House of Commons goes to the extent, in conjunction with the Lords, of presenting a petition which seeks, in deep contrition, "by reason of the past proceedings against the Holy Father,"

to cancel the Acts of Parliament directed against the Pope "with the condition that he will ratify their acquisitions of abbey-lands, and foundations." It has been computed that 40,000 families were interested in this question of ownership. At this cost, the subtle-minded assembly leaves to the queen, and her fanatic councillors, full scope to re-introduce Courts of Heresy against the heads of Protestantism, whereby 284 persons were burned, amongst whom Archbishop Cranmer, four Bishops, twenty-one Priests, and many women and children.* The abolition of the Royal Supremacy, the re-introduction of Celibacy and the Catholic Eucharist is passed through Parliament without difficulty, and without encountering any opposition on the part of the House of Lords—1500, or according to other accounts, 3000 clergymen are deprived of their benefices. From time to time, the unhappy woman on the Throne trusts to see her hopes of an heir to the Crown being accorded through such offerings made, as pleasing to Heaven. The third, "Reconciliation Parliament," offered to the world the spectacle of the Lords and Commons on their knees, humbly acknowledging their sin of spiritual defection, and receiving absolution from the hands of Cardinal Pole. Thus had the party, so imbued with State-craft, by a retrogressive movement, led the way back to the Papacy, but the esteem and confidence of the nation in them was uprooted. For the Protestant Church, the martyrdom of their Bishops, women, and children, accompanied by the dread concomitants of the Spanish Inquisition, had become a well-spring for inner purification, and, under this reign, the English Church first became established in the minds of the people.

The Anglican State-Church, under Elizabeth, is the final conjuncture of the inner and outward phase of the Reformation. In Elizabeth, kingship rises anew to its full significance. The spirit of the Roman Church having

shown itself to the people in such fearful guise, Elizabeth, from conviction, and with a clear understanding of her vocation, re-establishes her father's Royal Supremacy and her brother's work of reform, by one great act. By the resolute proceeding of the queen, Parliament is induced to sanction the Acts of Supremacy and Uniformity, 1 Elizabeth, c. 1, 2. In the Upper House, only nine temporal Peers and nine Bishops voted against the Common Prayer Book. Of 9,400 Clergymen, only 189 found themselves compelled to relinquish their offices. Winnowed by hard trials, strengthened by adherence to religious conviction, enlightened by individual searching of the Bible, now no longer withheld from laymen at large, the Protestant way of belief now strikes root in the minds of the people, receives through Prayer Book, Liturgy, and Ritual, a mode of worship suiting the understanding of the people, and therewith a possibility of setting up anew, in *one* land, *one* sole Church. The Anglican Church has ceased to be a political State-organization, but, with an honest evangelical belief, has become constituted as a Church, with firm intent to live in a right and Christian manner. Thereby the position of this Church-rule is defined in its relations to the Protestantism of the Continent, with which Elizabeth now enters frankly and steadfastly into alliance, as a protection against the powerful coalitions of the Catholic world, now in course of formation.*

Through the Acts of Supremacy and Uniformity, the Protestant Church is now declared the Constitutional State-Church, "by law established," and the population belongs, by right, to this Church. The Royal Supremacy has become a complement of the Royal prerogative with consequences very far-reaching as concerns external life, as may, already under Elizabeth's reign, be recognized.

By means of the Royal Supremacy Act, there has been conjoined to the prerogatives availed of in the temporal sphere the whole scheme of Roman Church-rule. As highest ecclesiastical authority, there is constituted a High Commission Court. The Archbishops and Bishops retain the traditional powers of Church-government and jurisdiction, subject withal to the king as regards their nomination and their continuance in office, as holders of offices of trust, under the Crown. This bureaucratic condition withdraws from the synods of the Clergy the independence previously obtaining. With the religious orders and cloisters the strongholds of Church influence have disappeared. The secularization of ecclesiastical property has, in like manner, substantially impaired their power as a landed interest. Only the Parish and Clergy are still connected with the landlord-class, through the medium of the patrons of Church livings and Church tithes, and through the Churchwardens, in connection with the parish. To this subordinated body of functionaries the whole of the Laity is now subjected in Church matters. All erewhile submitted to the State ecclesiastical, find themselves now placed in the like relation to the Crown. To the temporal Oath of Allegiance, the abjuration of the Papal power is made now the duty of the subject, and its violation, High Treason. After the carrying-through of the Reformation, there begins accordingly, after the manner of traditional Church-rule, a twofold persecution, of the "Papists," as well as of those dissenting from the Protestant line of teaching, less sanguinary and impassioned than under the older rule, but more irksome and vexatious.*

In this movement of the period, and amid such surroundings, it becomes possible to form an appreciation of the relation of the Parliament to the Royal State-rule.

I.—THE PERMANENT COUNCIL, NOW STYLED "PRIVY COUNCIL," has, since the retrogression of the nobility from its hold on power, reverted to its original position. As in the 14th century, it is become again the deliberative body for the conduct of the affairs of the Realm, and, in such character, an expression of the Royal will, independent of Parliament, nay, rather the State-rule standing above Parliament. Elizabeth, (10th April, 1593) made clearly understood the reprimand she uttered touching "irreverence" shown against her Privy Councillors, who were not to be treated as ordinary members who are only so during continuance of Parliament, whereas those standing Councillors, both for their wisdom and their great services, are summoned to the Council of State. The reign of Henry VIII. and Elizabeth is assuredly the most complete period of the King's Council, in its character as a deliberative body, and initiator of the most important measures in relation to the Reformation.* Its higher significance is brought more prominently into evidence in its exceptional criminal jurisdiction which, as a Royal right reserved in the previous period, had often by Parliament been questioned, but, ultimately, got recognized anew. At an earlier period, the after-throes resulting from wild party-conflicts, and the over-bearing arrogance of the nobles and their retainers, had called for a stern police control under Henry VII. The chief Judges had declared to the king that they were unable, under existing conflicts of faction, to administer justice at their Assizes. "By reason of existing great tumults and unlawful assemblies, briberies, and favourings," the Statute 3 Henry VII., c. 1, empowers the Chancellor, Master of the Exchequer, and Keeper of the Privy Seal, together with one Bishop, one temporal Lord of the Council, and two Judges of the Realm, under order from the king, to bring individuals under inquiry, and to punish, on account of seven specially-named breaches of public

order. The king declares therewith that he will make use of his prerogative of punishment according as the wants of the time demand, and, in that intent, he delegates a restricted number of Privy Councillors, to act in conjunction with two Judges. Henry VIII. carried on this arrangement, in the main. But in the second half of the 16th century there comes superadded the Reformation, with its thorough encroachments on clerical authority and clerical possessions, which led to acts dictatorial, even as the spirit of persecution ever springs from religious conflicts; on that very ground there does exist a tacit understanding between Council and Parliament about the "fitting" extension of such administrative justice. The chamber where the official sittings of this body were held was known as the "Star Chamber," and was but too well fitted to play a fatal part in the subsequent period.

The Reformation adds on to the Privy Council yet another institution, analogous to the State Council, namely, the High Commission Court. The first carrying into effect of the external arrangements of the Reformation had been made over to the hands of a duly-qualified representative of the king, in the person of his Vicar-General, Cromwell. After this was achieved, it seemed necessary to delegate certain of its functions of supervision and jurisdiction to an organized body. By the Supremacy Acts of Elizabeth, accordingly, a High Commission Court was constituted, under Patent from the Crown, on the same lines as the Privy Council in regard to matters temporal. This is the Consistorial-system of Germany whereby, through a mixed body, the unison between the temporal and ecclesiastical rule gets realized. The aim and purposes of the first Commission (1559) was (with a view to stave off the Catholic restoration) a "General-visitation" of all churches, with power of suspension, and deprivation of ecclesiastics. Subsequently, the High Commission Court receives the further authority

inquisitorial, "as heretofore," (hence without intervention of a jury), to proceed against heresy, abuses, and defections in matters religious, and to inflict fines and penalties. At the pinnacle of its jurisdiction, this body comprised forty-four Commissaries, among whom were twelve Bishops, a still larger number of State Councillors, and other ecclesiastics and civilians.*

II.—THE UPPER HOUSE OF PRELATES AND BARONS

passed, in the time of the Tudors, into an "Estate" of the Realm. Henry VII. had indeed to his first Parliament, summoned only twenty-nine temporal Lords, amongst whom many newly-created nobles. Afterwards, other great Lords, who had been restored to their rank and, partly, to their possessions, and, up to the death of Elizabeth, the temporal Peers were moderately increased in number, so that the Earls, at one time, reckoned nineteen, and the Barons, on one occasion, as many as forty-one. Thereto were usually, also, found two or three Dukes, Marquises, and Viscounts. The Tudors restricted themselves therein, with scarcely any exception, to the more ancient families of the gentry. After the collapse of the Military power of the great Barons, the Upper House reverted, in some degree, to the state of things prevailing in the 14th century. The State central authority reposes anew in the Privy Council, and the influence of the Peers lies in their being called to the great offices. Exactly in this bright nobility, now recognized as being hereditary, the pliant majorities were found, and just as much for the violent acts of Henry VIII. as for the several phases through which religion passed under Henry, Edward, the Catholic Mary, and the Protestant Elizabeth. If it does not come easy to an ancient nobility, in the immediate surrounding of a Royal Court, to withstand the despotic or unwise proceedings

of their master, so much the harder must it be for a newly-created and newly-endowed set of nobles, when face to face with a monarch of dogged will, yet popular withal, in the carrying-out of high purposes called for by the times. It is hence noteworthy that Henry's deeds of violence are directed, in the main, against the favourites by himself elevated, while towards his temporal Peers (among whom were several who had been under his personal wardship) he behaved as a kindly, bountiful, and grateful master. The "fall from their high estate" of the class, erewhile so powerful, is nowhere more distinctly visible than from the fact, that the hardly-striven-for right of a special jurisdiction in their own behoof, turns out to be one of their most perilous privileges. Instead of the ordinary procedure of the Courts, Henry has recourse to Bills of Attainder, whereby, under form of Law, he is qualified to condemn his fallen favourites. Placed between a stern, unbending Royal will, and a majority of the Commons assenting, the hereditary Peerage does not venture to interpose any opposition. Of decisive significance is, at this point of time, the Reformation, through which got swept away a steadfast group of twenty-seven regularly-summoned Abbots and Priors. In the Parliament of 1532, there appear only twenty spiritual Lords, side by side with forty-one temporal Peers, reversing the ratio of votes prevailing in the Middle Ages. For nearly a century the nobility ceases to be the representative of the rights of the people.

III.—THE HOUSE OF COMMONS,—LOWER HOUSE,—

had, as far as its composition is concerned, passed, with least modification, to the control of the Tudors. Some additions to the number of representatives do occur from the fact that, under Henry VIII., twenty-seven members for Wales were added, and four also for the County Palatine and Chester;

still more, from the fact that a number of older electoral boroughs had their summons restored, and others were newly summoned; under Edward VI., twenty-four; under Mary, twenty-four; and under Elizabeth, thirty-one more boroughs. Notwithstanding the greatly-increased power of the kingship, the Commons felt that they were placed on firm ground, in respect of the ever-growing taxation that was being levied. The public life of the land-owning class, and its influence in parliamentary elections, was centred in the Militia and the Justiceship of the Peace, wherein the wealthy classes are now more closely brought together. On the other hand, the number of the yeoman-class increases, through the secularization of monastery property, through the right of alienating ownership in land, and free testamentary power. The middle-class in towns increases through the expansion of Commerce and Trade, favoured by the Sovereign, through the care bestowed on guilds, trade associations, and companies.* An indirect acknowledgment of the growing importance of the Commons is found in the circumstance, that at important crises the Crown now seeks to exercise an influence over elections. Such an influence had already been sensibly felt during the Reformation Parliament. In 7 Edward VI., the Sheriffs in the different counties are enjoined to return certain persons pointed out by the king. In 2 Mary, there is issued, on the other hand, the already-mentioned injunction: "Men of the wise, serious, catholic sort to return." The number of Court officials and other dependent members, is very considerable under Elizabeth, her most influential ministers, as members of the Household, taking an active interest in the debates. The addition of 100 Burgesses, mostly dependants under Henry VIII's. successors, has undoubtedly for its object to regulate the right of voting in the interest of the Crown. A further symptom is, that now already,

persons not within the electoral district, endeavour to become members for boroughs in Parliament. In the year 1546, the son of the Earl of Bedford affords the first example of a nobleman trying to obtain a seat in Parliament, which precedent found numerous imitators.

The Lower House, thus strengthened, seems to be firmly established in its Constitutional position in all three fundamental principles—legislation, assent to taxes, and administrative control.

(1.) *Parliamentary legislation* is, forthwith, under Henry VII., inaugurated by an Act which recognizes the title of the Crown, or, to say better, creates it anew.* The succession to the Throne, for all five rulers of the House of Tudor, is based on parliamentary enactments. The work of Reformation, in all its main details, is carried through by Resolutions of the Continuous Parliament, summoned on the 23rd November 1529, up to April, 1536, (with many prorogations,) and chiefly by "motions" of the Lower House. All the subsequent Acts of Supremacy and Uniformity are, in like manner, sanctioned by Resolutions of Parliament. The dynasty could not dispense with the co-operation of Parliament in relation to the work of Reformation, just as little as ruling German princes could with their Diets. The century of the Tudors is more parliamentarian than any preceding, in so far as Parliament never had to deal with questions of graver importance. If one deems that there are anomalies to be found therein, these disappear when competent distinctions are drawn as to matters that are legal, administrative, and ecclesiastical.

In regard to the legal principles, the maxim as to the *consensus optimatum* is now steadfastly settled. Under no one of these reigns has any attempt been made to change, by means of ordinances, the civil or criminal law, or pro-

cedure. The questionable Statute Henry VIII., c. 8, which assigns to Royal ordinances the power of law, contains the express reservation in regard to legal enactments, "That hereby none be aggrieved in his possessions, freedom, or person, nor that the laws and customs of the Realm be thereby reversed."

In the region of administrative principles, the undisputed right remained to the Crown to issue ordinances, provided no parliamentary statute had already pronounced upon the matter. Hence, ordinances were issued, in many respects with Constitutional binding force, corresponding with the requirements of the time. Wherever such ordinances were at variance with parliamentary laws already existing, the Crown was empowered, by express enactment, to issue them. The far-reaching and significant Statute, 31 Henry VIII., c. 8, was only launched in order to carry through, all the more surely, certain ordinances bearing on matters religious, but was very soon (in 1 Edward VI.) repealed. True it is that projects of law emanating from the Crown, were, if the condition of things allowed, as a rule, accepted. When, however, (1532,) the Lower House threw out a Bill, Henry sulkily gave way, yet without further ado. Several examples of the kind happen under Edward, Mary, and Elizabeth.

The situation was very peculiar in regard to the Church laws. Up to the close of the Middle Ages, the interference of the Commoners in the internal administration of the Church, as also in regard to the levying of taxes on the temporal possessions of the clergy, was energetically fended off. The right, appertaining to the Church, of issuing provisions in regard to such matters, was, already, by the Act of Supremacy, diverted to the Crown, and, since (1534) Convocation was put under injunction against issuing any binding provisions, even in respect to the clergy, without leave of the king. As in former times, on occasion of the

Christian Church being received into the Roman Imperial State, and into the Germanic kingdoms, so was a solemn legal act deemed needful in order to recognize the Church reformed, as being the lawful Church, to recognize the Royal Supremacy, as being the rightful governance for the Church, inasmuch as an immeasurable number of political and individual legal relations depended thereon. Hence, the extension of parliamentary legislation to the fundamental Constitutional law of the Anglican Church.* Inasmuch as the legal groundwork was established, the Crown assumed, anew, the right of issuing ordinances, with the advice of the authorities ecclesiastical, and claims it, in even as wide a measure, as the rule prevailing within the Roman Church.

(2.) *The right of a parliamentary assent to taxes* remains, in like manner, undisputed. Since Henry III., tonnage and poundage were, at any rate, granted to the king for life, and thereby the hereditary revenue was so far strengthened as to be able to cover current requirements, even without subsidies. Moreover, the right of assent pertaining to the Commoners had, for two centuries, become so deeply rooted that Henry VII. and VIII., on the first attempt at setting it aside, evoked dangersome resistance.** The Parliaments of Henry VIII. showed themselves, as a rule, so yielding, that this king is said to have raised more subsidies than all his predecessors put together. And if Parliament did not allow directly, it tolerated, indirectly, by certain administrative abuses (in other words, so-called "benevolences") which, by the Council, by special Commissaries, or by putting capitalists into the Militia, were pressingly enforced. This kind of forced loan, (with or without declared intention of repayment,) begun under Edward IV., was, under Henry VII., renewed with the indirect assent of Parliament, and was now frequently (especially in 1491, 1506, 1525, 1544) resorted to.

Exactly in such abuse there does, meanwhile, virtually get acknowledged the right of assent to the subsidies.

(3.) *A control of the State-administration* remains finally assured through the right of assent to the taxes, and through the share taken by the Lower House in legislation. It is also occasionally exercised, through complaints raised against fiscal and other abuses; since the Reformation, through numerous religious suits, in one or other direction. At all times, this power of Parliament was dependent on the tendencies of the period. If, in the previous century, it had often gone beyond all limits, it now just as much remained within its legal limits. But energy of will was therein wanting, more than the power itself. Just as the Upper House, in the sentencing of disgraced favourites, so does the Lower House in regard to the admission of enforced loans, and in the punishment of an aggressive opposition, appear more kingly, at times, than the king himself. In the ebb and flow of the Reformation, the significance of parliamentary complaints took exactly an opposite direction. Instead of obviating the abuse of State-power, the Parliaments were so subservient, that, under Henry VIII., a despotic self-will; under Edward VI., the passion of faction; and, under Mary, religious fanaticism, knew no better means of counteracting opponents, than by securing a vote of the majority in Parliament. The inflated, abject language of the Lower House belongs, indeed, to the style of the period, and an insensibility to wrongs, inflicted on individual men, seems to pertain generally to a period of religious conflicts.*

An advance in parliamentary rights, on the other hand, is shown in the fact that the Lower House (1586) carried through its decision, in the matter of a contested election, even in the face of the express injunction of Elizabeth. So in regard to the acknowledgment of certain personal, special rights ("privileges") of members, who already, from their

position as members of the "highest Council of the Crown," had been ousted, after an equality of right on the part of the Lower House, in relation to the Upper House, had been substantially attained to. In 4 Henry VIII. the mistake had come about that a local court had pronounced a penal sentence against Strode, a member of the Lower House, on account of Bills introduced. On proposal of the Commons, the unanimous declaration of both Houses, and of the king, was made, which pronounced such proceeding of the Court null and void, with the statement that all suits, sentences, executions, fines, penalties, and so forth, which against Strode, or any other member of the present or future Parliament, shall be brought or threatened, shall be treated as null and void. Under Henry VIII. occurs also the first case of a carrying into effect of its penal power, inasmuch as the Sheriffs of London, on account of one of the members, are cited before the House and committed to prison. In like manner, in 35 Henry VIII., the Privilege of the House was acknowledged as against an order of imprisonment on the part of the Council. The attempt to exclude a member, by means of a Royal order, from the sittings of the House, (1571) was set aside. But this notion as to being "member of the Council of the Crown" had its serious side, in so far that the king could assume a claim to exercise a kind of disciplinary power over the members of "his Council," even as in previous generations had been asserted against the Judges of the Realm, as being justiciars of the Council. As a protection against such consequence, it became customary, from the year 1541, for the Speaker of the Lower House, at the opening of the Session, from the king to claim "freedom of discussion, free access to the person of the sovereign, and freedom from civil arrest," and soon after the Lower House, with a just insight as to the relation of things, began, of itself, to punish excesses of its members by fine and imprisonment.

Queen Elizabeth, however, did not allow herself to be held back, in individual cases personally offensive to herself, from imposing imprisonment, by way of mandate. In the year 1593, the Lord Privy-Seal, Pickering, even declared, in reply to the customary request of the Speaker for freedom of speech, by command of the queen: "that the privilege of the House consists therein, yea or nay to answer, but not to speak what to them seemed good, nor to say what came into their head." Under the Stuarts, in this relation, many serious conflicts are evolved.

As regards the course of business of the two Houses of Parliament, externally, there happened, at this period, the change, especially since the Reformation-Parliament, that the proceedings of the Parliament, once summoned, are prorogued from year to year. Even under Elizabeth, it was considered customary to prorogue the same Parliament for longer periods, and to resume business in repeated sessions, with the same body of members. The Parliaments are at this period in a normal condition, even as was the case with the German Diets during the Reformation period. The courage and power of will possessed by the men and women of the House of Tudor have placed the monarchy in right balance with their Parliaments, and the monarchy has employed its re-asserted power in Royal fashion, for the advancement of the intellectual and material development of the people, with the ready co-operation of the Parliaments. The extraordinary powers of the Prerogative, which the Middle Ages had bequeathed, found their consistent application in the great work of Church reform. All apparent anomalies in this respect may be traced to the influence of the Reformation. The majority of the people sought and found in this dynasty the advancement of their interests, through the administration, and the contenting of their national pride, through the Reformation. A good under-

standing with the Commoners, despite mighty wrong done towards some individual members, does prevail throughout the whole of this period. The incident occurring in 44 Elizabeth is characteristic enough, wherein the queen, after a debate lasting six days, sets aside the misuse of the granting of Monopolies, and calls God to witness "that never in my heart has thought prevailed that had not the welfare of my people as its aim."

ADDENDA.

*180) The laws and enactments bearing on the time, are contained in "Statutes of the Realm," vol. II.-IV. The parliamentary proceedings are recorded in the "Rotuli Parliamentorum," from 12 Henry VII., in the Parliament Office. With 1 Henry VIII., begin the official "Journals of the House of Lords," down to August 30th, 1642, The "Journals of the House of Commons," begin with 1 Edward VI. (1548). For the political history: Hallam, "Constitutional History," vol. I.; and, by way of check, Lingard, "History of England"; with comprehensive references to documents: Froude, "History of England since the fall of Wolsey," 1858, vol. I.-XII.; Pauli-Lappenberg, "Geschichte von England," V.; Ranke, "Englische Geschichte," especially in 16th and 17th centuries, vol. I.

*181) Amongst others, the Earl of Oxford, who had provided his Royal guest with a brilliant reception, with a numerous array of retainers, in uniform, was fined £15,000, for having infringed the prohibition against "liveries." From this reign, also, dates the mode of assessment, styled "Morton's Fork," whereby those who were bound to pay the tax, if they spent much money were assured, that they must be rich, seeing how much they spent, whilst those who expended little, were told that their parsimony must have made them wealthy.

*184) The circumstances attending the Reformation are, in the main, about on parallel-lines with the state of things on the Continent. The system of authority, which, in the Middle Ages, bound State and Society together, must have been terribly dislocated at a time during which six Popes abdicated, two were assassinated, and one was mutilated; when two, who were formally chosen, drove each other from Rome in turns; when the Papacy in Italy permitted preachers to preach Crusades for their private feuds, and for the enlargement of their territorial possessions; when, in France, a child of five years was created Archbishop of Rheims, and so forth. Upon the state of thought in England, the seventy years exile of the Papacy in Avignon, had a retro-active influence. Thus, gradually, a condition of excitement was reached, wherein the Church of the people at large was converted into an institution, external merely, and, to persons of condition, was mainly an institution to shrink away from. The office of mediation, which the Prelates,

at the time of Magna Charta, had so nobly assumed, was well nigh banished from memory. The higher clergy had, for a long time, ceased to act as mediators, and become strivers, amid party conflicts, for places of power. When, at the height of their influence, the nobility begins to struggle hard to get hold of the higher positions in the Church, while the ecclesiastical calling, in so far as the teaching and the care of souls is concerned, is abandoned to the meanly-remunerated clergy, and the social intercourse with the working-classes, to the religious orders. The Church revenues were, in the main, diverted from their proper uses, to such an extent, that, when "secularization" was subsequently being resorted to, they had been already appropriated to worldly purposes. Even on that account was the Church, during the War of the Two Roses, seen to be so wholly without influence. She deemed it, withal, as being exclusively within her province, to discharge the civil duties bearing on the general well-being and education, while the laity itself now possessed the insight, the will, and the means to carry-out such aims and purposes. After the reasons had gradually disappeared on the grounds whereof the Church had emancipated herself from the supreme authority of the State, so as not to lapse into the disintegration and uncouthness of the feudal system, she clung all the more firmly to such emancipation, as a right and privilege purely hers, and this led to the clergy being exempted from punishment, even in cases of public crime and breaches of morality, through the over-forbearance of members of their own order. When towards the close of the Middle Ages, new regions in the spiritual and material world were opening out, the Church claimed that the intellectual life should remain by the old land-marks, inasmuch as those who served her could not follow in such tracks of progress. Although her moral influence had grown amort, the Church held by the possession of privileges, which in human society remain for a while inhering, even when the inner claim thereto had lapsed. Exactly at that time (1401) occurred the first instances of the burning of heretics. This, it is, that presents the ever-persistent contradiction wherefrom the great Reforms of the State orginate; without the help of the State-power,—the Revolutions.

*185) Ranke, "Eng. Geschichte I. 224, "One finds in Henry VIII. no true affection, no impulsion of the soul, no real sympathy with any living being; men are to him mere pieces of mechanism which he makes use of and then shatters. But he is endowed with an intelligence beyond compare, a powerful capacity adaptable to all interests; he unites keenness of views with a will at all times steadfast. One follows the track of his reign with a blended feeling of awe and bewilderment."

**185) The wording of Statute 25 Hen. VIII., c. 25, places this national aspect in prominence: "This your Grace's Realm acknowledges no superior, next to God, saving your Grace only; it was, and is, free from any subjection under the laws of any man, saving under such as established are within this kingdom; but not for the following of laws of any foreign prince, potentate, prelate," &c.

*188) Froude, V. 128, demonstrates that at this time the expenditure of the

Court had mounted, from having been £14,000, up to £100,000, and that Crown-lands of the value of £500,000 had, by leases, sales, and exchange, been squandered away, a third at least of the value sticking to the fingers of the minister's favourites.

*189) Religious partizans are ready only to present the martyrology of the other side. True it is that this Reformation numbered 191, according to others 222, Catholic martyrs, without counting amongst them, however, any women and children! But, as compared with Elizabeth, let it be recollected that Charles V. had, according to Father Paul, some fifty, and according to Grotius one hundred thousand Protestants in the Netherlands, hanged, beheaded, buried alive, or burned, without mentioning the Bartholomew night, and other events.

*190) For the history of the Reformation, the one-sided work by Burnet, "Hist. of the Reformation," 1681, 3 vols. fol., replete with authorities. Modern: Vaughan, "Revolutions in History," vol. II., 1861, but above all, J. A. Froude, "History of England from the fall of Wolsey to the defeat of the Armada," vol. I.-XII. From among the abundant material might be chosen out the "Trial of Ann Boleyn," vol. II., c. 11 and App. "The character of Henry VIII." vol. II., c. 24; "The Trial of Mary Stuart," vol. XII. c. 69.

*191) The civil regulations of Elizabeth have, in later times, been criticized from a constitutional stand-point, without considering that, from the outset, the ordinances had, and have retained a concurrent power, as binding principles of administrative law. But even when judging relatively, it is often not taken into account to what degree the Government of Elizabeth was threatened from within by "Popish plots," and from without by antagonism of the Catholic powers, during those periods of enforced counter-reformation, the assassination of the Prince of Orange, the passionate persecution of Protestants in the Netherlands, in France, &c., when Pius V. not only quickened the insurgents, but, by a bull, excommunicated the queen, deposed her, and released her subjects from their oath of allegiance. Further, the execution of Mary Queen of Scots bears a different aspect when considered from a historical, rather than from its dramatic point of view. Mary Stuart was living on English soil, in the quality of a private person, and was clearly condemned, by process of law, of High Treason. Elizabeth steadfastly opposed the carrying-out of the sentence, till assent to it was wrung from her by her ministers, and, thereupon, it was proceeded with, without further ado, inasmuch as these measures were considered, in the Privy Council, as being indispensable to guard against the persistent conspiracies filling up the time of her imprisonment (1568-1587). Parliament which, in like manner, considered these measures necessary, made forthwith the declaration, that the same act should not prejudice the succession of the son (James I.) to the Throne, and this said son himself subsequently signified his agreement in the sentence of his mother. (Comp. Ranke I., 380 pp.)

*192) The greatly-increased importance of the body of officials in the Privy Council is characteristic, as, for instance, in the law of precedence of Henry VIII., the instruction that the Chancellor, when a Peer, takes precedence of Dukes. The gross abuse displayed by both sides of the laws against High Treason, and frequent employment of the same in the Wars of

the Roses against each branch, in turn, of the Royal family, led to the Statute 2 Henry VII., which declares allegiance to a "king *de facto*" as lawful. If the kingship be thereby recognized as an institution, the Council now stands forth as a judicial Committee in the fullest sense, and the body of officials as servants of the Law, who have, first and foremost, to discharge fealty towards the king, by yielding obedience to the *laws* given by the king. The order of precedence of the officials, the numerous regulations concerning matters of business in relation to the State-Council, the use of the Great Seal, &c., display an organization of the departmental system, which, up to this measure and degree, was to the Middle Ages generally well-nigh unknown.

*194) The High Commission Court was not at any time popular, either amongst laity or clergy; for a stricter leaning it showed itself too cautious, and for a broader tendency, too strait-laced. Yet such an organization was, in the main, justified. For if the abstract separation—in other words, if the ascendency of the Church over the State—comes to an end, Church government and temporal government alike are to carry out their contentions, as to their scope of authority respectively, within the State, under the paramount authority of the monarch. In such intent neither a body of clergy (or even an Ecclesiastical Parliament), nor a body of jurists, would suffice, but a mixed Committee, wherein can be determined the points at issue, which otherwise lead to serious conflicts between Church and State, and to violent strife of religionists among themselves. Since the entrance of Christianity into the life of States, human wisdom has never yet succeeded in happening upon a system of State constitution and administration, and still less on any scheme of union, or of separation, which might content the claims of the Church, as such. The countenance held by Queen Elizabeth in this particular was dignified, and the present time may perchance be more inclined to find she was in the right in respect to the strife that prevailed about the matter of the Ritual, for endeavouring to find a mean way between the pomp of ceremonials, calculated to influence the mind which the Roman Church observes, and the all too simple rite of the Reformed Church.

*196) According to the most recent researches, taken from Roger's "History of Labour," (1885,) the first half of this period was, on the whole, a very favourable one in relation to the position of the working-classes, by reason of the unusually high scale of wages, as compared to the low price of provisions. As to the latter half of the period, we look upon the position as being, on the other hand, unfavourable, less on account of the dissolution of the monasteries, as by reason of the confiscation of the revenues of foundations, under Edward VI., and the debasement of the coinage from the time of Edward III. to Edward VI. Undoubtedly, this last ground of difficulty was made good in the 17th century.

*197) Henry VII. descends from a Mr. Owen Tudor, and through a marriage, which was only subsequently declared valid under Richard II.—a declaration withdrawn, however, under Henry IV., and specially restricted by a clause bearing, that no succession to the Crown should result from such descendance. Parliament accordingly, when acknowledging Henry VII., makes no kind of reference to a claim hereditary, but simply affirms that

Henry VII. is to be and remain king. Under such circumstances, his marriage with the heiress of the House of York was assuredly of immense importance. The two descendants who survived the Wars of the Roses (Warwick and Suffolk) affording pretexts for ever-renewed insurrections, were executed in 1499 and 1513, respectively. Under Henry VIII., the lack of an heir male to the throne became one of the chief reasons of his entanglements in the matter of his marriages. The life of his successor was, from the outset, regarded as being so precarious, that he made, by virtue of a power conferred by Act of Parliament, in 1537-1544, provisions testamentary, which savoured greatly of arbitrariness, and were rendered still more involved, by reason of a confused will of Edward VI., made in his fifteenth year, and drawn up under ambiguous circumstances, in such wise that the succession of Elizabeth remained a grave problem.

*199) It is the result of a misapprehension on the part of those imbued with ultramontane views, when they would represent Protestant doctrines and Church organizations, as being dependent merely on the dictates of the monarch, or on a majority of votes in Parliament. The dictatorial injunctions of Henry VIII., 1531, were agreed to by the Convocation of the Clergy, "so far the law of Christ allows." The severance from the jurisdiction of the Roman See (1534) was resolved on by "Convocation." The Reformation Acts 2 and 3 Edward VI. were confirmed by a committee of Bishops, and sanctioned by Parliament. The Thirty-nine Articles of Elizabeth were settled in 1563 by "Convocation," and were *ex post* sanctioned by Parliament in 1571. Further, the Declaration of the Supremacy of Elizabeth, is drawn up so cautiously, omitting the words, "Head of the Church," that it does not contain any fixed statement in the matter of doctrine, as from the queen.

**199) When Cardinal Wolsey, in 14 Henry VIII., appeared in Parliament, with great pomp and circumstance, to propose an assent to a grant of money, he had to be reminded by the Speaker that his coming thither was neither suitable, nor in accordance with the ancient liberties of the House. In like manner, the Speaker Onslow reminded Queen Elizabeth, very frankly, on occasion of an address presented during a time of exceeding loyalty "that it did not pertain to the high prerogative of the Crown to levy money from her subjects according to her own free will." In spite of her parsimony, Elizabeth found it necessary to have granted to her, in eleven sessions of Parliament, 19 subsidies and 38 fifteenths.

*200) To the inflated language of the Parliamentary debates, a reflex of the time, historians have attributed overmuch importance. True it is, the addresses of the Speaker at this time lasted for hours, and abounded in eulogium and flatteries no end, of the Royal puissance, wisdom, and perfection. Henry VIII. was, in their eyes, an Absalom in beauty, and a Solomon in wisdom, &c. At mention of his "sacred Majesty" (a designation first employed under Henry VIII.) the whole assembly uprose, and, with profound reverences, repeated the words uttered. But what is to be said, when, in conformity with the spirit of the time, the University of Oxford is found eulogizing Henry VIII., Edward VI., Mary, and Elizabeth, all in one breath, on account of their piety?

V.

Parliament under the Revolution.*

TABLE OF KINGS.

JAMES I. 1603—1625.
CHARLES I. 1625—1649.
THE COMMONWEALTH, 1649—1660.
CHARLES II. 1660—1685.
JAMES II. 1685—1688.

WITH Society thus matured, and in its middle-classes greatly invigorated, the dynasty of the Stuarts entered into a conflict, which, through manifold vicissitudes, and, after having thrice overthrown the Royalty, ends by effecting the expulsion of this Royal race. It is a time wherein spiritual energies, set free by the Reformation, new institutions controlling the Church, and new fundamental principles bearing on State-law, take measure of each other, and throughout the conflicts of this period assume a character differing wholly from the Barons' War in the Middle Ages.

The Reformation in England had made the kingship into universal heir of the Papacy. If thereby a significant step was taken towards setting minds free, a movement more serious still was made towards hampering the Constitution of the Land. The conflict that had so long, and so deeply, moved the Middle Ages was found implanted in the midst of the Constitution. If the line of demarcation between Church and State had till then been safeguarded,

from a feeling of national jealousy, this bulwark between the two had now fallen, since both had been brought together under the sway of one Lord Paramount. The two tendencies of the human mind, which had been found hitherto embodied in Church and State, have now become thorough opposites in the State.

On surveying the wide range of a thousand years, among the nations there was found to be existing but one Church. The 16th and 17th centuries found themselves involved, however, in bitter strife as to which was the true, the Christian-Catholic Church. The possibility of an equality of right, or of only a toleration, within the State, of different ways of belief, was wholly foreign to the views of life prevailing, and, in fact, unfeasible, so long as each Church exercised a right over marriages and the whole ground-work of domestic law and public education, and regarded innumerable other legal relations of the social life of the citizen as an object for legislating upon and administering, subject to the co-active power of the Church, which, like every other State-power, might only exist as an indivisible authority.

Inasmuch as the Reformation led to strife, not only between the new and the ancient Church, but, further, even as concerns the tendencies, stricter and broader alike, of the Reformation itself; the Crown found itself obliged to assume its position in both aspects, and, with all the means at its disposal, to uphold the Church recognized as being "national." Already, under Elizabeth, it became still more evident in how far, by reason of the "supremacy," the prerogative had become altered, just as in Germany, where the position of the reigning princes had become wholly different, through the so-called *jus reformandi*.

In the spiritual sphere, the king reigns as absolute master, with a body of clerical functionaries; in the worldly sphere, on the contrary, as a monarch merely, with powers limited,

and with Parliaments authorized to pass statutes, and with independent *Communitates*. Each system stood side by side, with their body of officials and their regulations in daily operation. Already, from that cause, theoretical systems of kingly rights are evolved for the first time, made up, in the main, of theological views and arguments,—a theory of kingly "transcendent authority," claiming, like the popedom in the Middle Ages, a predominance over human teachings, by virtue of the authority of God's commandments. The assemblies of the clergy in convocations, now become the chief abiding-places of absolutist State doctrines. In a few decades, the clerical provisions become consolidated in the Canons of Convocation, (1606,) which proclaim the absolute monarchy, by God's command and man's nature, as being the sole legitimate form of government, and the rights claimed by Parliament, as being "godless usurpations."

In this position of Church and State the *House of Stuart* ascended the Throne, at a period in which the power of the "Estates" all over the Continent was broken. That this result did not come about in England may be accounted for ultimately, not so much from the fact of the personal influence of the Stuarts, and the lack of a standing army, as in the general ground-work of the English Constitution, in the equality of rights and coherence of the "Estates," in respect of which the kings of this dynasty were so fatally at cross-purposes. The strengthening of kingly power, under the Tudors, resulted first from the confusion of the 15th century, but was thereafter determined upon for the carrying-out of the national aim of Reformation. After proceeding with this mission, English kingship was, and still remained, the necessary hypothesis of the Constitution, the protector of the Church, the hereditary holder of the supreme power, the source of all right pertaining to the higher ranks, with tasks set for the protection and elevation of the working-

classes and of the clergy; abroad, with the great task, involving manifold difficulties, of advancing the Protestant cause in Europe. The fate and farther expansion of the Constitution depended on the fact whether the new dynasty would keep within these newly mapped-out boundaries of English policy.

But the Royal race of the Stuarts lacked the intelligence needful for such-like purposes. Up to now, in the history of England, Royalty had appeared, from generation to generation, in a line wavering to and fro: but now the line of declination is apparent, through an entire dynasty, during three generations. Hardly ever has a reigning family occupied the Throne which considered itself to such a degree exempt from the sovereign duty of protection. Their way of regarding matters, and of carrying them into execution, has but little in common with the character of English royalty and of the English nation, but belongs rather to the policy of the Guise family, and to the religious struggle of Scotland. Putting aside other differences in character, there is one thing in common with these four monarchs, namely, the total want of sense and understanding for the Law of the Land. It is exactly therewith that this century advances, in its course, through a long line of Constitutional struggles, and, indeed, from the very outset:—

I.—IN A STRUGGLE BETWEEN THE JURE-DIVINO ROYALTY AND THE PARLIAMENT,

which, commencing under James I., ended with the execution of Charles I.

In strong contrast to the previous dynasty, in James I., a learned pedant ascended the Throne, unkingly in bearing and in manner of speech, who seemed to look upon the proceedings in Church and Parliament as bouts at argument, in which

the "supremacy" of royalty had to be impressed on the incredulous. The learning displayed in his writings, an unmistakable sagacity, but withal a want of sound judgment, make up a curious blend of character, in which, nevertheless, anxiety and yieldingness are ever uppermost, with a view to escape dangers that threatened from within and without the Realm.* Already this first of the Stuarts found himself at cross-purposes with Parliament, whose members had gained a sturdy self-confidence during Elizabeth's reign. In his first Parliament (1605) 231 members are designated as "Knights," 140 as "Esquires," 71 as "Gentlemen," 9 as "Wholesale Merchants" (besides these, a Mayor, 9 Aldermen, 4 Doctors of Law," 1 Sergeant at Law). Quarrels, already commencing, as to taxes, monopolies and the Scottish union, (covenant,) are already rife, to the disadvantage of the Crown. The Parliament of 1610 gets into strife over the feudal revenues, which is followed by a speedy dissolution, and the dismissal of Lord Chief Justice Coke. The Parliament of 1614 is dissolved, without passing a Bill, whereupon certain political trials ensue. In the Parliament of 1621, James forbids the House of Commons "to treat of such matters, which went far beyond their sphere and capabilities, and to mix themselves up in anything whatsoever that had to do with his government, or his State secrets." Thereupon follows a very strong, circumstantial Protest, in which the House of Commons point out their freedoms and privileges as "hereditary" rights, and dispute every absolute power of the Crown as to religion and law-giving, designate Parliament as the highest Court in this country, and take into consideration entire freedom of speech and the ultimate decision of contested elections.** The king hereupon adjourns Parliament, publishes soon after (having, with his own hand, torn the said Protest out of the Journal of the House) a circumstancial declaration as to the impropriety

of such behaviour, and causes certain chief parliamentary speakers to be arrested. Nevertheless, by the close of his reign, the Lower House has passed important laws, renewed the right of parliamentary impeachment, its right as to decide questions of contested elections, and raised emphatic protests against the arbitrary increasing of the Customs. During this time, sentence was passed on Lord Chancellor Bacon, involving a penalty of £40,000, and imprisonment, for accepting bribes.

Whilst the political struggle was rife in Parliament, clerical controversies became more acute and pronounced, throughout all classes of the population. When the notion as to a mere national Church had shown itself utterly impracticable under "bloody Mary," one had, after much forethought, to grasp at the real weapon of the Reformation, the permission of reading the Bible. The result was, as Hallam says, that the people began to interpret the so-long forbidden Bible with a prejudice akin to that prevailing with an English jury, when examining evidence which one side has tried to suppress during a trial. To the mistrust against the authorized teachers of the Church gets added a desire for self-inquiry, and a striving for personal independence, this being a national trait of character. Both sections alike lay claim to the personal interpretation of Holy Writ by right of individual conviction and conscience. Amongst the Burgesses, the better class of the Yeomanry, a great part of the gentry, but more especially among a portion of the lower clergy, educated on the Continent, there existed a very fruitful soil for such teachings. As usual, the politico-constitutional ideas get interwoven with the religious, and, according to the influence they alternately exercise, the dissenting body is evolved either into a Constitutional ideal of Presbyterian cast, or into the wider-reaching democratic principles of the

Puritans, or, finally, into Independents, who deny all Church authority, and look upon clergy as mere functionaries, chosen by individual congregations, and invested simply with parochial offices of trust.

A theocratic tendency, on the part of the State-Church clergy, displayed itself, with increasing energy, against such manifestations. Henry VIII. and Elizabeth had retained the dignity of "Bishop," not as an "*ordo*" established by Christ, but as an office convenient for securing Church discipline. But since the dissidents made an onslaught against the office of Bishop, the Bishops answered by upholding their calling, as being of Divine appointment. They followed their opponents on the ground of *jus divinum*, and gained back, therewith, a certain independence as against the middle-class. The more the State-Church felt itself established, the more its sense of consciousness of power in this respect, with the remembrance of the former standing of the Church, increased. The goal so much striven for, could only be attained to by establishing a solidarity, with the "Divine" institution of the Crown that nominates the Bishops. If the dissident opposition could be twitted with having a political background, so might a similar reproach be addressed to the State-Church, wherein the zeal for Holy Church, became a holy zeal for the temporal power of the head of the Church; even as in the princely bureaucracy of Germany, there abides with an overzeal for the authority of the King, a secret zeal for a further exaltation of their own class. The purely absolutist conceptions of the kingly power were manifested in the meetings of Convocation, and in the writings of the time, immediately upon the accession of James I., especially in Cowel's "Interpreter." The displeasure excited in Parliament by this latter was softened down by an ordinance

of James I., prohibiting the work. The advance of the absolutist theory in the succeeding generation is demonstrated by the *Canones* of 1640, and the work by Filmer, so much spoken of later on.

Amid this already-excited state of things, *Charles I.* inaugurated his reign, not by mere unsuccessful protests, as in the case of his father, but by decisive action, to quell opposition. Endowed with all virtues that adorn private life, in conjunction with a lack of qualities befitting a monarch, quickened with exalted ideas of kingly power, combined with an exceptional narrowness of view as to the nature and legal bearings of the society surrounding him, he was, therewith, involved in a series of contradictions, which, by reason of the inevitable appearance of untruthfulness and unreliability, led, ultimately, to his perdition. The hostile attitude of his first two Parliaments, and their refusal of subsidies, Charles answered by speedy dissolutions, and by ordinances, issued with the aim of intimidating his opponents.* The Star Chamber is now availed of for the levying of forced loans, which are carried out by means of enforced billeting, press-gangs, and imprisonments. The growing resistance against this state of things, and the lack of money, compel the king to summon a third Parliament, in which, through the combined opposition of both Houses, he is forced to acknowledge the "Petition of Right," and the Declaratory Statute, 3 Charles I., c. 1, which declares as illegal, as to the past and future alike, all forced loans, arbitrary imprisonments, and proceedings by court-martial.**

Up to this pass, the conflict has worn the aspect of former times, the abuses in the administration and *gravamina* of the land travel in the range of the old conflicts between King and Parliament.

But with intent not to keep his word, the king, after

having received a subsidy, dissolves Parliament, wholly resolved never to summon any Parliament more. "Ashamed that his cousins of France and Spain should have achieved a work which he had hardly begun," he initiated, from March, 1629, a personal rule, which systematically attacks the fundamental principles of parliamentary constitution, established for three centuries.

The attack is speedily aimed against the practically determining point—the setting aside of the assent to the subsidies. Those periodical grants of money presuppose a system of agreement between Crown and Parliament, with which no absolute rule could hold. James I. already had sought to turn to account his theory of transcendent sovereignty by a levying of new Customs. This attempt was taken up now in earnest by the world-renowned "Ship-money," which, in the Middle Ages had been levied in coast-towns on the threatening of a hostile landing, but which was now imposed on all coast and inland counties alike, on the ground of a feigned peril of war. The question resolved itself into gathering a sufficient sum, amounting to £200,000, amply representing the ordinary subsidies, which were now procured by a circumventing of Parliament. The twelve Judges were previously brought together, under Sir John Finch, and (according to their own reports) were induced by threats and promises to express an opinion in favour thereof. By Royal warrant the Sheriffs were enjoined to burden each county with the fitting out of a vessel. The comparatively small county of Bucks, for instance, the home of Hampden, had to equip a man-of-war of 450 tons, with a crew of 180 men, guns, powder, double tackle, provisions, and all necessaries. The ship has to be brought to Portsmouth by a day certain, and from then to be maintained in supplies, wages, and all necessaries, at cost of the county. But as this ship equipment is not the real purpose of the measure,

the Sheriff is further enjoined, in conjunction with the Mayors, to levy the sums required therefor, from individual free-holders and citizens, and to return the assessment-lists. Despite all intimidations, Sir John Hampden, through refusing the tax, brings the question for decision by the Courts of Common Law, this time in full Court of the Exchequer Chamber. By this contest between party and party the Judges were startled, and the proceedings were protracted over three months. At last seven Judges against five pronounced for the Crown. This was the main point of attack against the parliamentary constitution, and a turning-point in the struggle for the Constitution, because it afforded proof of the ultimate aim of the Government, and, at the same time made evident the corruption of the Courts of Law.*

The constitutional share of Parliament in legislation was a disputable point, in respect of ordinances not running counter to statutes of Parliament, but which create, side by side with them, guiding-principles of administration. The manner of carrying into operation this right of ordinance had assumed a new fashion. As the dynastic domestic policy encounters a sensible obstacle in the ceremonial forms of the Council, and in its judicial advisers, James I., already, had begun to put aside the irksome machinery, by transacting State business in the "Cabinet"—in other words, in small confidential meetings, wherein the counsel of the Court-party possessed influence greater in proportion than those of the responsible ministers. It is this body, thus constituted, which now, under the name of Royal Council, carries out the powers of the "Star-Chamber." From this latter now emanate the compulsory measures needful to the new *régime*, which, amid increasing opposition, becomes a comprehensive system of warrants of apprehension, amerciaments, fines, and refusal of "Habeas Corpus." From this centre

is developed that manner of rule which, according to Clarendon's expression: "By ordinances commands what was not by the law commanded, forbids what was not by law forbidden, and thereafter punishing disobedience against the ordinances, by infliction of heavy fines and imprisonments." So soon as there was no Parliament summoned, and there was created, by the Star Chamber, an administrative control direct, every bulwark of State-government disappeared. Financial and police measures of the Government were now carried on by means of a long series of ordinances, and through senselessly high penalties, there was created an important source for the finances.*

The Crown found a further means of conducting the conflict, by means of its Church organization, which had made over, into the hands of the king, the appointment of the higher ecclesiastical bodies, and of the Bishops, for the maintenance of the National Church in its constitution "by law established." Charles I., albeit Protestant, according to his personal belief, cherished the notion of winning ground by a developing of his spiritual supremacy, with the view towards achieving a worldly absolutism, by reverting to the forms of the Roman hierarchy. In this sense, the reforms of Archbishop Laud bear a certain Catholic leaning; a reverting to transubstantiation,—equivocally worded,—to auricular confession, preferment of unmarried clergy, restoration of the "worship of images," and of the Crucifix, of splendid vestments, of the Altar at Communion, and of genuflexions, in conjunction with harassing, unbearable persecutions of the dissident sects. This identifying of Church-rule with an extreme clerical-party tendency must soon lead, judging from the past, to open rebellion in the sister kingdom of Scotland. But in England likewise, by reason of the filling-up, designedly, of higher Church-offices with ecclesiastics of such leaning, the Royalistic church-

dom and the clerical caste was urged to such a height that in the *Canones* of 1640, it uttered the principles that: "It was High Treason to preach, and to teach that side by side with the Royal authority, any other co-active power, either Papal or popular, can exist; that all payment of taxes is a bounden service of the subject, according to Divine and natural law, and the law of nations; that no ecclesiastic shall venture to speak otherwise of the power of His Majesty than is in this Canon prescribed." The scope and purpose of the Reformation seems to have graduated merely into a medium for the extension of the powers of the king, and of the clergy.

The groundwork, however, of the Constitution—the combination of the State-administration with the communal bodies—rendered this way and manner of governing impracticable, for any continuance. The Sheriffs and Justices of the Peace might be deprived and replaced; but still it would be necessary to take them from out the county itself, wherein an illegal fashion of rule would be very differently received than by a mere body of officials professionally disciplined and trained. This propertied body, on the other hand, independent by reason of its property, does not submit to intimidation, nor, out of any view to being rewarded, does it lend itself to organize pressure against its fellow-citizens dwelling in the community.

On this ground it was that the assault against the parliamentary constitution originated from the centre found itself debilitated, by slow degrees, in the counties where the real mechanism for carrying it out was lacking. The invisible, yet insurmountable resistance lay in the sturdy structure of the county, and in its actual firm coherence with the actual organization in town and parish. The means, generally, of the whole system slowly, but gradually, get exhausted. The stress of war, and the Scottish uprising,

compel the king, after an eleven years' interval, to summon Parliament anew, hence the so-called "Short Parliaments," which, after a few weeks, get dismissed in right inconsiderate fashion, but only, soon afterwards, from November 3rd, 1640, to make way for the "Long Parliament."

The measures of the Long Parliament are directed in turn against abuse of powers, and assume accordingly a retro-active movement against the three organs of government that had committed abuses, in the matter of the kingly powers.

Against the corrupt Courts of Law: with the declaration against the unlawfulness of Ship-money, and the reversal of the sentence against Hampden, the Judges who took part therein are impeached.

Against the Privy Council: against the Prime Minister, Strafford, the charge is raised of High Treason; to the Bill of Attainder, against whom, and to whose execution, the king, as reckless of his promises as he was self-seeking, gives his concurrence.* For all time forth, however, the administrative criminal jurisdiction, and the civil jurisdiction of the Privy Council, and all like attributions of the Star Chamber, are, by Statute 16 Charles I., c. 10, removed.

Against the abuse of Ecclesiastical power: aiming at the abolition of the High Commission Court, which, in like manner, by Statute 16 Charles I., c. 11, is abolished. Ranging therewith is the impeachment of the twelve Bishops. Further, on September 1st, 1642, the Lower House resolves upon the abolition of the episcopal office, *nemine contradicente*, and on the sequestration of ecclesiastical property, and, by this "root and branch Bill," deals an incurable blow at the parliamentary constitution. With further-reaching consequence, ensues the sentence and execution of Archbishop Laud.

Directly against the endeavour being made to set

Parliament aside, by not summoning it, the "Triennial Act" is framed in 1641. Just as the attempt of the Hapsburg dynasty subsequently to the Peace of Westphalia, to shelve the German Reichstag by not summoning it, was answered by the Reichstag continuing to sit uninterruptedly; so here, in case of the non-summoning of a new Parliament, the official bodies, and lastly, the electors, would themselves have been empowered to call a new Parliament, with the addition of the fatal clause, that the present Parliament shall not be dissolved without its own assent.

In the *Civil War*, now beginning, come into use the party names of "Cavaliers" and "Roundheads."* Nobility, gentry, citizens, and peasantry, range into two camps. In round numbers, about two-thirds of the nation seem to side with the Parliament. On the side of the king ranges a good half of the nobility and of the old gentry, partly from conviction, partly for honour's sake; on the side of the Parliament the larger portion of the prosperous towns and free peasantry, and, taking their lead, certain Lords and members of the old country gentry, like Hampden, Digges, Vane, or men, who, like Blacke, Bradshaw, and Cromwell, belong, withal, to very reputable families. The mass of troops, on either side, compose a military force just as diversely split up. During the first years it is still the dominant society, which, sundered though it is on both sides, inclines to come to an understanding; the Cavaliers, indeed, even negotiating without the king's wish. On both sides the war, as a rule, is conducted in honourable fashion, and with conscientious observance of capitulations and suspensions of arms, no kind of class-hatred manifests itself. Under the conditions of peace, in 1646, is comprised the elevation of Cromwell, and of others, to the Peerage. By slow degrees, and under strong influence of the heterogeneous Irish and Scotch elements, break up the firm elements, and the legal con-

ceptions of the Constitutional Monarchy, wherein still all party-aims seek a bond of union with the kingship, but which, in this king, were not to be found. After years of undecisive contests, the parliamentary army, by passing over to the system of regularly-paid troops, gains the upper hand. Into the newly-formed regiments of Cuirassiers, Dragoons, and Infantry, now throng the enthusiastic strugglers for religious freedom, the fanatical opponents of a "godless usurped" kingly supremacy. The standing army forthwith affords to the movement its steadfastness and mainstay, first of all, in conjunction with the Scottish insurgents, to whom the king, after the hopeless defeat of his adherents, surrenders himself. Hand-in-hand with the victory in arms, in Parliament, army; and through petitions of every kind, endeavour is now made to turn to account arguments taken from the Bible, wherewith the sects combat the Divine right of the king, with like keenness of thought, argumentation, and headstrong persistence as the Court theology on its side brings to bear. Out of the parliamentary party, men come to the front whose notions of Church and State go far beyond the monarchical order of things, as then prevailing. Now had arrived the time of action for men of a religious belief in freedom, and Oliver Cromwell was the first to bring together a regiment composed of such "men, well armed through the quiet of their conscience, and outwardly by a good iron equipment, steadfast like one man." These were the sects borne down by the pressings of the administration, and driven to fanaticism by the catholicizing tendency of the State-Church. From internal necessity, the absolutist-system had conduced to assign an undue value to individual spontaneousness in Church and State, and hence to an ideal constitution of republican cast. The old heretical doctrine, which maintained that "the right of the ruler is also founded in grace,"

that, as a consequence, the power ruling the citizen, loses this right by sinning, urges the fanatical sects to formulate the outrageous demand of a punishment being inflicted on the "godless usurper" of a churchly supremacy, and broadens itself further and further (as, subsequently, in the Parliamentary Resolutions of January 1st, 1649) into the notion of a "High Treason of the king against the People." William Allen, Adjutant-General of the army, affirms that already, in the beginning of the year 1648, "the Council of officers, after long consultation and prayer, to the clear and united resolve had come, that it was their duty to bring to account Charles Stuart, that Man of Blood, for the blood spilt, and for the unhallowed dealing he had used against the cause of the Lord and His people." While the moderate sections are considering, misgivingly, the course adopted against the captive king, and are treating for peace, Charles had—disregarding this position—been exercising, even in prison, his "king-craft," in order to disunite Parliament and the Scotch, the army, and people alike. Exactly at this turning-point, there came to be known, far and wide, with proofs irrefragable, a whole range of his double-tongued dealings. Truly characteristic, amid this contention for principles, at this eventful time, is the firmness with which individuals and parties hold steadfastly by their convictions as to their constitutional rights. On the 28th April, 1648, the Commons still affirm the resolution: "That they desire not to change the fundamental rule of the Realm, through King, Lords, and Commons." The majority of the Lower House stands forth steadfastly for the inviolability of kings. Against the last attempt at reconciliation the remonstrance of the army is raised, wherein: "His Excellency the Lord-General, and the General Council of the officers, set forth the danger of an arrangement with the king, and require that the person of the king be pursued in the ordinary way of the

law." As the Commons, notwithstanding, on December 6th, 1648, by 120 votes against 83, decide for the acceptance of the conditions of peace, the army proceeds with force of arms against the majority, takes forty-seven members of the House prisoners, and pronounces ninety-six others "secluded." Despite the protests raised, the minority remaining continues to sit as the House of Commons, ("Rump Parliament,") and levels the charge against the king of High Treason against the people of England, which results in the appointment of a Judicial Commission, and the consequent sentence and execution of the king.

The terrible shock of such an outcome to all subsequent generations—far different from the "removals" from the Throne and the murders of kings during the Middle Ages—lies in the awfully tragical contradiction which has developed herein in the supreme fundamental principles of State order. The kingship under John Lackland was certainly more deeply degraded than under King Charles. The Roman Church, when Luther uplifted himself against it, was out-of-joint more than the Anglican under Charles and Archbishop Laud. But, in the time of John, there stood near the degraded kingship a Church, still in the plenitude of her moral power, embodied in the heroic figures of Archbishop Langton and his brethren in office. During the Reformation time, on the other hand, there ranged the impressive figures of the Church Reformers, and capable monarchs, against the Roman Church degenerated. In the Cæsarism of Papal mould, affected by Charles I., appear both aspects at once—Kingship and Church—in their distinctive being, interverted. The legitimate kingship exhibits, in this embodiment, the direct contrary of the duties of a monarch and the Head of a Church "national." The overwhelming sense of this it is which paralyzes the arms of the conservative and moderate majority of the nation, and leads it to a passive resistance*

to a fanatical minority to fall back upon the right of Society at large, which, at the setting-up of a monarchy hereditary, remained in reserve (*vide* pp. 29-30). On the ground of the declared sovereignty of Society (sovereignty of the People), a re-construction of State and Church order had now to be attempted.

II.—THE COMMONWEALTH.

The State, rendered king-less, has become a Republic, which they styled the "Commonwealth of England," so as to avoid employing a foreign and unpopular form of expression. An Act of Parliament of May 19th, 1649, declares the people of England "a commonalty and free State." The kingship and the House of Lords, as being "unnecessary and dangerous to the liberty of the people," are abolished by express resolutions of Parliament.

The actual power of the party which had striven for this result, was embodied, on the one hand, in a victorious army, and on the other, in a Parliament House, which, after the expulsion of the moderate members, only comprises those belonging erewhile to the extreme Left. By choice of the House, a Council of State was formed, whereof Lieutenant-General Cromwell took the actual conduct. The respective measures of Government proceeded, severally from the Council of State, the Parliament, the Council of Officers, or from the Lord-General direct. It had long been generally known that opinions in Parliament alike, and in the army, were widely at variance. But the dangers of the country, and the combination of efforts abroad, kept this irregular government together through many years. Cromwell recognized in the Long Parliament the only rightful bond of union between the past and the present. Only on the 23rd April, 1653, did he determine on its dissolution. The real

character of the rule, thenceforth, was the military dictatorship of Lord-Protector Cromwell.

An unbiassed judgment must allow that this administrator of the Realm did represent the State worthily. Whereas under the Stuarts, England had dwindled from her position of power, Cromwell stood forth pre-eminent amongst the rulers of the time. The crowned heads of Europe in turn brought him their homage. Army and Navy, Ireland and Scotland, obeyed as never before. The commercial policy of the Protector was, for long years, followed in England as a guide, even as he it was who first made England to be acknowledged as a Naval power. Men of capacity and repute were appointed to office, and genius and learning were patronized. Thereto came added the new maxim of government—religious toleration. Even to the Jews it was allowed, after having been excluded for well nigh 300 years, to settle again in England. This, and much besides, was a virtual exercise of the calling of monarch, in the place of the fallen dynasty.

There prevailed, however, throughout the land, a lack of contentment, even amongst the party in the ascendant. As with every victorious party, they, too, experienced the truth, that the actual ownership of the State-power had changed the position of the party. They found themselves in the possession of power, but in contradiction with the state of Society. The structure thereof, so far as it had shown forth since the close of the Middle Ages, stood at thorough cross-purpose with the ideal State of the democratic party. The latter had got built up out of a reputable portion of the middle-classes, whose private life afforded but limited experience in matters of State, and whose position, in respect of the Church, had only, by reason of the pressure exercised, led to a habit of opposing. Sturdy and victorious in the armed strife though they were, they

were not capable to determine the framework of the Constitution so that, in any way, it might be lasting. Still more was it evident that the demands of the "people" were impelled by opinions and interests standing widely apart.

The Royalist and Episcopalian party-groups, which, in their common misfortune, clung closely together, appeared now as the conquered party. The long ill-treated, but now victorious, party clamoured for the punishment of the "delinquents," that is, of all who had taken any part in the illegal measures of Charles I. The Commonwealth, with its unheard-of financial needs, ordained sequestrations up to the measure of its requirements, exacted considerable penalties to get clear of all claims, and took measures against the most seriously compromised, even to the sale of their estates. It is computed that between three and four thousand gentlemen cleared themselves, in this wise, of all claims, by paying a penalty, representing in round figures, £1,305,299. 4*s*. 7*d*.; the estates sequestrated are estimated at five times as much. From among the ranks of the State-Church clergy, some 2,000 were deprived of their benefices. Still exercising a certain influence on their surroundings, these groups were placed in an attitude hostile to the Government.

The Presbyterian centre party, violently ejected from Parliament by the triumphant Left, stood, in respect to the present Government, even like the old Royalists, in aimless discontent, and deeply embittered. Their clergy even refused to read out the ordinances of Parliament, in the wonted fashion, from their pulpits. In Scotland they were fighting again for the king.

In the more extreme parties of the Left, there begins a severance, from the time of their actual participation in the State. In one part the Puritanic zeal gets lowered to an

abstract democratic State ideal; in another part the religious zeal burns against "worship of images," and against the old episcopal hierarchy. Both remain equally unbridled in their particularism. But the stress of things had made them the party in the ascendant. The kingship was this time overcome in the heavy conflict, not through the "liveries" of the Barons, but through the sturdy convictions of uncouth men, military officers, who, in ever-increasing numbers, came out from their own class. This course of events had given to the middle-classes a highly exalted self-consciousness, with which the Government prevailing had to reckon. From all sides the "well affected" (as they were now called) begin to bring to bear their representations upon the State with a ceaseless array of petitions, amongst which "free Parliaments," as a matter of course, took foremost rank.

In this position of parties, the carrying-out of a "*self-government*"-system showed itself, forthwith, from the lowest range up to the highest, impracticable—a "self-government" in which the highest personal services to the State had grown up with greater ownership, the service of jurymen and local duties with the Yeomanry, into a habit of communal life. After the Civil War had rent asunder such coherence, it became evident that it was not possible to arrive at reconstructing the shattered framework in harmonious activity with the life of the *Communitates*.

The militia organization of the county, despite earnest efforts on the part of Cromwell, was irreconcilable with a standing army, whose service rendered, renown, and competency (as ever) was combined with deep contempt for a system of militia, which had shown itself so insufficient during the Civil War.

In the judicial-system, the continuance of Judge and Jury in civil matters was, indeed, possible. In criminal matters,

however, the Grand Jury, composed of the gentry, and the Petty Jury, composed by antagonistic parties, became an instrument wherewith the Republican Government was unable any longer to carry through its ordinances.

In the Police administration, there remained only, for a Republican Government, the alternative either to place able gentlemen in the commission of the peace, in which case a hostile majority was certain, or it must nominate new and inexperienced men, to whom the necessary authority was lacking. Hence, from its very beginning, the Police administration was the weak side of the Commonwealth. It went tolerably well in boroughs well affected to the Government. But in the counties the Protector was unable either to set aside the old elements to any considerable extent, or to exorcise the old spirit. The English sense of order especially led, in consequence, to a militarily-organized police rule, instead of a "self-government," according to the laws.

The financial system of the Republic demanded unheard-of means for the maintenance of a large paid army, rendered necessary, also, by reason of the relations to Ireland and Scotland. The old system of taxation, according to assessments made by the community, showed itself, in this intent, wholly insufficient. The Parliament, under these circumstances, resolved upon a monthly levy, amounting to £90,000, distributed proportionately over the counties, and an Excise rate on beer, tea, and an array of other articles of use, up to 5 per cent. The manner of taxation, on the whole, was not wrong, but was very exacting. Sinclair has certainly exaggerated the State requirements from November 3rd, 1640, down to November 5th, 1659, computed at £83,331,198, wherein £32,172,321 Land-tax, £7,600,000 tonnage and poundage, £8,000,000 Excise, £3,528,632 from sequestrations, £10,035,663 from sale of Church property, £4,564,986 from sequestrations and settle-

ments of claim in the case of Royalist "gentlemen," £2,245,000 from the sale of property of "delinquents." The wants of the standing army appear to engulf the whole public income. The new taxes pressed more heavily on the population than the Ship-money and all the ordinances of Charles I. Their legality was quite as contestable as that of the Ship-money. There remained, consequently, no other choice than to set, in the place of financial "self-government," the military police power as tax-collectors.

Still more inconsistently is the Church administration devised, inasmuch as, in the place of the overturned State-Church, the ideas, quite as intolerant, of the Presbyterians, had come to the fore. According to the ideal of a Church parliamentarism, each parish should have its priest and several lay-elders, and a group of parishes combined a district synod, with a presbytery of clergy and elders, and several district synods, a provincial synod, and, at the head, a general synod. This jumbled system of elective assemblies showed itself, however, just as questionable in respect of the Church as a constituted body as it was at cross-purposes with peace in matters religious. The spiritual electoral bodies exhibited speedily a greater spirit of discontent than the Episcopal system, and got just as much into conflict with Parliament. The detailed organization was only carried out in London, Lancashire, and in a few counties, and made itself so hated by its arrogance and intolerance, that just this very fruitless striving helped to smooth the way for the setting-up anew of the State-Church. Already the confusion existing in regard to matters ecclesiastical, had forced on the Commonwealth to adopt a system of toleration, saving with a few reservations against "Papists."

These relations rendered it impossible to carry into effect the administrative laws through the established organization of the *Communitates*. The Commonwealth was speedily

in as vehement a conflict with the "self-government"-system as Charles I. had ever been. The taxes imposed through ordinances were refused, and against such refusal no jury would pass any sentence involving penalty. In consequence, a High Court of Justice was constituted on the same lines as the Star Chamber, and several individuals are sentenced to death on account of their violent opposition. On similar grounds, the "Provincial Governments," in former times in use, are set on foot anew. The Realm, since 1655, is apportioned into districts, with eleven Majors-General at the head, mostly bitter enemies of the Royalists, and harsh and overbearing against the civil authorities. The military governor is responsible for the submissiveness of his district, *i.e.*, empowered to levy troops, to raise taxes, to inquire into the private life of the clergy and schoolmasters, and to consign to prison dangerous and suspicious persons, &c.*

All these circumstances combined, rendered it necessary that the State powers should be concentrated in one grasp, and the personage apparently suitable for this purpose was found in Oliver Cromwell. The ponderousness of the man, combined with untiring energy and personal courage, the hard, uncompromising manner in which he drives straight at his aim, are Puritanism incarnate. In conjunction therewith was a truthfulness of character and integrity of convictions, which has often, in later times, been questioned, by reason of the Biblical unction of his speech, which was the prevailing language of the time and of the party.** It is a pure misapprehension of the real state of things to suppose that the impossibility of achieving a regular parliamentary rule was attributable to the aggressiveness of such a protectorate, whereas, it was the inevitable result of the rending-asunder of the connecting bonds wherewith the parliamentary constitution is interwoven. He was himself as much quickened by the will to achieve it, as the

victorious party itself was ever urging on its accomplishment. The impossibility of a parliamentary government, with the needful foundation, brought together, at this period, seven infructuous attempts, which, in their impracticability, afford striking examples for all time to come.

The first Parliament of the Commonwealth, consists of the fragment of the extreme Left remaining from the Long Parliament, (the so-called "Rump Parliament,") from which was chosen a Council of State, comprising forty members. Opposed to this Council, and in constant conflict with it, is the Great Council of officers, wherein the staff officers constitute the Supreme Council; each company, or battalion, chooses two adjutants, or agitators, which form the Lower House. As the regiments are without chaplains, the officers and soldiers assume the office of preaching and praying. The army, organized on this footing, resists, by force of arms, every endeavour to disband it, or to diminish its numbers. On the other hand, the Rump Parliament had extended in number, in course of time, by means of after-elections, to 100 members. Being in possession of political power the House could never come to the determination to decree its own dissolution. Through its long continuance and the small number of members, and through the removal of the Upper House the Assembly loses more and more its representative character. It had, in fact, become nothing more than a committee of men of confidence, belonging to the Left, who now, as heretofore, constituted the minority in the land, and were only upheld by the army. Yet this House was the sole legal bond between the military dictatorship, and the people at large. In constant friction with the Assembly, Cromwell bided the time when the growing discontent, which must inevitably draw to a head, from the severe ordinances, the imposition of taxes, the misunderstandings, and, above all, the refusal to dissolve, on the 20th April, 1653, the moment

had arrived when in stern tones, he declares Parliament dissolved, and orders the Chamber, where the sittings were held, to be voided, and to be locked up.

A second preliminary Parliament, of 144 men of trust, is summoned by Cromwell, as Captain-General, to deliberate on the re-establishment of a civil power. The members were, by advice of the officers, and, apparently, on proposal of the dissident clergy, nominated only from the well affected. The Assembly met on the 4th July, 1653, amid fervent prayers, assumed the name of Parliament, and made a number of motions for the bettering of Justice, the introduction of civil marriage before the Justice of the Peace, (in relation to the marriage of the numerous dissenters), regulation of the Excise, abolition of unnecessary offices, and for future the abolition of Church patronage. By an over-hasty resolution to set aside tithes, all the other attempts were foiled. The honourable Assembly resigns its powers thereupon into the hands of the Lord-General. It had busied itself with proposals that concerned the middle-classes, but were not in sympathy with the higher-classes, and in hostility to the clergy and lawyers. The ingrained-enmity of the higher-classes gave to this preliminary Parliament the nickname of "Bare-bone Parliament," assumed from a London leatherseller, Praise-God-Bare-bones, a shining-light of the Assembly.

A third Parliament succeeds, in the year 1654, as an attempt at a Constitution on the single-chamber-system, as the democrats were unwilling to entertain the notion of a twofold-chamber-system. In accordance with the "resolutions" which the Long Parliament, in January 1650, had formulated in regard to the future Constitution, in the summons thereto the greater number of market-towns was omitted but the number of members for the county tripled. In his opening speech the Protector spoke of the "necessity of a

settled establishment, but which was not to be expected either from the 'Levellers,' who wanted to bring back everything to a system of equality, and to introduce, in matters relating to the Commonwealth, party rule; nor from the Sectarians, who, in matters spiritual, wished to upset all order and rule." But already in the first proceedings, there was manifested so violent a democratic spirit of resistance, that the Protector, on September 12th, 1654, declares that he had received his office from God, and from the people, that he did not intend to infringe the privileges of Parliament, but that necessity knew no law; he had, consequently, caused the doors of Parliament to be locked, and required from the members before entrance a written engagement, as to the recognition of his authority. The Assembly gives in, but in the further proceedings upholds its claims as a constituent Parliament. There should be in future short Parliaments, at fixed periods. Those empowered to vote in counties must be free-holders of 40*s.* yearly income, or having £200. In the boroughs it was to remain as through the past. The apportionment of seats was to be according to the size of the electoral district, consequently, there were to be 270 members for counties, 130 for boroughs, 30 for Scotland, and 30 for Ireland. The House has exclusively the power of legislation, and the imposition of taxes. As to the constituting of any kind of permanent body for the protection of existing legal order, there is no intention whatever expressed. The democratic constitutional ideas are exhausted in *one elected body*. The members of the Council were, indeed, nominated by the Protector, but confirmed by Parliament. At last the question whether the definitive introduction of this constitution required a concurrence of opinion with the Lord-Protector, was negatived by 107 against 95 votes; whereupon Cromwell, on the 22nd January, 1655, declares the Assembly dissolved.

A new constitution, on the twofold-chamber-system, comes into play during the fourth Parliament which Cromwell summoned on September, 17th, 1656. A condition precedent is, however, attached, that only those members shall be admitted "who by the Council shall be approved, and thereupon a certificate have received." In consequence, ninety-three members were excluded; later, however, after oath taken, they were admitted under the new constitution. There is manifested, already, the revival of a certain influence of property. There is, again, already mention of a "strengthening of the Government on the old and approved foundations." The Protector is allowed to name his successor, but is only permitted a suspensive veto in the matter of legislation. The Parliament is to consist of two houses; the "other House" (Upper House) of from forty to seventy members named by the Protector, and confirmed by "this House." On the 25th of March, 1657, a resolution is passed with 123 against 62 votes: "That his Highness may deign the name, style, title, and office of a King of England to assume, and the same to exercise according to the laws of this nation." Cromwell declares, however, after some delay, on the 2nd of May, his definite refusal of the title of King. On the 26th of May, the Constitution comes into force; on the 10th of December, 1657, the Protector makes use of his right of nomination by the summoning of sixty-three members for life, to whom, however, "public opinion" was unwilling to accord the dignity of a "House of Lords." As the hereditary Peers, with exception of about eight, were under the impression they were assuming a new dignity lasting for life, the Protector had to address his nominations to persons who, by their property, and party relations of recent date, owned a certain position in the army or in politics. Both Houses now meet on the 20th of January, 1658, the Protector opening the proceedings with the address, "My

Lords, and you the Knights, Citizens, and Burgesses of the Commons." On occasion of the first message "from the Lords there arose, however, a contradiction in the Lower House, (from the fact that now the ninety-three previously excluded in the discussion take part)—the proposition was refused. The discussion thereupon extended over many days, until, on the 4th of February, Cromwell dissolved the House, with the declaration: "He had not wished to undertake the Government without a number of Lords as intermediaries between him and the House of Commons, as a defence against tumultuary and popular tendencies. There came therefrom only strife, and no one was therewith content, he dissolves this Parliament, and may God be judge between him and you." On the 3rd of September of the same year, Cromwell relinquishes the cares of government, and is consigned to the tomb with kingly honours, such as up to then had never been shown to any legitimate monarch of England. Thereafter follows:—

A fifth Parliament, under the Protectorate of Richard Cromwell, in January, 1659. The elections to the new House are, however, followed out according to the old plan of summoning anew the boroughs hitherto excluded, and the older parliamentary ideas return anew in stronger force. The new Protector and the Constitution, in conjunction, get, in truth, acknowledged, but only after lively debates, and amid expression of universal displeasure. The Long Parliament is designated as a "handful of the House of Commons" and as an oligarchy, despised by all who love a free communal life. The "other House" is, for the present session, recognized as a House of Parliament, but with the proviso that it be not the intention to exclude from their privilege such old Peers who have shown themselves true to Parliament. After a few months, however, the vehement displeasure of the army, forces on the dissolution

of the Parliament. The Protectorate of Richard Cromwell is no longer acknowledged. The officers demand the recall of the Long Parliament dissolved by Cromwell. There follows accordingly:—

As sixth Parliament, the Rump Parliament, is summoned anew in May, 1658. The old Speaker, Lenthall, and about fifty members take their seats again, with the declaration: "That they, by God's grace, were again established in their liberty and the right of their sessions." They elect a Council of State, but cannot come to any determinate resolutions. In October, violent dissension breaks out with the army, touching the position of the civil authorities. The dismissed officers, by force of arms, prevent the meetings. Then succeeds an interval of violent rule on the part of the army, through a "Committee of Safety." By the settlement of their pay and the intervention of General Monk, external order is again established, the Parliament having to agree to receive anew the members who had been ejected in December, 1648. The Parliament, thus modified, still sat for a few months longer. On March 16th, 1660, however, with its own concurrence, "that the Parliament summoned on the 3rd November, 1640, be dissolved," a new assembly of Lords, Knights, Citizens, and Burgesses is summoned on the 25th April, 1660, to which 400 members for England and Wales, according to the electoral laws of 1653, shall be elected. Then succeeds accordingly, as the

Seventh Parliament of the twelve-year-old Commonwealth, the "Convention Parliament" of 1660, which determined for the re-installation of Charles II. in the kingly dignity.

As far as any constitutional advancement of England is concerned, the Commonwealth remained just as fruitless as it was for all the institutions of "self-government."

III.—THE RESTORATION OF THE KINGSHIP UNDER CHARLES II.

is founded on a natural re-action of the well-to-do classes against the rule, till now prevailing, of the army and a puritanical minority.

In the whole course of English history, the social privileges of the Lords, the old gentry, the State-Church clergy, and of the lawyers had never been so grievously infringed as under the Commonwealth, and in reality, as it now seemed, without any sufficient ground. The danger of absolutism had been averted by the tragical fate of Charles I. The impossibility of such endeavours being urged anew seemed irrevocably fixed. The united views of the time aim visibly at a change. The death of Charles, but particularly his kingly bearing at the last hour, had already diverted from the victorious side, the minds of the more moderate. Moderation and justice seemed now, to many men of the time, to abide with the other side. Moreover, the manifestations of a re-action on the part of the propertied class are well-nigh always alike. Where the interests of Society are directly engaged, the re-action can only happen on the ground of self-consideration. The expression of faithfulness to the monarchy involving no longer any risk, knew no longer any bounds. Amid the rush of addresses now rife, the Universities, being the great nurseries of theology, come to the fore. Oxford declared that it would never swerve from those principles, according to which it was in duty bound to obey the king without reservation or limit. At a solemn celebration, the theory of Filmer concerning the principles of paternal monarchy were proclaimed. The truest expression of the period lay certainly in the elections of the "Convention Parliament," whereby (in conformity with the system of 1653 favourable to the Presbyterian party) a Lower House

was brought together, consisting of partly Royalists, partly Presbyterians, with a small sprinkling of Republicans.

In the first period of the Restoration the Royalists and the Presbyterian centre-party work still in unison in enforced moderation, having regard to the Puritan army still afoot. Their aim in common is the re-establishment of the parliamentary constitution, in other words, the solemn recognition of the hereditary monarchy, and the sanction of its inviolability by punishment of the "regicides," the setting-up anew of the Upper House, and also of the hereditary Lords and the Prelates, re-establishment of the Lower House, representation of the Counties and the ancient boroughs, whereby the right of voting is restored to the market-towns, and withdrawn from larger towns, such as Manchester, Leeds, and Halifax; finally, the re-establishment of County organization, with the setting-aside of the military governors, and with a re-organization of the militia as the armed force of the propertied classes.* To these are adjoined certain fixed regulations bearing on property; the releasing of Knights' fees from feudal burdens, as also the restitution to the Crown and Church of the sequestered and sold estates. The removal of feudal burdens had already been introduced under the Commonwealth, and could hardly be recalled. The Excise duty on beer, already introduced under the Commonwealth, which was now extended to other classes, was allowed to the Crown as a set-off. As a project of law, concerning the restitution of estates to individual "delinquents" was being protracted, the original owners by exercising their own powers, took possession by main force, ejected the new owners, whereby, of course, innocent parties came to grief, and many of the sufferers went empty away.

After the settlement of these points, the Puritan army is, without any effort at resistance, disbanded. Thereby the

higher classes of Society were re-established in their proper position, to the former holders of Knights' fees, important releases were granted without payment, and past wrongs, as far as possible, were redressed. With rightful judgment, the Convocation Parliament of 1661 was now, at the close of the year, dissolved. The new elections bring together, under the re-established influence of the Lords and the old gentry, an almost entirely Royalist assembly.

Although the Restoration had now been set up, through the loyal co-operation of the Presbyterian party, the ruling party, from now forth, feels no misgiving about declaring, subsequently, the constitutional centre party and the Puritans as "rebels," and in persecuting all parties of "resistance" in Church and State, as dangerous to the State. In comparison with the behaviour of the Commonwealth in respect to the "delinquents," they fancied that they remained in arrear in persecution, if their political adversaries were merely ousted from their offices in Church and State, according to the system of "purification" of the officials, as is customary in modern schemes of Continental constitutionalism. As the majority of these officials, however, according to the system of "self-government," are corporate officials, this only became feasible by requiring an oath, on entering office, which should exclude every sincere opponent from such office. The "Act for the regulation of Corporations" requires an avowal of the unlawfulness of resistance, as a condition precedent to admission, and performance of every civil office. In future, persons chosen have to receive the Sacrament according to the Anglican rite, one year before entering in office. In like manner, through a new Uniformity Act, the recognition of the Anglican Prayer Book, and the disavowal of all "resistance," is made the test for the clerical body, so as to expel the Presbyterian clergy from their livings, notwithstanding all solemn assurances given. Competent police

regulations against the so-called "conventicles," *i.e.* the religious services of Dissenters; enactments for the limitation of the right of Petition, and for rendering more stringent the inspection of books, form the wonted machinery of political reaction, just as in later times on the Continent.

The ultra-royalist expressions indulged in, the violent measures resorted to against "resistance," against the Press, and the right of meeting, may easily awaken the notion of a retrograde movement as regards parliamentary rights. But, despite the ostentation manifested by the High-Church party, the fact could not be blinked that the Restoration was a restitution of the kingship effected by the propertied classes, which, on that very account, arrogate greater pretensions than ever, both in the Upper and Lower House. The Peers had already, under Charles I., (1625,) established the rule that each member of the House was to receive a summons for each session, inasmuch as the House had at that time refused to sit without the Earl of Bristol, who had been omitted from the summons. The Lower House had already, under James I., established the principle, that the boroughs once summoned were to be summoned ever after. Now the right of the Crown to create new boroughs disappears. James I. had summoned twenty-seven new ones, Charles I. fifteen more. Under Charles II., only the County and City of Durham and the market-town of Newark were adjoined, but no more were added to the fixed number of 513 members. The reign of Charles II. appears, at any rate, judged exteriorly, to have been normally parliamentary, all legislation at this period being grounded on legally elected Parliaments. No attempt is made, through the agency of the Council, at any exceptional legislation. Equally uncontested remains the right of taxation: no underhand attempt is made at raising customs-dues, benevolences, and forced loans. Parliamentary control is exercised more effectually than ever.

Less frequent transgressions happen in connection with the administration than under the Tudors. The possibility of such excesses was, in the main, staved off, for even the most exalted worshippers of the Divine right of the Crown, and upholders of non-resistance, were fain not to give any countenance to the existence of the Star Chamber, or of the High Commission Court. The influence of the Lower House is considerably extended in respect to matters financial, especially through the so-called "Appropriation Clauses." In the midst of the intrigues of the Court, and of parties connected therewith, there ensues a change, 17 Charles II., c. 1, according to which, to grants of subsidies there is appended a stringent appropriation clause, whereby the Lower House intervenes in the budget of State expenditure, and gains thereby an influence, but slightly apparent, yet lasting over the whole range of the State-administration. No less characteristic of the period are the dissensions touching the question of the privileges of the two Houses respectively, as conveying a sense of the general security. The earnest-minded steadfastness of an Eliot and a Hampden, and the headlong determination of the Puritan partizans, had left a lasting impression on the general mind, that the line of demarcation of the kingly authority dare not be overstepped by any minister, without imperilling his life, nor by any king, without risking his throne. Charles II., and his ministers, were perfectly clear as to the state of the constitutional question. The restoration of the kingship, was by all parties understood to mean, the restoration of the ancient prerogative as limited by the "Estates," just as it had existed previous to the encroachments of the Stuarts. The Great Charter, the Petition of Right, and the old constitutional laws, were recognized as being in continuance, partly in express words, partly in actuality. It is characteristic, further, that in the very enthusiasm of their loyalty,

both Houses are intent on establishing, with unheard-of zeal, the strengthening and the extension of their personal privileges. In 15 Charles II., the House adverted to the criminal proceedings taken against Sir John Eliot and his companions, during the reign of Charles I. With full concurrence of the Upper House, these proceedings were declared null and void; and the absolute irresponsibility of members for their speeches and acts in the House, was established by express "resolutions." As regards the carrying-out of any exceptional criminal jurisdiction on the part of the Crown, against members of the Highest Council of the Crown, it is for ever done away with, and freedom of speech has never since then been questioned.

The position of the kingship, as compared to the claims of Parliament thus expanded, was by no means so favourable as might have been expected from the ultra-royalistic theories. But, meanwhile, there did exist, as under the Tudors, a wide-extending influence of the king, by reason of his spiritual supremacy and his temporal prerogative; through the nomination of the Council and of the Judges of the Realm; by Acts of Grace, and by influence exercised personally on the members of the Upper House and Lower House, and on prominent local offices. The future of the monarchy depended on the use which the kingship restored might make of its renewed powers.

The present situation of the Realm, which more than ever demanded a Royal spirit of rule, is characterized by the fact that the upper-classes are restored to the enjoyment of their influence, but use it only to persecute, without measure, their opponents in Church and State. This party-persecution was no new thing, but heretofore it had only aimed at single individuals. Now, however, it was directed by thorough-going legislation against parties at large. Formerly it had its head-quarters in the Upper House; now, more especially,

in the Lower. Therein one might perceive how gradually the centre of gravity was being displaced, and how much more dangerous the influence of extreme parties might become in an elected assembly, so far as legislation and administration were concerned.

The power which alone could hold in check this party-spirit was the king, personally liked and influential, and anew in a position to exercise his Royal privilege of protecting the weaker side, all the more urgently impelled so to do, seeing that he owed his throne as much to the persecuted middle-party as he did to the persecutors themselves. He was bound in honour to afford the solemnly-promised protection to the parties which, as being the majority in the Lower House in December, 1648, and which, as last remnant of the Upper House in January, 1649, had stood forth manfully for the right of the king, against the violent acts of the army.

But for the second time, at a decisive period, we come anew upon the mode of thought displayed by the Stuarts. Disregarding his Royal calling, Charles II. has exercised the office vouchsafed to him by Providence, with a reckless frivolity, the like of which is not to be met with in the wide range of English history. Of engaging exterior, but hollow-hearted, devoid of principles and morals alike, to this Stuart the Throne was merely as a fountain-head of social delights, up to the measure of his gratifications. More hurtful than all the adversaries of the kingship was, in view of the future, the unexampled fashion in which, since the fall of Clarendon's Ministry (1667), the office of king was exercised, in every regard, in the person of Charles II.

The right of nomination of the Council leads, in the hands of Charles II., to the transformation of an honest Ministerial Council into that of a "Cabinet" devoid of conscience. Even after the withdrawal of the jurisdiction of the Council, this "Cabinet" retained the authority to decide as to

important measures of internal politics, and as to the whole range of external politics. Historically proved is the use made thereof by the "Cabal" Ministry, so called from the initials of the names of the five ministers, as likewise under the administration of Desbury and Danby, how, year by year, the interests of the land and of the Church national are trafficked away to Louis XIV., in consideration of payment from secret service-money. The question of Protestantism stood not at this time any longer prominently in the foreground, but was traversed by the great questions of European equilibrium. To the natural union between England and Holland, there stood opposed a petty jealousy prevailing in England. For diplomatic intrigue there existed herein ample scope. When, in 1668, the king found his Exchequer empty, and his Parliament in a war-like frame of mind, he conceived the plan of entering into secret transactions with the king of France, that might lead up to the procuring of moneys. In the course of the confidential correspondence, the religious question gets mixed up with the question of money. In January, 1669, the king summoned Clifford, Arlington, and Arundel, to a confidential conference at the Duke of York's, and explained to them how painful it was to him not to be able to confess to his true belief. These transactions lead, after about a year, to a secret treaty, (1670,) in which France promises to pay a yearly stipend of £200,000, by way of covering war expenses, for the promised support against Holland, and for the suppression of the discontent in England. After the French advances are squandered, Charles (1674) applies for £400,000, with the hint that otherwise the Parliament must be summoned which would declare straightway for a war with Holland against France. Louis, in the meantime, pleads lack of money, and affords only one-fourth of the sum asked for, on promise given to prorogue Parliament from November, 1674, to April, 1675. In subsequent

proceedings (1678), Charles II. holds to the policy of selling his neutrality at the highest bid obtainable from France. While the unmeasured aggrandisement of France is filling Europe with forebodings, and Parliament, eager for war, is proposing an alliance with the States-General, the king answers with a refusal, as being a matter not in the competence of the House to deal with. In this state of things, Louis agrees to a further subvention of 2,000,000 livres for 1681, and a yearly allowance of 500,000 crowns for the two years next following. While the king is expressing to Parliament his willingness to begin a war with France, and asks subsidies for that purpose, he is actively employed all the time in trying to sell his services to the King of France at the highest possible price. As the legal responsibility of the Ministry of State, on the ground of the violation of the law and an act of treason of the king himself against the country, was insufficient, it may well be understood how Parliament arrived so far as to comprise in their grounds of impeachment, the "honesty, justice, and utility" of the ministerial administration, as was prominently urged in the case against Danby, and further as to the notion of a so-called political responsibility of the Ministry.*

The right of appointing the Judges of the Realm had been already availed of, by the exercise of personal influence on the part of the Court, so as to make of the Judges ready instruments of unconstitutional rule. The second period of Stuart rule, outdid even the first in this particular. During this reign, three Lord Chancellors, three Chief Justices, and six puisne Judges were, on political grounds, deprived of their office, and all important offices were filled with subservient followers. With such a staff of Judges, the pliant laws relating to high treason, insurrection, libel, and the press, were turned to evil account in the most flagrant fashion; the judicial murder of Lord W. Russell and Algernon Sidney

having been planned and hastened through by the king himself. From this body of Judges the brutal intimidations of the jury characterizing this time originated. The crafty manner of dealing resorted to by Charles prevented such manipulations of justice from becoming too public. In the trial of Barnadistone, however, the manner of acting adopted by Charles, whereby certain counsel, who had been acting for him, were directly before the verdict, promoted as Judges of the Court, might easily be appreciated. When the trials in connection with the "Popish-plot" began, Chief-Justice Rainsford was dismissed to make room for Scroggs, who certainly was thoroughly deserving of the confidence reposed in him, inasmuch as he furthered the false accusation, now in one direction, and now veered round to the other, and by staving off from the Duke of York the weight of a serious accusation, in suddenly discharging the grand jury empannelled to try the charge. Later on, Pemberton is elevated to the post of Chief Justice, mainly for the purpose of directing the trial of Lord Russell, whom he contrived to lead to the block, without, however, satisfying completely the expectations of the Court. Still more weighty for the Court was the campaign subsequently set on foot against the municipal charters which was at first conducted under the able leadership of Saunders, after which, he found his promotion to the Chief Justiceship. Charles urged moreover, in person, the judges to pronounce in his favour, whereby the City of London found itself condemned to the loss of its privileges and to a fine of £70,000.*

The personal influence exercised by the Court on Parliament, and the appointment of the staff of officials, was finally treated by Charles in such wise, that it procured for the seventeen years' Parliament the nick-name of the "Pensionary Parliament." The bribing-system followed out by France had been brought to bear on prominent members

of Parliament, albeit on a very moderate scale, as compared with the sums hauled in by the king. Not less hurtful was the system of bribery resorted to throughout the whole range of the offices in gift of the Crown. The character of the functionaries then employed is made clear from the deeply-rooted hatred of the parties between whom these officials found themselves placed, without any kind of support from the king. It is significant, however, that never has the name of the king and the "will of the king" been mentioned more familiarly by statesmen, and clerical authorities, than under the dishonourable system then prevailing, of which Macaulay, in one of his Essays, says with truth: "Honours and public charges, peerages, baronetcies, regiments, frigates, ambassadorships, governorships, commissions, leases of large estates, contracts for equipments, supplies, munitions of war, letters of grace on account of robbery, murder, and incendiarism, were sold at Whitehall, scarcely less openly than asparagus at Covent Garden, or herrings at Billingsgate. Brokers were constantly on the prowl in the ante-rooms of the Court for customers, and amongst these the most successful in the days of Charles were the loose women, even as in the days of James, and the clergy. From the Palace, which served as head-quarters for such a plague, the contagion spread through every department and every rank, and had nurtured everywhere indolence and disorderliness."*

This mode of treating the Royal prerogative sufficiently explains the gradual transformation which, in the course of a seventeen years' Parliament, makes it observable in the feeling of the land, in the subsequent elections, and in the voting in Parliament itself. The malpractices of the administration are first felt extensively. Legislation, in a party sense, operated in itself more incisively than the violent actions of by-gone times between aristocratic parties. Such laws when in operation made themselves

sensibly felt through the party in the ascendant. Still more effectual, in this regard, was the "self-government"-system. In the sphere of communal life the unjust and worrying legislation was felt in a far different degree than within the range of official life. In the active life of counties, boroughs, and parishes the ruling-classes gained for themselves a sense of moderation, which a kingship, disregardful of its duties, had not been able to maintain. Through the neighbourly tendency springing from communal life, the party-spirit that sunders Churchmen from dissidents gradually gets reconciled. Amid the abuses rife in the administration, there gets reawakened a sense of legitimate liberty, that brings to mind the opening period of the Long Parliament (1640). The protracted duration of Parliament was well calculated to guarantee to the Royalist party the full measure of its influence. In 1667-1670 already, party-spirit has attained to its highest pitch. At the close, a retrospect taken of the numerous impeachments of Ministers and the mistrustful administrative legislation, affords a striking contrast to the feeling displayed at the beginning of the period.

The increasing opposition of Parliament, however, Charles II. undertook to surmount, after his way, by corrupting the electoral bodies. As the bribing of the members of Parliament no longer sufficed to secure a majority in the Lower House, it became consequently necessary, in order to procure one, to effect a transformation in the electoral bodies. The county elections offered no ground to work upon in this respect; but the boroughs and market-towns, in the varied structure of the small municipalities, offered a free hand for exercising an influence from without. These town elections had long afforded the landed gentry a personal influence still greater than in the case of the county elections, yet not to every Lord or Squire, but to such a one only as would strive to

uphold the interests of municipality. They remained still the head-quarters of dissident opinions, wherefrom the opposition country-party drew their main strength. In order to effect a change, the king resolved (1681) to fashion the municipal charters in the interest of Court influence. By the writ of *quo warranto*, which he had hunted up from the administrative system of the Middle Ages, "the forfeiture of the privileges, on the ground of misuse, or contravention of form," is availed of. The older charters were thereby quashed, to be replaced by fresh ones, after an oligarchic pattern, in the shape of municipal boards, on a more restricted scale, which, just as with the municipal offices, were to be revocable at will of the Crown. Many boroughs anticipated the sentence by voluntary surrender. In the further application of this proceeding, Lord Jeffreys deprived, in London alone, 1800 free-men, fully qualified as electors, of the right of voting, and was still blamed for not having made a more thorough sifting. Within a few years 200 new charters, conceived in such sense, were granted, whereby the chief appointments were, according to the new charters, usually reserved to the Crown.

From these events, it will readily be understood how, in the Long Parliament, the opposition of a land-party manifests itself more boldly against the Court. The reply, signified in reference to the misuse of the power of the Courts of Law, was the Habeas Corpus Act, and the recognition of the fundamental principle of the non-responsibility of the jury in a celebrated judgment of 1679.

IV.—THE EXPULSION OF THE STUARTS,

after certain interludes, follows under these circumstances. The opposition in the last years of Charles II.'s reign had proceeded to serious measures. The Bill for the exclusion of Catholic heirs to the Throne, set in motion by one faction, leads from 1681 to a scission and retrograde movement.

The worst mistake committed by the Opposition was the scheme advocated by Shaftesbury, to make the weak-minded bastard, the Duke of Monmouth, heir to the Throne. The opposition had advanced to such a position, from which it threatened the hereditary monarchy, and foreshadowed struggles for the Throne, with which the most awful memories of the nation were bound up. And here, for the first time, that fluctuation of party manifests itself, which continues, periodically, even till to-day. An electoral struggle, such as had up to now been unheard of, developes, in which the respective parties are designated as "Petitioners," and "Abhorrers." From love of vituperation, the respective opposition parties called the Royalists, "Tories," the others branded their opponents as "Whigs." One soon got accustomed to these nicknames, made use of on either side, and accepted the designations assigned by the rivals, which have continued to live on to our own times. But the adherents of the Exclusion Bill (Petents) lose their majority, and a strong reaction sets in, which brings about the mighty campaign against the municipal charters and parliamentary boroughs, and keeps it in continual swing, so that Chief-Justice Jeffreys was able to boast of making the town charters fall before him, even like the walls of Jericho.

In the midst of the favourable current, *James II.* ascended the Throne, with a speech, well received on all sides, wherein he specially promises the English Church his goodwill, and Royal protection. The newly elected House declared, in Parliament, every proposal for any change in the succession, to be high treason, and after the suppression of the Monmouth Insurrection, voted £700,000 for a standing-army. The loyalty of the landed gentry, the despondency of the intimidated municipal corporations, a quickly formed standing army, with a submissive corps of officers (comprised mainly of Irish and English Catholics), an unprincipled body of

Judges, the High-Church clergy, with their article of belief in Non-Resistance, the disunion of the Protestant sects amongst themselves, laid bare a prospect nothing less than unfavourable. But the triumph which James had easily enough carried off over the rash insurrection of Monmouth, only brings his own plan quicker to a head—to reward the attachment of his people by the ruin of the National Church.*

The weak spot, which James thought he had found for his plans, after a precedent under Charles II., lay in the dispensing power of the king. Such was looked upon as indisputable, as the right of pardon in ordinary criminal cases, but beyond that, as regarded the sphere of laws administrative, was open to question. The Constitution seemed still to afford scope for James's plan, of reinstalling the Church of Rome, and thereby, of leading the nation to the notion of a *jure-divino* king. A condition precedent for the carrying-out of the scheme, was the setting-aside of the judicial safeguards, viz., in the jurisdiction of the courts of "common law" by which the authority of the statutes is kept up against all encroachments by way of ordinances. But such safeguards, James II. knew how to undermine, in a more inconsiderate fashion even than his predecessors. In the course of three years he brought about the dismissal of twelve judges, and the elevation of the uncouth, dishonest Jeffreys to the post of Chief Justice, Lord Chancellor, and President of a High Commission Court, restored against direct prohibition of law. As a preparation to the principal action, for form's sake, a criminal prosecution was instituted against a Catholic colonel, who had been nominated, under Royal Patent, with dispension from the Oath of Supremacy. The decision of the Court of Law declared for the validity of the nomination, as the laws "of the king were his own laws." After the Judges holding a different opinion were previously dismissed, fresh Judges, amongst whom, two Catholics, were raised to the Bench.

James called this a simple regulation, in order that the Judges might be "all of one mind."* On the ground of this forestalling of justice, there followed forthwith the dismissal of sixteen Lords-Lieutenant, amongst whose successors twelve Catholics were nominated. In like manner, one-third of the Sheriffs' offices were filled, in all haste, by Catholics. At the same time, the entire County-militia was suspended by Royal ordinance. The necessary power for any eventual employment of force, James thought he had secured, by means of his standing army, officered by Catholics, for which the Parliament had so willingly granted the means. Through the High Commission Court, which had been established in contravention of law, with Lord Jeffreys at its head, the necessary disciplinary power for the Catholicizing of the clergy, seemed to have been gained. Forthwith one observed, on every hand, the Regular Orders appearing, and the Catholic clerical dress. As the final stroke followed, by virtue of an ordinance, the setting aside of the State-Church, under the name of a "declaration of freedom of conscience," through which, by virtue of the Royal prerogative, the subjects were "dispensed" from the recognition of the statutes enacted for the protection of the English State-Church.**

However powerful and clever these measures might be, according to the views of the astute adviser, they were founded on a misconception of the actual position of the constitution, in which the line, as well as the object, of attack, had become an entirely different one from that of the generation preceding. The Anglican Church had come forth from the strife against "Papists" and "Levellers" quickened in strength. It had become intertwined firmer than ever with the intimate feelings of the ruling-classes; had arrived at a truce with the Parliament, had become "the standard-bearer" of the Royal party, in and through the Restoration; and in all points, through new constitutional laws, "estab-

lished." On the other hand, the power of resistance in the ruling-classes had increased, through the further development of "self-government;" the militia, as the only legal force of defence of the land, and their equipment, was in the hands of the gentry, and against that militia, from the sheer fact of its want of a homogeneous body of officers, a regular army could not hold head. It was, in fact, impossible to have entered upon a more perverted or hopeless track than this. The State-Church clergy, in their clerical and political position of influence; the gentry, in their attachment to the Church of England, and to the organization of the militia; the towns, in their Puritanic recollections; the entire nation, in its jealous pride of the National Church, were mortally offended. The first symptoms of opposition, manifested exactly by the party of "Non-Resistance," especially amongst the Bishops, might have duly warned the king. But James, involved in his belief in the councils of astute advisers, a very pessimist in his appreciations of men, hard and wrong-headed even to folly, drives headlong for his goal. It was an exceptional incident which now compelled exactly the most zealous preachers of absolute obedience, to afford a decisive example of disobedience. The Archbishop and Bishops were, on account of their steadfast refusal to read out from the pulpits the declaration of freedom of conscience, put upon trial, but declared "Not guilty" by the jury, and in the endless rejoicing of the people over this acquittal, there was effected a universal uprising of the nation.

The consequences, apart from the dramatic incidents, are, the union of both parties holding for the theory of "resistance" and "non-resistance," into an armed resistance, the invitation to the Stadtholder of the Netherlands, the flight of the monarch, abandoned by all his followers (December 23rd, 1688), summoning of the "Convention Parliament," transference of the Crown (now become "vacant") to the Prince of

Orange, and the formal contractual arrangement between the Prince and Parliament, whereby all encroachments of the prerogative are declared unlawful. Just as of yore, in Magna Charta times, the two great parties of the Middle Ages, the Prelates and Barons, found themselves standing side by side for a common aim and purpose. As at the Restoration of 1660, the Presbyterian party had to afford a helping hand to the Royalists, so did the Tories of 1688 find it necessary to stand by the Whigs, for the purpose of expelling the Stuarts. This "glorious Revolution," as it was now styled, is not based on any party programme, but on the recognition of antecedent conditions, held in common, within whose range both parties alike find free scope. This twofold action has, also, in the transference of the Crown to William and the daughter and heiress of James, found involuntary expression. The ground whereon the two opposed State ideals now found themselves placed, was the furthering of a government of the State and the Church in accordance with the "law of the land." Upon this ground both parties arrived at formulating a fundamental principle, mutually agreed upon in the 13 articles of the "Declaration of Right," which affirm the suspension and the dispensation of laws, the maintenance of a standing army, the raising of taxes without assent of Parliament, and other abuses of the prerogative, as illegal.

The closing drama of the Stuarts, and of the previous generations, have afforded for the life of the nation a gigantic advance in consciousness of knowledge made sure of matters bearing upon the State, and of general human interest. Free understanding, upon which everything depends in the system of a free State, such as the nobility at the time of Magna Charta already possessed, comes back anew in a higher degree in the present generation. In the cavaliers, and in the heroes of the "resistance," in Hobbes, as well as in Locke, is mirrored practical experience in actual State

government. It is in the schooling of communal life, and its interdependence with Parliament, that is conveyed to the parties, for better and for worse, the understanding of matters of State, and of an actual influence upon the State. It is the habit of communal life, and its morally purifying energy, which repels, from the very foundation upward, all corruption in the State, such as the Court of the Stuarts had spread around. As in earlier periods, however, so in this time so full of strong emotions, a steady improvement of the law has taken its onward course, which, in respect of the further development of the Constitution, fashions the determining groundwork. We close, consequently, this period, abounding in action, with the:

V.—CONSOLIDATION OF THE RELATIONS OF THE "ESTATES," on the foundation whereof, the English parliamentary constitution was destined to reach the highest point of its activity.

With the period of the Tudors and Stuarts there is comprised a space of time filling six generations, which already, during the Middle Ages, nearly indicates the periods the great evolutions of the "Estates" are completed in, throughout the European civilized world. Lords and gentry have, during this interval, drawn continually closer together, in order thereafter to assume the special position of a ruling-class. After the ruin of the great war-like Barons, the ownership of the nobility, during the period of the Tudors, was grounded, not so much on a mediæval mighty possession as upon the considerable grants out of secularized abbey-lands, and other combined ownership of the newly-ennobled gentry. The influential participation in State affairs comprised in the main in the Peace Commissions, which in great measure are combined with the administration of the militia. The ordinary framing of these commissions must

consequently thoroughly establish, in the long run, the legal position of the higher classes in analogous fashion, as formerly, the organization of the feudal militia. In the landed property of the Lords there was no longer any connection with a neighbourhood where gentlemen and farmers were wont to treat themselves as retainers of some ancient "gracious lordship." The manors of these lords were, like others of the landed gentry, increased through copy-hold property, and many other kinds of possession. When in 1640 the Long Parliament met, it was computed that the combined income of the members of the Lower House amounted to £400,000, and their landed property was three times higher in value than that of the Lords.

In the Stuart period, this new state of things found expression in a very numerous elevation to the Peerage. James I. had created 62 new Peers; Charles I., 59; Charles II., 64; James II., 8; in all, 193, which, after deducting 99 extinct Peerages, leaves the number of about 150 temporal Peers. This number must already lead to the inference that the Peerage was looked upon as a rank of "precedence" among those being of the class of gentry, as hereditary and granted by patent, and was not regarded as a distinct estate of nobility. Already, at the meeting of the Long Parliament in 1640, it was observed that two-thirds of the then existing Earls and Barons had only been created within the last generation. Greatly accelerated was the course of this development by James I., who, amid his financial difficulties, began to sell Peerages for amounts ranging from £10,000 to £20,000, and of such offer four "Earls" availed themselves in one year. The lack of money urged James to increase still further titles of honour, by creating the dignity of Baronet, which was contrary to all English rule, as being a mere title not connected with any public duty. The original fee for this title was £1,095, and in the course of this period

this title was granted to about 900 persons, as a kind of connecting link between the political nobility and the wider range of gentry.* The Restoration completed the fusion, by the entire abolition of the feudal connection between title and property, 12 Charles II., c. 24, which declared all property held previously on feudal tenure, to be converted into common free-hold with all legal consequences. At the close of this period, the English nobility has become converted into a raised class of gentry.

This gentry now expands in each succeeding generation, through its possessions and the public duties wherewith it is bound up. Under Henry VIII., the law as to freer testamentary power, and, in the 17th century, the Civil War, had led to manifold change of property, whereby the town populations, grown wealthy, are found largely represented. The new proprietors, first politically, by Commissions of the Peace and Membership in Parliament, and, after a time, socially also, get classed with the old gentry. As Commission of the Peace and Membership in Parliament comprise the leading men in towns, these are more and more aggregated to the gentry. The honorific designation of Esquire, which, at the close of the Middle Ages, was only granted occasionally, spreads to the wealthy classes in towns, and to people of good education and following a liberal profession.

The free-holders of the county having a vote, and the burgesses in municipal corporations, now appear in conjunction with this extended gentry, as a politically qualified middle-class. In the county, this was limited by the ancient qualification of the Jury to 40s. income from free-hold. But these free-holds got multiplied considerably from the fact that the shilling had decreased in value by one-third. The county free-holding class appears, at any rate during the Civil War, very numerous, and through

the Civil War itself quickened into a firmer consciousness of its own power. It has, from time to time indeed, exercised a decisive influence in parliamentary elections, which it retained likewise, in some counties, after the Restoration. More decisive, meanwhile, was the structure of the electoral franchise in boroughs, which, by reason of the charters granted between 1681-88, would have assumed a very oligarchic character. At the last moment, James II. withdrew these measures; the greater part of the boroughs, however, assumed thereby a position of varied character, which had already obtained of yore, and through the older charters of incorporation. In the main, the electoral franchise was already limited to a narrower group, ("select burgesses,") which comprised within itself the entire town administration, completed its number chiefly by co-optation within their body, and thereby formed a kind of urban patriciate. For the landed gentry, there existed, in these electoral groups, a still wider field for exercising influence than in the county elections. The influence of the office of Justice of the Peace, and of the control of the militia, of varied family connection and acquaintance, made itself felt herein on an extensive scale, whereas the influence of capitalists was restricted locally, merely to London and a number of larger towns and emporiums of trade. At any rate, there were numerous seats to be found for the Whig gentry among the class of petty burgesses in the boroughs. Besides also, in this group of the electoral bodies, the principle remains established, that taking part personally in communal offices, and in the burden of the taxes, grounds the electoral right; the total inequality of the electoral bodies has, meanwhile, in this respect, on all occasions, opened a wide field to agitation, and has induced manifold fluctuations in the combined result of elections.

The classes not electorally qualified in town and country

comprise, finally, indeed, a group personally free, similarly situated, in regard to family and property, to the higher classes, but without any active share in the determination of the will of the State; conformably with their relative exemption from personal duty in important functions, and the non-assessment of the humbler-class to the State and parochial taxes. This class also seems somewhat raised, socially; the last remnants of serfdom disappeared under the Tudors. Copy-holders, from being mere farmer-peasants, have become, partly hereditary holders, and partly, at least, protected against arbitrary ejectment; the real burdens and dues, on change of ownership, keep up a semblance of the property not being wholly free. The position of labourers without land has been raised through the increasing prosperity, and through the protection of the guilds, which the legislation of the Tudors assigned as an equivalent for their control over trade and labour. In respect of the working-classes without means, the legislation of the Tudors assumed an earnest solicitude on traditional lines. The Restoration also exercised only a pressure against political feeling, but not against the social position of the lower-classes. No inclination for the extension of the control of labour is displayed. Even making allowance for unfavourable periods, and the decline of some branches of industry, wealth and prosperity have increased, even in the 17th century, despite the Civil War.

Regarded as a whole, English Society presents, at the close of this period, a structure with lordly and dependent points of contact, gently graduated; at the summit, the Peerage as culminating point of a landed gentry, wider spread and firmly fixed in the county, and of a class of gentlemen still more widely extended; then again, the entire ruling-class, with a preponderating influence over the

electoral middle-class; the entire population held together on the groundwork of equality, of property and domestic right. In this State structure, the foundations of the Estates were so immutably laid, that the violent acts of Charles I. and James II., of Cromwell and the Puritans, went by without leaving any visible trace of Revolutions; two of Royalist, one Republican, and one of Social cast.

ADDENDA.

*208) The Statutes of the Realm contain the legal data of this period. Vol. IV. a. V. VI. VII. a. Bearing on the time of the Commonwealth: Acts and Ordinances during the Usurpation from 1640 to 1656, by Henry Scobell. Of the Parliamentary Procedure Parry gives moderately complete extracts, in his Parliaments 1839. S. 240-603. Historical standard works: Macaulay, "History of England"; Hallam, "Constitutional History, vol. I. II. The questions of State-law of the Revolution are treated by Clarendon, "The History of the Rebellion"; Burnet, "History of His Own Time"; Guizot, "Histoire de la Révolution d'Angleterre," "Histoire de la République d'Angleterre"; Dahlmann, "English Revolution." Thoroughly investigating the foreign affairs: Ranke, "English History," vol. I.-V.

*212) Through the capricious testamentary dispositions of Henry VIII., and the childish will of Edward VI., there were created no less than fourteen possible titles of succession to the Throne after the death of Elizabeth. All the more solicitously does Parliament and popular opinion hold to the next heir allied in blood to the Stuarts, even as already on occasion of the execution of Mary Stuart, Parliament had acknowledged the eventual right of her son to the Throne. The real name of the family is Fitz-Allan, Hereditary High-Stewards (Stuarts) of the Kingdom of Scotland. In James I., his genealogical whim made him believe that the son of Mary Stuart and Lord Darnley united in his own person the hereditary kingship of the West Saxon dynasty, of the Norman Kings, of the Plantagenets, and the Tudors. Amid the subsequent fluctuations arising out of French and Spanish alliances, it was really, in the main, genealogical vanity that led the Stuarts to fend off from connection with princely families of Protestant stock. The later leaning of the dynasty towards Catholicism was brought about by constant alliance with Catholic princely houses, and through female influence.

**212) Characteristic is the addition of the motives, with regard to the sex and age of the late queen, and in order to avoid conflict, especially so as not to drag the succession to the Throne into dispute, many matters were allowed and tacitly passed over. "But your Majesty has been wrongly advised by whosoever would hold that the sovereigns of England have possessed, of themselves, any absolute power whatever."

*215) As a blow for the intimidation of the Opposition, there was instituted,

at the end of the third Parliament, a criminal prosecution against Sir John Eliot, and two other members of Parliament, on the ground of their speeches in Parliament, which ended in a verdict with a heavy fine and imprisonment. Eliot died in prison. With reckless incaution Charles I. had, before the breaking out of the Civil War, made the attempt, personally, to seize five of the leading members of the Lower House, in a way that seemed neither admissible by any right of discipline, nor by any process of a Court of Law.

*215) The Petition of Right is treated in later Constitutional State Law, as a third Magna Charta, from the fact that it declares, in the most unequivocal terms, a whole range of Acts regarding abuses in the administration as illegal. But Charles had no intention to bind himself by any such law. The Judges consulted in secret had given it as their opinion that the Bill might be allowed to pass, and that the Government might go on acting just as before.

*217) The unkingly treatment of the office of Judge, which is common to all the Stuarts, was readily understood, first, through the Ship-money. Already, under James I., the dismissal of Lord Chief Justice Sir Edward Coke, on political grounds, had occurred, and a shameless system of the sale of judgeships was introduced, which debased the honourable repute gained by the Courts of Law under the Tudors. Under Charles I., the filling-up of the appointments became a political contrivance. In the year 1626, already, Chief Justice Crewe is dismissed for not having acknowledged the legality of the forced loans. In 1630, Chief Baron Walter is suspended because of his questioning the legality of a proceeding taken against members of Parliament. In 1634, Sir Robert Heath, on account of opposition to the Ship-money, and against Archbishop Laud. His place was filled up by the unworthy Chief Justice Finch.

It is characteristic of the *morale* of such a body of officials, that the same twelve Judges, at the trial for High Treason against the minister of the king, upon a very doubtful point, are unanimous in pronouncing for his guilt. Parliament, subsequently, answered this by the impeachment of Lord Privy-Seal, Finch, and six Judges, one of whom was arrested on the bench in Westminster Hall.

*218) The anti-constitutional Ordinances of the "Star Chamber" are enforced by fines and imprisonments. The fines imposed for senseless amounts —£20,000, £10,000, £5,000—are not unusual. The sum total was estimated by a contemporary at £6,000,000. Besides money-fines and imprisonment, the Star Chamber enjoined now, also, punishment by the pillory, flogging, and cutting off the ears. Only capital punishment and forfeiture remained, according to the Magna Charta, reserved to the ordinary Courts of Law.

*220) The day after Charles had signified his assent to the Bill of Attainder against his minister (May 11th), he sent, through the young Prince of Wales, a missive to the Lords, wherein he begged them, conjointly with him, to try whether the Lower House could not be induced to allow of Strafford's being imprisoned for life, "If, however, nothing less than his life can satisfy my people, then must I say, '*Fiat justitia!*'" A postcript adds: "If he is to die, it were merciful to afford him respite till Saturday."

*221) When Charles, shortly after the outbreak of the Civil War, summoned the loyal members to a Session of Parliament at Oxford, only 118 Commoners obeyed the summons. The majority of the Lords, also, had remained with the Parliament at Westminster, and only later on do the greater part of the Lords proceed to Oxford, where the king treated this "Mongrel Parliament" of his, almost with contempt.

*224) I call this manner of acting "passive resistance." It is the now usual mode of behaviour on the part, later on, of the Opposition which, in the resolutions of Parliament, remains faithful to its convictions, leaving it to others to pass measures which they, in honour and conscience, deem expedient. The Opposition, loyal to the Constitution, found itself in the alternative position either to sacrifice the Constitution, and, in addition, their personal liberty and fortune, or, disavowing principles, to attack the kingship. Proof sufficient of such a state of things is afforded by the testimony of Lord Chancellor Clarendon (father-in-law of James II.). According to the Court theologians surrounding the king, and according to his own interpretation, every promise given by the monarch, containing the clause "*non obstante*" attached to it, was not binding. On this fact is based that characteristic feature, respecting which Macaulay said, not without reason, "There never was a statesman whose deceptions and falseness could be shown by such irrefragable evidence."

*231) This Puritan police-control is detested, not only for the Draconian prohibition of the Prayer-book, now grown to be popular, through the destruction of works of art in churches, and of monuments, by the burning of pictures of saints, even in public art galleries, by the mutilation of statues (to make them look proper), but, above all, by the rigorous control of morals, leading to the suppression even of public amusements, rural wrestling-matches and maypoles, so much cared for by the rural population. Theatres were to be pulled down, the audience fined, and actors driven off with broomsticks.

**231) The accounts of English historians of a subsequent period, *after* the struggle for the Constitution has been fought out, take a hostile attitude against the Protector. For a social order of aristocratic caste it was difficult to assign justice to the man and to the events of his time. It was only in the 19th century that Carlyle's hero-worship strove to make up for the past, and the present generation seems inclined to fall in with his views. Unjust, and tinged by national and personal feeling alike is Guizot's opinion on this subject, in connection with which I would quote the words of a doctor of theology of the present day: "That century was a century of faith, one might almost say of a child-like faith. Men like Eliot and Hampden, Cromwell and Vane, believed in God and Christ, in sin and the Evil One, in heaven, and hell, as described by Holy Scripture, such as Milton has depicted. The world to them was full of God. Where duty called, these men could brave everything, for to them all was sent and ordained from above." Vaughan, "Engl. Revolutions III.," 332, compare with the opinion of Ranke, "Engl. Geschichte III." 435-584. Compare also Alf. Stern, Milton und seine. Zeit. vol. I. (1885).

*239) The laws bearing on the Militia, passed under the Restoration are meant to form a counter-organization against the Republican army, and an armed defence of property. The right of nomination possessed by the Lord-Lieutenant has the effect that the administrative body, and the officers, are taken from the county gentry. The great feudal owners (£500 ground rent), and the large town property (£5,000 personal property), have to provide the cavalry; the rich peasant-proprietors (£50 ground rent), and the well-to-do citizens, the infantry. The rest of the population is charged with the duty of equipment, *infra classem*, but may be called upon to contribute in money. All this was intended as against the Puritan army, but proved in the end to be against the kingship.

*246) Ranke's masterly hand has treated these diplomatic proceedings with well-known acumen, "Engl. Gesch." B. IV.—V. (Buch. 15, 16).

*247) As examples of the kind of penal prosecution for press offences sentence, involving penalties of £5,000, £10,000, £30,000 are pronounced. For a libel against the Duke of York, a fine of £100,000 (according to the present value of money about £500,000) had to be paid, no less than three times. As an example of other sentences, Hallam mentions the Scotch Priest Lighton, who, on account of a controversial pamphlet against the hierarchy, was sentenced to scourging and the pillory. Moreover, one side of his nose was to be slit, and one ear to be cut off, and one cheek to be branded; in the week following, the same punishment to be inflicted publicly on the other side, and he is to be imprisoned for life in the Fleet Prison. The famous lawyer Prynne was twice sentenced to have his ears cut off.

*248) Apart from the accounts given by the Duke de Grammont, and other contemporary testimony, the sketches given by Macaulay, in his Essays (IV.) as examples of the Court life of the times, would scarcely be credited: "A dead child is found in the palace, the offspring of some maid of honour by some courtier, or perhaps by Charles himself. The whole flight of panders and buffoons pounce upon it, and carry it in triumph to the Royal laboratory, where his Majesty, after a brutal jest, dissects it for the amusement of the assembly, and, probably, of its father among the rest. The favourite Duchess stamps about Whitehall, cursing and swearing. The ministers employ their time at the Council-board in making mouths at each other, and taking off each other's gestures, for the amusement of the king. The Peers at a conference begin to pommel each other, and to tear collars and periwigs. A speaker in the House of Commons gives offence to the Court. He is waylaid by a gang of bullies, and his nose is cut to the bone," and so forth.

*251) According to the account given by Barrillon, he promised the protection of the "église protestante;" according to the printed copy of his speech in the *London Gazette*, he promised the protection of the government of the Church by law established.

*252) After the expulsion of James II., none of the ten Judges, then in office, were found worthy to remain. Lord Jeffreys was condemned to civil death, all the others were expressly excluded from the Act of Indemnity. Under such conditions, England learned to value aright the offices of honour,

which assigns to the official (in spite of his appointment being revocable) the full judicial independence, from the mere fact of possession. After the Restoration had withdrawn the pressure of military rule, the Justice of the Peace, in spite of a rather paternal control, and too great a zeal exercised against poachers, was considered to be an honest medium for carrying out justice, in a demoralized time. The systematic exclusion from the commission, of insubmissive Justices of the Peace, was also found to be ineffectual and impractical. Justices of the Peace and Juries have, at this period, remained irreproachable.

**252) Charles II. already had made a similar attempt at a "Declaration of freedom of conscience," by suspending not less than forty parliamentary statutes; but he had been obliged to relinquish the attempt, through violent remonstrances addressed to him by Parliament. The actual Ordinance, by James II., is certainly issued with the reservation of a subsequent assent by Parliament: but very soon after, Parliament was dissolved without being further referred to. The dispensing power bore upon all criminal laws, and all the oaths of office and tests to be taken. The Pope had dissuaded from such measures being resorted to, but was no longer able to have the high hand of the "Jesuit party."

*258) According to the original statutes, the new dignity of Baronet was, in fact, purchasable for £1,095, but the individuals, seeking the honour, must be of good family, must have a ground rent of £1,000. But as the sale of the 200 patents which had been reckoned on, was not so easy to procure, these conditions, as being restrictions on the Royal prerogative, were not strictly abided by, as they could not be held to bind down the successors.

VI.

The Parliaments of the 18th Century.*

TABLE OF KINGS.

William and Mary, 1689-1695.	George I., 1714-1727.
William III., 1695-1702.	George II., 1727-1760.
Anne, 1702-1714.	George III., 1760-1820.

THROUGH the Reformation, the Revolution, the Restoration, and the Expulsion of the Stuarts, the Constitution has attained to a formal close. A modification does take place in consequence of the union of Scotland, (1706,) and of Ireland (1800). Further, the accession to the Throne of William III. marks out, by the "Declaration of Rights," the beginning of parliamentary rule by party, which pre-supposes a fresh survey of the fundamental principles of this State-system.

The kingship remains as it had been heretofore, the fountain of the State-power; the Courts of Law, the safeguard; and the Law, the supreme controller of the State-powers. Through the 400 years of legislation since Edward I., a mutuality of relation between these factors has sprung up which encompasses State and Society, State and Church, Local Administration, and the "Estates," with firm legal safeguards. These mutual checks, self-imposed by the kingship, operate in like measure as the legal safeguards of Parliament, and equally as a legal protection for the "Estates," corporations, and individuals. The sacredness

and inviolability of this order is, by means of a formal understanding, arrived at by the two great parties in the nation, gets fully acknowledged on occasion of the expulsion of James II., and all active movement in the life of the State reposes since then on the following pre-supposed bases:—

The Law, acknowledges hereditary kingship as the fundamental institution of the land, and sets forth the order of inheritance.

The Law, regulates the prerogatives of the Crown, and marks them out in such wise, as to secure to the Church coincidently the "self-government" she requires.

The Law, regulates the exercise of the State-prerogatives after the manner of the customary system of "self-government."

The Law, guarantees for the upholding of such order of administration, comprehensive legal protection, by means of the administrative jurisdiction.

The Law, regulates, in conjunction with the duties of the subjects, the rights pertaining to the several classes, out of which a "ruling-class" now stands forth, with the requisite participation in the State-power.

On these firmly-established bases is founded the relation of Parliament to the State-Government, which will form the main object of the following inquiry:—

As *first* pre-supposed basis, appears the *establishing of the kingship hereditary*. The deposition of James I. brought afresh into prospect an array of conflicts, such as from Norman times had been found complicated with every fresh break in the lawful succession to the Throne. Amid the heavy trials the English people had to encounter, the frequent changes of dynasty had been those the most fraught with peril. To ward off similar consequences, both parties, after prolonged misgivings and deliberations, arrived at the following resolution:—

"That King James II., having sought to subvert the

Constitution of the kingdom, by infringing the original contract between king and people, and violating the fundamental laws by advice of Jesuits and other wicked persons, and having left the kingdom, has abdicated his rule, and the Throne is accordingly vacant."

The fact of the deposition is covered by the fiction of an abdication which, to a certain extent, corresponds with the circumstances under which the king had quitted the country; through the further fiction that the living heir of James II., Prince Edward, was illegitimate (by reason of a negligence shown to record the birth), corresponded to a belief wide-spread among the people; as also through the addition of further qualifications in connection with the event, with a view to exclude the risk of a precedent being established. By reason of such fictions, the Crown was transferred to the eldest daughter of James II., in the character of heiress, who now, in conjunction with her husband, gets recognized as being the lawful sovereign. But as towards the close of the reign of William III., the lack of male heirs is becoming assured, the definitive "Act of Settlement" ensues, whereby, in case of a lack of Protestant descendants of Charles I., the Crown reverts to the Electress Sophia of Hanover, grand-daughter of James I., whose agnatic and Protestant descendants are called to the Throne.

As *second* supposed basis, there comes into play *the regulating of Prerogative, by the Law.* In Germany, the Middle Ages exhibit, throughout their course, a natural tendency to regulate the exercise of sovereign prerogative rights, by firmly-determined rules, binding on king and people alike. With the close of the Middle Ages, this defining of powers has even so far progressed on the Continent that the settled framing of an administrative-law is regarded as the main character of the new State-

system, so far as the two periods represented by the mediæval and the ancient world, are concerned. In England, the prolonged struggle against Absolutism and the mis-rule of the Stuarts, pushed the defining of these legal limitations to an exaggerated extreme.

The regulating of the *War prerogative* by the Law, is based on the distinction between the ordinary military organization (militia) and the extraordinary creation of a standing army. The militia-laws of the 18th century are, with many conjoint laws, consolidated by 26 Geo. III., c. 107. In later enactments, the effective militia is fixed at 120,000. In conformity with these enactments, the Lord-Lieutenant in each county nominates twenty or more Deputy-Lieutenants, and all the militia officers, in accordance with an exactly graduated census, from the ensign up to the colonel. Just as the standing army was formed, after a way, differing wholly from that of the Continent. The rude soldiery of Cromwell, as well as the attempts of James II. at subverting the constitution, had created a lasting impression that every standing army remains as a menace to the Constitution. But as such seemed indispensable for the colonies, and to uphold England's powerful position, an enlisted army gets tolerated, from 1689, under the following conditions:—

(1.) The acknowledgment, annually made, that the existence of a standing army during times of peace is "against law";

(2.) The acknowledgment, often repeated, that this army is not necessary for the preservation of order in the State, but only "convenient for the maintenance of the balance of power in Europe";

(3.) That the expenses of this army remain dependent on an annual grant of money by the Lower House;

(4.) That the necessary disciplinary powers, as "extra-

ordinary powers," are to be apportioned, from year to year, by Parliament, through a "*Mutiny Act*";

(5.) Lastly, with the measure, that through the system of purchasing officers' commissions, the body of officers is recruited from the sons of the ruling-class.*

The regulation of the *prerogative of Justice*, by law, comprises all that concerns the civil and criminal jurisdiction, and rests still in part on custom and "common law." supplemented by statutes manifold since Edward I., which, like the "common law" itself, can only be changed by statute. The appointment for life to the office of Judge of the Realm is, since William III., sanctioned by law. The fundamental axiom, that the Courts of Law are only to decide by fixed law, and that they are to lay down the rules for their own decision, prevails equally in England as in Germany.

The regulation of *Police* authority had already, in the time of the Tudors and Stuarts, grown into an interminable series of special statutes, completed by reverting to the ancient police authority of the officers of the peace, according to "common law," in which are found anew the "general clauses" indispensable to police authority. Special local police requirements were cared for by means of local acts, and, further, but in very restricted scope, by means of bye-laws emanating from district and local authorities.

The legal regulation of the *prerogative in matters financial* rests on the distinction between the ordinary and extra-ordinary revenue of the king. The ordinary revenue comprises the ancient hereditary income pertaining to the kingship, which belongs to the king, independent of any assent of Parliament. This stock of inherited property was greatly diminished through alienation, on a large scale, of domain-lands, as well as by the removal of feudal charges, &c., and, in consequence of irregular administration, it found itself so heavily burdened with liabilities, under George III.,

that this king preferred to make over the administration of the Crown property to Parliament, receiving in return a settled sum out of the State-revenues, "Civil List," (1 Geo. III., c. 1,) yet only under a provisional agreement, whereby the Crown reserves the right to resume, on occasion of every fresh accession, the hereditary revenues. The extraordinary revenue comprises the income arising from direct taxes, Customs, and Excise, based on the grant of Parliament. The permanent needs of the State in the 18th century, and the creation of a national debt, no longer admits of the English State expenses having to depend upon periodical "grants of subsidies." In the course of the 18th century, therefore, all subsidies, up to then customary, have merged into taxes permanent; customs and taxes thereafter to be levied are not "granted," but are levied by force of law for the Exchequer. The strict legal regulation is availed of, also, in regard to communal taxation, in which, by several hundred enactments, the particular object and the rating is settled, and no individual determination as to the rate of taxation is allowed to local officials, but only an adjustment as to the annual requirements.

Lastly, the *Ecclesiastical prerogative* and government is regulated by the Acts of "Supremacy and Uniformity" of Elizabeth, and the completing laws of the Restoration. The position of the State-power is safe-guarded against any possible excesses of the Church functionaries, by the Statute of "*præmunire*" and related laws. This aspect of the matter presented the greatest difficulty; for the occasional connection of the Anglican clergy with the Whig nobility, in opposition to James II., had in no wise removed the old conflict between Church and Parliament. On the other hand, through the "glorious revolution," the danger of the subjection of the Church, on the change of parliamentary government

through party, was more menacing than heretofore. Amid the insurmountable mistrust prevailing, a great part of the clergy had quickly returned to the legitimate party-flag of the Stuarts, seven bishops and 300 clergymen refused to take the Oath of Allegiance. This secession of the "*non jurors*" continued still, throughout a generation, in open opposition to the dynasty, and even down to the beginning of this century. But as the Whig ministers appointed Whig bishops, the estrangement between Church and State was followed, for a considerable time, by an estrangement between the higher and lower clergy, and, further, by an embittered conflict between the doctrines of High and Low Church. Only in the course of half a century is this discord smoothed over by the conciliatory bearing of parliamentary rule, by a loyal recognition of the hierarchy of the Anglican Church; by the retention of the seats of bishops in the Upper House; by forbearing from further interference with the internal affairs of the Church. But the periodically occurring general synods of the clergy in Convocation were found, in the long run, to be irreconcilable with the peace of the Church, and therefore, since 1717, a cautious plan was devised, to suspend all activity on their side although they get indeed convoked. In accordance with traditional usage, immediately after the opening they get adjourned, on the ground of "lack of business," (a proceeding, continued up to the middle of the present century).* As a conciliatory factor, there was combined therewith the preservation and augmentation of the vast property belonging to the State-Church, (according to the estimate of 1850, amounting to a yearly income of £5,000,000,) which had in no previous century been looked after with such conscientiousness; on the other hand, through the bond of Church-patronage, which takes in Crown, Lords, and gentry alike, almost exactly corresponding with the influence exercised

by the ruling-class. Lastly, the maintenance of the principle that the avowal of belonging to the State-Church remained as a condition precedent for admission to Parliament, and for obtaining magisterial offices, in accordance with the Test Act, 25 Car. II., c. 2.—But, on the other hand, Church property also, through its whole range, remains subject to contribute to the taxes of the parish, the clergy become active members of the vestry, an important factor in the commission of the peace, and thus in close alliance and "elective affinity" with the ruling-class, they grow to be a weighty element of parliamentary government. The separate taxation of the clergy had ceased already during the Restoration, whereas, on the other hand, now the clergy was allowed the right of a parliamentary vote as a matter of course.—This including of the State-Church in the parliamentary State was the last decisive step towards securing a restoration of the internal harmony of a united Church in a State united, and of more energetic action in the life of the nation. At the beginning of the century, dissenters from the State-Church in England and Wales would seem to have formed but a small percentage of the population.

As *third* supposed basis appears the formation of the "*self-government*"-system. The exercise of the State-prerogatives thus regulated had become organically combined, by reason of the legislation since Edward I., with the counties, and boroughs, and, since the Tudors, with the parishes also, in a way lasting and uniform. If for such a complexure be employed the expression "self-government," (an expression which has never been legally defined,) it is certainly necessary to draw a distinction between magisterial "self-government," which this word principally implies, and the economic "self-government," which has its point of gravity in the levying and the appropriation of the communal taxes.

Magisterial self-government is bound up with the higher

offices already created during the Middle Ages. The English State-administration had, as late as our own time, no other district and local magistrates than such offices within the communal bodies. For that very reason they possess the feature in common, that they are free of any remembrance of either manorial or rural police as being purely official functions, that they are subject to civil and penal responsibility, to surveillance from the disciplinary authority, and to dismissal, on a par with the German conception of "mediate State-officials." Such are the offices of the Sheriffs, Justices of the Peace, Lords-Lieutenant, Deputy-Lieutenants, and Coroners. The Constables are subordinated to the Justices of the Peace, as executive officials; the Churchwardens and Overseers of the Poor, and Surveyors of Public Highways, held a rather more independent position. As a powerful connecting link to this system of individual functions is added: the immediate co-operation of the middle-classes, as Civil Jury and Special Jury, at the Criminal Assizes and Quarter Sessions, and the share taken by the main part of the population in the quality of witness, or juryman, or prosecutor. Lastly, the active duty of the Assessment Committees for the land-tax, for the "assessed taxes," as also for the income-tax, introduced from the close of the last century. The much-renowned *independence* of the "self-government"-system does not proceed from any kind of autonomy, but simply and solely from the position of the honorary office which assigns to the official discharging the functions thereof, judicial independence.

On the other hand, the economic "self-government" has its fundamental principle as of old in the economic union of rural communities, and in the ecclesiastical requirements of the parishioners, which latter has especially become the link of union with the local communal organization.

The later legislation has shaped out the most important and prominent functions of police in matters bearing on public welfare, especially the charge of the poor, and control of highways and bridges, as an object for general state legislation. There exists in alternate operation therewith, the early commutation of communal burdens into payment of money. The economic "self-government," has, therefore, its centre of gravity in the system of communal taxation, which, in the 18th century, showed in a five-fold aspect. The Church-rate, resolved upon by the vestry, according to the annual needs. The Poor-rate, assessed by the Overseers of the Poor. The County-rate, consolidated by 12 Geo. II., c. 29, as a district tax, levied on the footing of the Poor-rate. The Borough-rate, for the judicial, and police administration, according to the same fundamental principles. The Highway-rate, supplemented by the still retained manual labour and cartage, for the maintenance of highways. To this complex of taxes, were joined the offices of Overseers of the Poor and Surveyors of the Highways, their main business being the assessment, levying, and expending of the parochial taxes. Then, again, on the foundation of these communal offices and taxes, the local Parish Vestries arise, as branches of the economic "self-government." Yet, even here, the Parish Assemblies show a tendency to decline into an oligarchic system like the close boroughs, their place being taken by "select vestries."

The *interdependence* between the magisterial and economic "self-government," is thereby accomplished, so that the superior functionaries of the "self-government" form coincidently the higher court of judicature of the local parish, in order to ensure the carrying-out of administrative laws in regard to local administration. Their official duty accordingly forms an integral portion of the administrative State-law, and the system of communal taxation, an integrat-

ing portion of the State-economy, in a rational relation to the State-taxes. Both elements belong inseparably together, yet in such a manner, that in the one portion the character of the magisterial administration prevails, in the other portion, the element of expenditure of the taxes, and is only controlled by the magisterial office. Defective though the statistics of the 18th century be, yet the following numbers may be approximately ranged together. We find at the close of the same, in England and Wales, 3,800 active Justices of the Peace of the counties, (amongst whom are numerous lords,) at least double as many gentlemen as militia officers and deputy-lieutenants; about 10,000 jurors employed in the County Assizes, and four times yearly in the Quarter Sessions. Then, again, annually changing in about 14,000 parishes and districts, at least 1 "Constable," 1 Surveyor of Highways, 2 Churchwardens, 2—4 Overseers of the Poor, and other combined offices and boards, besides which, about 100,000 persons who are alone taken up with the Assessment Committees. It is clear, up to what measure this individual activity must have trained a parliamentary electoral body, which in the 18th century was limited to 200,000 persons at the outside.

As *fourth* preliminary condition appears *the administrative jurisdiction*, as that element of the English institutions, which has offered most difficulty to Continental theorists upon the Constitution.

Since the times of Magna Charta, there had been set forth a whole array of new fundamental principles of the administration: first in Royal Charters, later on, in *Assisæ*, and parliamentary statutes, in the hope, that the principle expressed would also be followed. But England soon made the experience that, under party-rule, these principles were not followed out, and centuries later, the misgovernment of the Stuarts demonstrated, that the responsibility of ministers

in no way sufficed, but that a more intimate and comprehensive legal safeguard was needful in public law.

The ordinary Courts of Law showed themselves to be inefficient for the purpose It is, at any rate, true that the Civil Courts of Law served, indirectly, also for determining the line of demarcation in public law, inasmuch as they determine the compensation in damages against officials, who by exceeding the limits of official authority, (*extra officium*,) injure a private individual. Still further-reaching the ordinary Criminal Courts of Law served for the determining of the line of demarcation and of the execution of the public law, by their decisions regarding offences against the State, and by the verdict in respect of breach of official duty, in which they have to decide regarding the competence of all departments. But this legal protection remained insufficient for the requirements of a parliamentary State, under the inevitable influence of party-system on the administration. For such decisions of the Court only met but a very small number of cases, compared with the immeasurable chain of abuses, which a party-administration has the power to exercise in respect of police, finance, and military matters. The Stuart manner of rule has also proved decisive in this direction, inasmuch as it led to the complete formation of legal checks over all those parts of administrative law exposed to party-abuses. As erewhile in Germany so also has the English legal control developed chiefly in the domain of police regulations.

There was certainly no need of special measures for all matters regulated by penal statutes. The summary jurisdiction of the Justice of the Peace controlled this region by short proceedings styled "convictions," analogous to the summary procedure in our (German) Criminal Courts. But such was certainly needful, in a more restricted sense, in regard to police administrative laws whereby such requirements of civil order

are regulated, that are only to be dealt with through magisterial orders and measures in reference to any single case, after previous examination of the circumstances; in other words, under the form of a police decree, styled in English law: "order." In this matter of "orders," an administrative jurisdiction was just as needful, consequently, for the laws and regulations which contain directions bearing on the personal resolutions of public officers.

The administrative control, however, of the official duties of any department can only be exercised within the range of the department itself. During the Middle Ages already a grand array of administrative checks had been devised, which, under the Tudors, attained to a certain measure of perfection. By the disciplinary control over the persons, a mode of behaviour in conformity with law gets enforced on functionaries either on pain of dismissal from office or by the infliction of a summary fine. Moreover any illegal or undue action exercised by the executive officials, gets modified or set aside, by order of the magistrates. Finally, appeal by way of "complaint" exists through the twofold action of the superintendence which is exercised, not only *virtute officii*, but also on the application of the party concerned, and ousts any illegal or undue measure on the part of the administration. Under the Tudors, in addition to the Courts of the Realm, as exercising control over Justices of the Peace, the Privy Council constituted a general Court of "Complaint." The gross abuses of its powers under Charles I., led to the abolition of the Star Chamber in 16 Charles I., c. 10, whereby all questions to be decided in connection with points at issue touching "complaints," petitions, or otherwise, are withdrawn from the Privy Council. But as a High Court of Appeal for redress of abuses in the administration of the county was indispensable, it was now left solely to the Judges of the Courts of the Realm to issue, in name of the

king, the writs corresponding, in the matter appealed against. The Superior Court of Law (usually the King's Bench) became, in consequence, the Supreme Court in regard to matters administrative, not by virtue of the ancient competence of the Courts of Law, but by reason of a new legal control originating towards the close of the Middle Ages, and which was instituted as a control of the administrative duties of the respective departments.

But experience very soon demonstrated that a body of judges at a distance, could hardly decide on points at issue otherwise than according to the tenour of the returns from the lower courts, and afford little effective redress of abuses on the part of the police. To render these "complaints" effectual, a further development of the departmental-system was needful in the sphere of provincial and local administration, such as have been developed in German States by the formation of the hierarchy of administrative courts.* By reason of the combination of police and judicial functions in the person of the Justices of the Peace, the designation of a "*jurisdiction*" is maintained as regards administrative regulations, and together with the name, the form, and spirit of a judicial proceeding.

All police injunctions containing a measure restrictive touching the person or property of the individual are issued in the form of an "*order*," *i.e.*, a decree drawn up formally in writing, witnessed by a clerk, and, in more important cases, accompanied by the signature of a second Justice of the Peace. Against such "*orders*" there was introduced, in the 18th century, by numerous parliamentary statutes, an appeal to Justices of the Peace at Quarter Sessions, and with all the forms of legal procedure.

As regards more important regulations, the Special Sessions of the Justices of the Peace of a division, (Hundred,) the periodical formation of which dates from

the 18th century, exercise an original jurisdiction. The nomination and confirmation in office of local functionaries, questions relating to highways, the granting of public-house licences, and other matters for decision before such Special Sessions were determined by law, so that these sub-districts became an important intermediate range in the administration.

The Quarter Sessions, which bring together at least four times a year Justices of the Peace, generally constitute regular appeal courts in criminal cases, and, further, district administrative boards for adjustment of the County-rate, issue of police regulations, the granting of licences for slaughter-houses, &c. To this "county business" there is conjoined the hearing of appeals from "*orders*" of individual Justices of the Peace, and of district sessions wherever by law there is *appeal allowed*, generally with the clause that no further appeal to the Superior Courts of Law shall hold.

The ultimate appeal to the Superior Courts of Law as regards the decision of Justices of the Peace accordingly recedes, and is restricted to a small number of cases annually, with the following distinctions. A *writ of certiorari*, is the legal remedy after inquiry, to discover whether the administrative act is issued conformably with the law, whether the respective magistrate was competent, and whether the administrative regulation had been carried out in due manner. Against warrants of apprehension the writ of *habeas corpus* is brought to bear, as legal remedy not only in criminal cases, but also in regard to warrants of arrest in matters of police, finance, and otherwise. As general subsidiary legal measure, a *writ of mandamus* is added for the enforcement of administrative laws in respect of parishes, municipal and civic corporations, and all other boards and individuals.

The prolonged experiences of English party-struggle have disclosed the weak points wherein party-influence

threatens the administration. The police administrative measures always showed themselves to be the sphere most calling for the protective function of the laws, and foremost among them stands the system of licences, as the region always most open to party abuses.—The remaining branches combine therewith in like fashion, and as supplementing. In regard to the control of the militia, Deputy-Lieutenants exercise an administrative jurisdiction in relation to questions raised concerning military duty, upon claims to discharge, &c., just as in the case of the Justice of the Peace. As to the communal taxes, the special and general sessions of the Justices of the Peace constitute the appeal courts to determine as to the assessment of taxes appealed against. In the sphere of State-taxation a guarantee is formed through the assessment boards. The *writ of mandamus* serves for the municipal administration in manifold ways as final legal check, especially against resolutions in contravention of law, on the part of the representatives of the community. In the ecclesiastical administration, the legal check is given by an ecclesiastical Court of Delegates, partly by writs of the superior courts of law.

In its *total result*, whenever danger of a misuse of party-influence being exercised, or of its being employed for electoral purposes, is manifested, the administrative jurisdiction renders the daily working of administrative law wholly independent of ministerial control. The internal administration of the land hence remains untouched by any change of ministers, or by party-influences, which without these checks might bear upon the temporary majorities of Parliament, and on the individuals and principles connected with the administration. The experience of many centuries as to the destructive consequences of party-system respecting the administration had completed this laborious structure in the 18th century, and thereby given to the English consti-

tution a shape, whereby the conduct of the highest State affairs may be made over to alternate party-ministries without endangering the stability of the administration, or the existence of the staff of public officers or the security of the sphere of individual rights. By means of such intermediate structure, England has, in its own special way, succeeded in retaining, even under party-ministries, entire integrity of State—and local administration—a result, which imitators of parliamentary administration have generally been found deficient in, from lack of the needful foundation, which also makes any attempt at a reform of State-administration, in the main, illusory.

Lastly, as *fifth* preliminary condition appears the *consolidation of the ruling-class* in the modern parliamentary government.

If the influence of the ruling-class had established itself by the Restoration, the ill-considered attack of James II. only served further to strengthen this position. As in the case of every State-revolution, so likewise here, a more elevated position of power of the members of the propertied class of Society ensues. With well-considered moderation the gentry now make use of their influence on legislation, in order, by means of the "qualification," to secure possession of the Lower House. According to 9 Anne, c. 5, the Knight of the Shire must possess, henceforward, £600 ground-rent from free-hold or copy-hold, in like manner the member for cities and boroughs £300 ground-rent. A moderate sum is set as qualification for the office of Justice of the Peace. For those justices, already to be counted by the thousand, by 5 Geo., II. c. 18; 18 Geo., II. c. 20, there is required a ground-rent of £100 hereditary, or for life, or at least twenty-one years' leasehold; Peers are qualified as a matter of course, also their eldest sons and heirs, as also the eldest sons and heirs of persons possessed of £600 ground-rent.

A high qualification for the militia had already been formed by the enactments of the Restoration.

The sense of these arrangements is in their interdependence so perfectly clear, that it cannot be misunderstood.

Above all things, the *military* power was to remain assured to the ruling-class, by the formation of the militia, under administrative commissioners, possessing £200 ground rent, and a body of officers possessing from £50—£1,000 ground-rent. A standing army which depends on the yearly assent to the money-supply, with the necessary powers allowed at will of the Lower House, is placed in a very precarious position. It is commanded by officers, whose commissions are purchasable at sums varying from £450—£6,000, and which are thrown open only to sons of gentry, from the grade of ensign to that of lieutenant-colonel.

A firm control of the *police* powers is determined by the qualification of £100 ground-rent, as preliminary condition for the office of Justice of the Peace in the county, still more strengthened by a silent renunciation on the part of the justices themselves, of the daily allowance accorded them by law.

A further settlement of this relation of power depending on property, resulted from the system of *family-entails*. The social endeavour of the holder of a large estate to secure the property inalienable "*fideicommissa*" has, it is true, not prevailed in England, as the kingship, in principle, retained the licence of alienating the Knights' feuds. The inventive faculty of lawyers meantime rendered the existence of family entails possible, by which the inalienability in favour of an heir might be settled. This privilege, in itself not too excessive must in the great emporium of the world lead to the formation of *latifundia*, since, in the 18th century, an enormous accumulation of capital was derived from commerce and colonial

possession, which the gentry preferred investing in landed property at home, and bought up still existing small estates. Only through the combination of these two relations has the accumulation nowadays existing resulted, which brings four-fifths of the cultivable landed property into the hands of about 7,000 individuals belonging to the nobility and landed gentry.*

The gentry, being thus constituted throughout, reserved next for itself the filling-up of the seats of the Lower House by persons from their midst, with a qualification ranging from £300 to £600 ground-rent. Just as serviceable for the same end were the heavy incidental expenses of every parliamentary election, and the system of non-allowance of money to members, which, since the 17th century, has come silently into observance.

Lastly, this position is consolidated by a repeated representation of those most prominent in the ruling-class in the Peerage hereditary, being a continuing representation in dignity, independently of all changing influence of elections, of the gentry, from whose ranks the Peerage proceeds, and in whose ranks, saving the Peer, the whole family remains just as it was. The nomination of 268 Peers and 528 Baronets, under George III., shows clearly this ensured position at its acme.

By the side of this mightily-increased power of the ruling-class, a relative receding of the *middle-classes*, as regards their political and economic significance, is recognizable. It is true that the electoral influence of these classes is still of importance for the conditions under which the ruling-classes exercise their sway over the State-power, and for the spirit in which this sway is employed; but only as a "moderating" element. Now, as previously, the middle-class qualified to vote comprised preponderatingly those elements which render service as jurors, and administer the offices of

the local community. But through the buying-up of the still existing free-hold estates, and through the withdrawal of the politically-active Squires from the personal occupation of agriculture, there ensued such an enormous increase of tenancy-at-will, that the people got into the habit of calling the whole rural middle-class by the name of "farmers." In alternate operation with such agricultural dependence, there exists the growing decline of individual action on the part of the middle-classes alike in parishes and corporations, and the simultaneously progressive formation of select burgesses and select vestries. To the middle-classes, on the whole, there is wanting a cohesion in larger bodies, such as is possessed by the ruling-classes at quarter-sessions, on grand juries, and in municipal corporations. The sum total of those qualified to vote in the middle of the century was estimated at about 160,000.

On the groundwork of these suppositions are founded the Parliaments of the 18th century, which have been regarded throughout the civilized world as models worthy of imitation, —"a Constitutional" government, now to be portrayed, consisting of Lower House, Upper House, and State-government.

I.—THE FORMATION OF THE LOWER HOUSE.

The House of Commons, in its actual self-contained shape, comprises, for England and Wales, conformably with the number established since Charles II., 513 members: 92 for counties, four times as many for cities and boroughs, for which the number, since Edward I., has gone fluctuating from above 150 members. By the Union, 45 for Scotland, and 100 for Ireland are added, forming a total of 658; 40 of whom are sufficient to pass a "resolution."

Through a process of growth, developed during the course of long centuries, the "*Communitates*" have acquired that intimate coherence which has caused the English House of

Commons to be regarded as being one of the most powerful bodies throughout the civilized world, and which has rendered it capable, amid the seemingly constant fluctuation of political parties, to guide the destinies of an Empire. If it were only a question of uniting a considerable number of intelligent and able men from electoral districts, as far as possible uniform, many other Parliaments, fashioned on the English model, should be able to achieve as much as the prime original. But the coherence prevailing is founded from now forth on the basis of the communal taxes and the "self-government" system, which, in conjunction with the Church National, have imparted to English Society a capacity for parliamentary self-government.

In regard to *taxes*, these electoral bodies gained a firm coherence through the system of taxation of real property. The mass of the communal burdens had been increased, by the close of the 18th century, to more than £5,000,000 a year, higher than the direct State-taxes put together. In this state of affairs the Legislature could not shut its eyes to the fact that State and Communal taxes cannot be organized apart from each other, but that the totality of the requirements of the community had to be established according to one coherent scheme. Consequently the old system of periodical "subsidy grants" should, as an extraordinary revenue, cease, inasmuch as it was equally irreconcilable with the then existing requirements of the State as with those of the communal unions. Both aspects of the public demands required, moreover, a legal fixation, independent of "yearly grants." At the settlement of this question the Legislature has reserved to the State, exclusively, *two* out of the three bases: the income tax, customs and taxes on articles of consumption. On the other hand, the State abandoned the old system of land tax, so as to gain the full power and expansion of a direct tax for all domestic legal purposes in village, town,

hundred, district, and county, and from the point of view that the foundation of a community can only be lasting and uniform when independent, year by year, of changing condition of persons and property, and of a fluctuating population; and that, therefore, the burdens of the communal boards are to be apportioned on immovables; in other words, on all holdings, (ploughland, buildings, factories, mines, &c.,) according to the profitable nature of the objects, and not according to the personal condition of the owner; and that on this account, and in order to equalize the communal burdens between greater and smaller unions, the Poor-rate, introduced by Elizabeth, was to be applied in respect of all communal divisions and counties alike.* According to these views, the Communal taxes have been fashioned from generation to generation by the Legislature, the practice of the courts, and the administration, and therewith the material bond has been maintained by the uniform burdening of immovables, which form the principal basis of the community, even as the territory of the State forms the basis of the State. The more English Society was in danger of disintegrating the lower classes (from base to summit) by emigration, by free trade, and through the cosmopolitan notions of commerce, through the nomadic instinct of the rural labouring population, and the gradually growing scission of the communal bodies, in respect of the different churches and professions of faith, the more firmly did the legislation cling instinctively to the system of taxation of real property, as the necessary condition of coherence between the electoral bodies.

The personal bond of union, on the other hand, is formed by the magisterial "self-government": the administration of the higher State-functions in county, hundred, and local unions through offices of honour held by the landed gentry, through the jury-system, and the performance of the smaller offices

by the middle-classes—supplemented occasionally by a few popular officials learned in the law, as also through paid subordinates. This system is not founded on the preference assigned to "laymen" in the conduct of routine business, but from the experience that the office of magistrate is exercised with more liberal views by men of social independence, than by a separate regular bureaucracy, and that the experience they want in routine may more readily be supplied by the numerous clerks than can the qualities of character so much required for the higher office. No less important is the significance of the office of honour from the fact that it gives to the functionary, the full independence of the judicial office; only by the introduction of these elements of judicial independence could that system of administrative jurisdiction be formed, which gives support and stay to parliamentary party-government. More important than all else remains the social aspect: that the conflicting strata in Society find themselves combined in what is common to them, in the carrying-out of the law, the maintenance of civil order, and in the care for the common good. While the life of Society separates men in regard to the interests bearing on property, commerce, and industry, on matters intellectual and professional, the system of "self-government" serves to teach these same men, in the accomplishment of their common duties as citizens and men, to know and to esteem each other amid their strivings in common. This is the aspect which lends a value to the cohesion existing in the communal union, which is not to be replaced by any other organization in the world.

In this epoch the *Communitas* has received its full significance in respect of the parliamentary constitution, through the lasting, organic union of the "self-government"-system, combined with the communal taxation; in other words, by the personal union of the magisterial and economic "self-adminis-

tration," which (wholly different from the French) is equally peculiar to the German communal organization. This union arrays, face to face with the social contrasts, a permanent effective counter-organization, and thereby succeeds in uniting them anew, and converting social prejudice into political principle, fosters that legal sense whereby a nation is rendered capable of self-rule. The re-fashioned and moderating influences which the respective classes of Society have derived from communal life, foster moderate political parties, and render them, after English fashion, capable to guide a parliamentary government. The elections resulting from such bodies represent a cross-play of common interests and endeavours, wherein the extreme prejudices and tendencies of social classes are already surmounted. Only therefrom do the fundamental tendencies result, which the England of to-day designates with the appellations "Liberal" and "Conservative," as contradistinguished from the merely social (extreme) parties. The working-out of the social points of difference to such a common will,—not the complex of the individual ideas therein contained—imparts significance to the combined vote of the *communitas*; as is very evident from the relative inferiority attaching to the parliamentary elections in larger cities, and of the Universities. From these active bodies, allied and on a neighbourly footing, there originates the general consciousness in respect of the State, which combines, from daily habit, the natural diversity of opinions and endeavours of Society into one united will. Just because the internal connection of electoral bodies is the decisive one, the striking inequality of English electoral unions might continue to exist for centuries, so long as a relatively proportionate representation could, on the whole, be maintained therein. The common will of such bodies cannot be represented otherwise than by decision of the majority, by the side whereof a representation

of minorities is contrary to common sense, equally as with the representation of interested groups, and the counting-up of disconnected votes. Social life in the counties and parishes was thereby interpenetrated by a spirit of loyalty, and by a spirit of unity, which absolutism, even in its best form, reserves for its official class. But yet another important element, which "self-government" brought into Parliament, was the practical acquaintance with public affairs. Certainly three-fourths of the members of the Lower House were, mainly, up to the time of the Reform Bill, officials of the administration; not in the State-service of the party-administrations, but in the "self-government"-system, independent of any change of parties.

In the flourishing period of local administration in the parish, in the 16th and 17th centuries, the influence of communal life made itself felt also amongst the middle-classes, and was apparent during the Civil wars. Even in the 18th century, the numerous offices of the parish kept up this connection to a certain degree. Only this could not be understood in England without reserve being made for the municipal corporations, which (in contradistinction to Germany) represent the weak side. The legislation of the Tudors had, indeed, extended the system of parochial poor-law and highway officers, and the taxation therewith connected was applied equally to the parishes in cities and boroughs. But this new formation took its own independent course, without connection with the old municipal authorities, which (resulting from the "court leet" and the *firma burgi*), were restricted to the police and the administration of town funds, and got into a position of isolation, in which the activity of the meetings of the townsmen declined, and select bodies took their place. Under the Stuarts, this malformation was intentionally furthered by enforced Charters of Incorporation, and was continued even after the expulsion of

the Stuarts, under silent tolerance of the ruling-class. According to the population, the representation of boroughs was ten times too large, could only be equalized by a restricting of the electorate, and became to such a degree ingrown with the dominating influence of the landed gentry, that the Parliament of the 18th century could not resolve upon any measure of reform. The municipal organization was, and remained thereby, a jumble of anomalies, which got equalized rather by chance-work. Here was the vulnerable point of the parliamentary elections, which in the 19th century presented the next point of attack, for efforts in favour of reform.

II.—THE POSITION OF THE UPPER HOUSE.

The Upper House forms the necessary supplement to the House of Commons, as upholder and mainstay of the existing order of things, consequently for the protection of minorities against majorities, of the weaker-classes of Society against the stronger, and for the preservation of the lasting order of the State against the daily changing interests of Society. In this sense, a repeated representation of the ruling-class, through the heads of their most prominent families, is maintained, independent of transient electoral influence. To the already-existing body of 166 Peers, at the accession to the Throne of William III., are added, in the course of the 18th century: 34 Dukes, 29 Marquises, 109 Earls, 85 Viscounts, 248 Barons. Under the total of the Peers (372, on the accession of George IV. to the Throne) the representation of the English State-Church by 2 Archbishops, and 24 Bishops, affords a set-off to the preponderatingly secular character of the Institution.*

England had arrived at this formation, in deviating greatly from the "Estates" of the Continent. In its origin, this Upper House had come into being as a State Council, upheld

in its powerful influence arising from landed possession, and strengthened by the presence of the great lords, who were ready and competent to carry out the *ardua negotia regni* in common with the highest servants of the Crown, and who also, as regarded the burdens of the State and communal taxes, were always at the head of the ratepayers. The thoroughness of this aristocracy has then (contrary to the old French Parliaments) pushed into the background the mere official element, and only established the official functionaries side by side with themselves as "assistants." The ecclesiastical and temporal Peerage has, in the periodical sessions of the Royal Council, become silently a standing body, an essential factor of the Legislature, the topmost pinnacle of the administration of Justice. After the setting aside of the Upper House during the short government of Cromwell, England had just had enough experience of the one-chamber system, never to revert to it anew. In the older constitutional strifes, there existed precedents hundredfold, which brought before the eyes of the nation how unstable was the legislation of the land, and all civil and criminal jurisdiction, exposed to the daily resolutions of a chosen assembly, so soon as the necessity of an agreement of the king and the House of Lords to every change of the laws of the land was wanting. This general view was fain to establish itself all the more, according as the rapid change of parliamentary majorities and ministries, brought clearly into evidence in the 18th century the necessity of a firm support of the legal, and of the administrative order.

At the same time England made, during this century, the experience that a State-body, which was to hold fast by the side of the mighty power of the House of Commons, should have its very roots, just as the *Communitates*, not only in wealth and in office, but in the coherent structure of the State throughout. The Peers who, as a matter of course,

stood as Lords-Lieutenant at the head of the actual county administration, and of the command of the militia, kept up the idea of a leading position, dependent withal in their very union with the Upper House, upon Royal nomination. The same coherence which unites State and Society in the *Communitates* exists equally in respect of the House of Lords. Indeed, the titled Upper House represents, just as in the case of the Lower House, an organic union as regards property and office,—not of an imaginary office, maintained only on bare titles (like the titles of nobility on the Continent), but of an energetic activity mantained fully in the *ardua negotia* of the government of the Realm, and in the local administration. Just as little does it exhibit the representation of the privileged landed proprietor, for this privilege disappeared in England, together with the feudal-system, but it confers on every owner who pays his taxes and fulfils his personal duty to the State, the fullest rights. Even those family settlements so highly important for social standing, exist for the property of the small copy-holder with equal right as for the large estate of the highest Peer. An anomalous element was evolved in the Peerage simply from the fact that in consequence of the Union with Scotland a select Committee of eighteen Scottish Lords was elected, and in like manner since the Union with Ireland, a Committee of twenty-eight Irish Peers. The inconsistent element of election in the Upper House, has always served the purpose of representing class privileges rather than that of any State function on the part of the Council of the Realm. It was, however, mitigated, as regarded Irish Peers, through the nominations being for life, and as regarded the Scottish Peers, by their restricted number; and further, from the fact that the superadded numbers of Scotch and Irish Peers got nominated, under some new title, to be hereditary Peers of Great Britain. The position of the Upper House was also in this respect

in the 18th century, thoroughly established in essential coherence with the *Communitates.**

III.—THE MORE RECENT RELATION OF THE GOVERNMENT OF THE REALM TO PARLIAMENT.

On these foundations is now developed a new position of the Royal Council in relation to Parliament, which for about 100 years, under the name of Parliamentary Government, appears as a goal to be striven for by the people of the civilized world.

The English State has remained a monarchy, in fact, a constitutional monarchy in a twofold organism, which is described by a short expression: as "King in Parliament," and as "King in Council," *i.e:* the king is bound, in the carrying-out of the power of the State, either to obtain the concurrence of the one, or is bound by the advice and counter-signature of the other. The events of 1688 have, however, brought about a change in the relations of power, which now exert a retroactive effect on the form of the State-administration.

I. *The Privy Council* is still the constitutional centre of the State-administration, with essential modifications however, and restrictions of the functions. All jurisdiction of the Council, in matters civil and criminal, is extinguished with the Star Chamber. The entire police-administration, the superior court of appeal of the communal administration, and everything that is capable of abuse throughout the whole range of those invested with office, is established by an interminable chain of laws, and secured in matters administrative by legal decision. The centre of gravity of the State-administration practically now lies in the consulting the king as to the summoning or dissolving of Parliament, and as to the proposals to be submitted to Parliament. The deliberations of the now existing Council turned on measures

relating to foreign and colonial policy, new laws to be introduced, temporary measures, patronage for vacant important offices, and on similar matters for which the ceremonious assembling of the whole body of numerous members, seemed in reality neither necessary nor expedient.

Consistently therewith the current business of the Council is now, in the 18th century, conducted by a more restricted Ministerial Council, which is composed of five, seven, or more chief members of the Council, as "the actual Government of His Majesty" (Cabinet). This form of government showed itself as being the only one practical. Even the great personal influence of William III. could no longer thoroughly succeed in forming a mixed administration of Whigs and Tories; in the years 1793 to 1796, the incongruous elements silently drifted off till only a homogeneous Whig-Cabinet remained. William III. presided for the last time over the actual deliberations of the State-Council in a body. One became convinced, from experience itself, that new projects of law and measures of government, could only be brought before Parliament by a Government in itself united.* For that very reason no serious endeavour was made towards reverting to the old treatment of business, in full session of the Council. An enactment relating thereto, viz., the Act of Settlement, was withdrawn, even before it came into operation. But as nothing is legally changed, a nominal "sitting of the Royal Council" is held, in cases in which an "Order in Council" is required conformable to constitution and law, to which *pro forma*, besides the ministers, certain members friendly to the existing ministry are invited, as spectators merely in dumb show. The Privy Council now consists only of a ceremonious sitting of the existing Ministerial Council, for formal ratification and publication of such measures which must issue constitutionally from the "King in Council." To this new form of State-government by a restricted Ministerial

Council, is now conjoined the preponderating influence of Parliament on the persons composing it and the direction of its policy as follows :—

II. *In the "King in Parliament"* are now centred all those powers which have been withdrawn from the "King in Council," that is, the ministers of the Crown for the time in office, require the assent of Parliament for a whole range of cases that were otherwise decided independently by the Royal Council. The positive point is, that every constitution has its peculiar gaps, which may be designated as being powers "extraordinary," powers "dictatorial," or by some such name, but which crop up inevitably ever anew in the relation between State and Society. No human wisdom is able by legislation to draw the line of demarcation sufficiently clear, for constantly new wants, or to say better, the urgent needs of Society require fresh measures for which no fitting rule of law has as yet been happened on. In a republic equally as in a monarchy, such dictatorial power must pertain to one side or other, and the element of power if withdrawn from the one, must aways be appropriated by the other. Nations, grown up under a Monarchical Constitution, and remaining in trusting relationship to such monarchy, reserve such powers to their monarch in the well-grounded understanding that they are more safe in his keeping, identical as they are with every interest relating to the person and to the family of the monarch, and with the permanent welfare of the community. The English nation, too, has held by this monarchical tradition with enduring steadfastness as long as possible. After sad experiences, the scope of the latent powers of Royal prerogative was narrowed somewhat by the legal definition of individual points, carefully, hesitatingly, almost with trepidation, throughout each preceding century. The unexampled disregard of duty, however, on the part of one dynasty, through three successive generations, shook the

nation in their faith, and brought about that decisive alteration, which, at the turning point of the "glorious revolution," withdrew all and every "extraordinary" power from the kingship, that had so shamefully misused them. Each separate clause of the Declaration of Rights, was only too well justified by what had preceded, and the combined result of this series of negations, and more than all, the absolute denial of the "power of suspension and of dispensing," was, that every remnant of power dictatorial was thenceforth denied to the king.* But while, according to the doctrines of democracy, the powers thus taken away were to benefit the national liberties, in reality this did not result. Just as with the "Sovereignty of the people" itself, so do the powers unencumbered, always fall to the ruling-class of Society, and hence in England, to the now completely developed aristocracy in Parliament. But as the requirements of the nation grow constantly with the existing Legislature, as the State required, year by year, new and extraordinary powers, there was nothing for it, but that the "King in Council," always had to revert to the "King in Parliament;" *i.e.*, that the State-government was obliged to get the necessary means and powers assented to by Parliament, year by year; in other words, to live in continuous dependence upon Parliament. But just in the 18th century a number of circumstances occurred which increased considerably such dependence. While the existence of a standing army was dependent year by year, on the free consent of Parliament, no king of England could do without such military power, which he now required for the keeping of Ireland in check, for upholding the standing of England in Europe, and for maintaining her powerful position throughout the far-stretching empire which extended to all parts of the world. Furthermore, the gradually accumulated complex of administrative law required new regulations, in the form of

statutes, in respect of any change, however insignificant, arising from year to year,—and besides "private and local acts"—to which Parliament has to signify its assent. Further, the wars carried on by England on the Continent required such unheard of expenditure, and pledging of the credit of the State, that even in the structure of the Constitution, as erewhile prevailing, the crown of that time would have been brought into an unwonted state of dependence on the moneys granted by Parliament. The need of a National Debt came urgently into prospect, and had even then reached the sum deemed at the time exorbitant, of £15,000,000. Through the seven-years' war this debt was increased to £139,000,000, by the American War to £248,000,000, and through the French Wars to £840,000,000. It was even more sensibly felt amid the difficult relations of such an empire, that no Royal Council was able any more to guide the affairs of government even for the space of a year, in opposition to Parliament. As a result from this state of things:—

III. *The new relation of the Cabinet to Parliament* comes, on these grounds, to be a mutual understanding, practically necessary, between the actual State-government and Parliament. But dependence on Parliament means a dependence on the majority, and hence on existing parties. The more difficult grew the carrying-through of new laws and measures in the great bodies of the Realm, the more inevitable did it become to undertake the carrying of them through with the co-operation of great organized parties, and with the co-operation, advice, and aid of their ablest leaders; and in the ever-new and difficult positions, there remained no other choice but to entrust the conduct of the affairs of State, directly to the leaders of the more strongly organized party.

Undoubtedly, with the conjunction of all these circumstances, the centre of gravity gets shifted to the Lower

House, and there is no further question now-a-days, or, in fact, for a good century previously, as to any kind of misgiving, about the misuse of the State-power against the majority, but simply of its misuses *through* the majority. Parliament, instead of controlling the State-administration, and rendering Ministers responsible, is fast becoming the "ruling-body"; its majority does not any longer control the administration of the Empire, but always indirectly through its bearing the administrators themselves. The legal responsibility remaining unaltered, gives way in presence of "political" responsibility; in other words, a system of change of Ministers, conditioned upon the party relations of the Lower House.

The rapid change of these party-ministries depends not on a principle, legal and "constitutional" in the main, but anew, on the peculiar position of the British Empire. Since the inauguration of parliamentary rule there have been but few periods in which the permanent direction of State-policy was clearly defined. The consolidation of parliamentary rule under the dynasty of Hanover took place during Walpole's Ministry and the contest against the French Revolution under the Pitt Ministry. On the other hand, as a general rule, the position of the British Empire in the vast alteration of its political and commercial relations in regard to the Continent and the Colonies, as also the very irregular coherence of the elements of the Empire, demanded so frequent a change of measures that the principles, with difficulty combined, of parties and party-leaders, could not suffice for the new situation of affairs. Upon every change, the experience was evidenced anew that the necessary unity of action was only to be reached or achieved by forming the Ministerial Council from men who were mainly at one, as to the principal measures of the Government for the time being, and who have gained a majority in both houses, or are, at least, in a position to gain one.*

At each stage of this development, the new fashion of rule rested on a tacit understanding between the statesmen having the lead, and the Opposition. Without any alteration of the laws, the new manner of government rests on the displacement of the relations of power in so far that the constitutional scope of the Cabinet has remained purely a matter of scientific discussion. On the entirety of the bases supposed is now grounded in England:—

The Construction of Parliamentary Parties. Just as the central administration depends, in logical sequence, on Parliament, so has the predominance of the Lower House led to a more solid organization of both Parliamentary Parties, which have in turn, in the course of this period, assumed the reins of government, while the patching-together of a Coalition Ministry has merely resulted in filling an interim of but short continuance.

This party-construction became the expression of the order established in State and Society, as it now stands achieved. It pre-supposed a Constitution acknowledged by all parties alike; the incontestable position of a ruling-class, and the interweaving of the power of the State with a recognized Church-system. So soon as this unification in the head and members was reached, the fundamental conceptions of the "State" appear, in simplest possible guise, as two parties, whose principles derive their origin from the constitutional conflicts of the 17th century.

After hard experiences, the nation succeeded in reconciling the antagonism between Society, State, and Church, through the inner structure of the respective factors. The framework was, and remained, albeit, an organization twofold, in the whole and in the part, combined of social and State elements, and hence the object of a twofold consideration and direction of the interests engaged, according as the State came to be regarded, whether from summit to base, or

from base to summit; and according as the necessary unity of the will of the State, or the unfettered will of the individual elements happened to be taken as points of departure. In the Long Parliament of Charles II., the separation of the two parties was already complete. The notions that prevailed in all vagueness during the Civil wars, and in the times of the Commonwealth, in regard to matters of State and Religion, have drifted into clearness. Even as in the times of Magna Charta, the English view of life is already characterized by the practical direction given towards set purposes, so, after a strife extending over two generations, between the extremes of Puritan and High-Church theories, it wends back to that leaning, purely political, which formulates its systems according to special experiences gathered from the past.

The gentry had, by united effort, gained the mastery over James II.—Parliamentary, County, Corporation, and Church Constitution alike, and the whole legal conditions of the land, were declared "not to be meddled with" by any kingly prerogative. The inviolability of the "fundamental law" was even sanctioned by the expulsion of a dynasty, and the legality of such proceeding became a necessary hypothesis of the actual Constitution. In the view of the one side, this was deemed the highest principle of Civil freedom in the State —the right of "Resistance"—the party-word of the *Whigs*.

On the other hand, however, only the ruling-class exercises actually a decisive influence over the direction of the State-power. Through the Parliament, it controls the central administration, and, through the office of Justice of the Peace, the county. It needed, consequently, a sanctioning authority to exact obedience from the nation. It exercises its powers only in the name of the "King in Parliament" and of the "King in Council." Only insomuch as it obeys, itself, a moral rule which, for all classes alike, finds embodiment in the Church of England, is a moral use of its

sway guaranteed. The other side claimed accordingly that the highest principle to be advocated was: "Church and Crown"—the party-cry of the *Tories*.*

Party-principles on both sides are the result deriving equally from the like condition of things, and belonging necessarily together, even as do actual Society and State in England. They represent the two several points of view dating from the Middle Ages, which live on in these parties on a loftier level; with the Tories the thought, inherited from the Church, of the necessity of a settled, permanent State-power as foundation of Civil order; with the Whigs, the social idea of Germanic communal life, as the ground-work of constitutional liberties. The State conceptions apportioned, during the Middle Ages, between *imperium* and *sacerdotium*, had now become the fundamental conceptions of the State united.

Under the designation "Whigs" and "Tories," the well-to-do classes have all through the 18th century given direction to the Government, closely allied as it was with the family traditions and social interests of the gentry. The pass-words of parties were still, at the beginning of the century, "Resistance," and "non-Resistance"; next, "Stuarts" and "Hanover"; afterwards, "American War," and then, "French Revolution." During the greater part of the century, the Whig-party, quickened by the recollection of the encroachments of the Crown, is, upon the whole, in the ascendant; in the last decade, the Tory party, not without misgivings as to the submission of the lower-classes, holds sway.

These theories are founded on the degree of education existing at the time. The theological aspect of the High Church and the puritanic stand-point had, during the course of the Civil War and the Commonwealth, become greatly secularized. The now prevailing tendency, as emanating

from the individual, influences the State-system; on the one hand the nature of free-will affords development of the theory of a State-contract, which, according to Locke, is an abstraction evolved from the county and parliamentary constitutions; on the other hand, a scheme of "authority" hereditary is derived from a feeling of dependence and the desire of being governed, which results unchangeably from the nature of Society. According to Hobbes, the fundamental conception is undoubtedly evolved from the relations of Civil War. Such abstract philosophy, from the point of view of the "*ego*," treats the people for a long time as mere mathematical units, whose sum total is completed in the State. Only after the contrast presented in the French Revolution does the truth get recognized that State communal life is founded on a coherence between classes, a truth that has imparted to Burke's rhetorical fervour a lasting influence. The empirical direction of the national mind, has, since the 17th century, given to both parties a historical starting-point, wherein, on the one side, the original controlling power of the Anglo-Norman kings, and on the other, the traditional Saxon communal freedom, were regarded as the groundwork, which was fashioned, and in a measure warped, according as party point of view urged, by a retrogression, or arguing back from later date, such as English history up to the present day has ever had to contend against.

All the more needful was it to maintain existing legal order through a body of lawyers, aggregated in an independent corporation, and through the charge and dignity of Judge therefrom emanating, in due course. With this period begins for England "a new era of judicial purity"; a feeling resulting from bitter experiences has kept parties from disturbing the organization of the Courts of Law, and the Inns of Court, wherein existed the mainstay of public and private right, and now the judicial firmness of character,

which, during the strifes of the day, fashioned and settled the existing law. Out of the statutes, precedents, and cases, there was established a constantly progressive judge-made law, which, for the first time, obtained a systematic shape in Blackstone's world-renowned Commentaries. Instead of the pedantic, unsystematic juridical works, wholly incomprehensible to outsiders, there now, all at once, was launched a well-written, and well-reasoned-out, survey of English Law, so far as it concerns judge and advocate alike in his professional life, framed according to the system, readily understood, of the Institutions of Roman Law. Blackstone's chief merit is the impartial presentment, in a lucid, agreeable style, combined with an unbiased optimism which was able to create, of the English Constitution, an ideal, and at a time, too, when the Whig-party was known of all to be corrupt. Although throughout the work two fundamental organizations, "self-government," and the administrative organism, are treated in a fragmentary way, this delineation has, through its points of contact with classical education, and with Montesquieu's "separation of Powers," controlled during a whole century the impression that prevailed on the Continent in respect of the English Constitution, containing as it did just exactly what was wanted, and omitting what was not wanted.

*The practise of Parliamentary Governments** in the 18th century, could not, for that very reason, harmonize in any degree with the ideas entertained by theorists on constitutional law. For even the ideal principles of the Whigs and Tories could only be realized in conjunction with the then prevailing interests of Society, and especially under the directing influence of the ruling-class, as has already been evidenced by their external working.

The Ministerial Council was, hence, at first composed almost exclusively of the higher nobility. Gradually,

however, the needful regard for members of the Lower House began to prevail, and Walpole, (at first appointed merely as Paymaster-General,) since the year 1721, became leader of the Ministerial Cabinet. From that time forth a system of distribution of offices is inaugurated on the following lines. Court offices are reserved for the leading noblemen of the party in power, and for their adherents, without any direct share in the management of affairs, but with high rank and honour pertaining to them, and having decided influence at Court. The great offices of State are assigned, for the most part, to the noble members of the ruling-party having influence in Parliament, with a slow, but steadily-growing deference for party-relations in the Lower House; for this reason an increased number of ministerial offices is also given to members of the House of Commons who do not belong to families of Peers. A change of Ministry is followed, according to party-custom, by a change in the Court offices, a change of the Under-Secretaries of State of the different departments, and, in addition, a few secondary appointments (upon the whole, about half a hundred offices), while among the permanent officials, only those appointments which fall vacant in the course of the administration, come within party-patronage. These restricted limits on occasion of any change of Ministry, show how narrow the shifting range of State-government, within which the party-ministries move, has become.

The course of this State-government in its actuality presents a wonderful changing picture, little corresponding to constitutional ideals, from the end of the 17th to the beginning of the 19th century, up to the period when the development of a new social order makes itself felt.

Directly after the Revolution difficulties are experienced by Government, which required the assent of a majority of

both Houses for every important measure sought to be passed. It was lucky for the nation, that during the first part of this generation, when the great questions of European equilibrium depended on the part taken by this State, the greatest statesman of the time, *William of Orange*, held in his hand the initiative of the entire Government, though amid constant strife and with but small recognition, his Cabinet changing six times during his rule. Once more the English nation was made to feel that a revolution, even the most just and successful, is a national misfortune, by reason of the upheaval of all the legal and moral foundations of the State. In fact, the conditions resulting from it may be compared to the period following Magna Charta. Never was the discontent greater than now, when all seemed to be achieved. An intriguing nobility involved principles with and without higher aims, and a constant capricious change of public opinion seems to permeate the whole of that first generation. The Whig-party, consisting mainly of the nobility, the well-educated towns-people, and Protestant dissenters, did not cease, in spite of all kinds of legal fictions, to regard the kingship as being of their own creation. The Tory-party, whose principal influence lay in the old landed gentry and in the lower clergy, looked upon this kingship as merely a kind of Regency. In mistrustful reserve and undisguised dislike, the old landed gentry, closely united with the lower clergy, stood opposed to the master who had come over from Holland. Four bishops and 300 clergymen refused to take the Oath of Allegiance. The contrariness of the lower clergy went so far, that by a Statute of Parliament, 1701, the clergy had to be bound down by a fresh oath, by which they recognized William as "lawful king." Parliament, Church, and the Law of the land had returned to their original position, but the conquering

party looked upon this as a matter of course. Nobody felt that there had been any social improvement,* but the Tory-party found to their vexation that only their old opponents, and conjointly with them, certain foreign favourites, had come into power. This kingship, though it was the result of an act of political necessity and wisdom, was and remained something forced and fabricated; the hearts of the people did not warm to it, and it was for that reason, perhaps, that the king himself had no cordial feeling for England. William's chief aim, namely, to strive against the overwhelming power of France, to uphold the integrity of Holland, and the European equilibrium, was utterly strange to insular views. Instead of the joyous feeling on account of the liberty preserved for the country, a chilling feeling between king and Parliament pervades this whole period. William had already been deeply hurt by the refusal of Parliament to grant him for more than four years, the Customs which had been accorded to his predecessors for life, as also by reason of the mistrustful resolutions in regard to the maintenance of a standing army, and against the filling-up of offices and grants of favour to subjects not born in England. His honest endeavours to promote clerical tolerance, Parliament answers by a mutilated Toleration Act, allowing the ancient laws of exclusion to remain. The answer from Scotland is summed up in the fact that (1690) all the clergy belonging to the Anglican Church are driven out, and the Presbyterian Church, in its harsh exclusiveness, is declared to be the Scotch State-Church. In the year 1693, William, of his act, refuses to pass a Bill, which was intended to exclude a number of Royal functionaries from having seats in Parliament. In the year 1694 he gives, after much hesitation, his assent to the Triennial Act, which did not, at least, contain the offensive clauses of the Triennial Act under Charles I. The attempt made at the beginning

of his reign to form his Cabinet according to monarchical principles from among men of trust belonging to both parties, proves, in the course of his government, to be impracticable. The root of the evil is, that the insurrection of Society against the State-power unavoidably disturbs that coherence by which State, Church, and Society were united in the English *Communitates*, and thus excites social antagonism, which cannot be calmed down during the space of a generation. After the "glorious revolution" there were still difficulties without end to overcome, from base to summit, in the inner life of the nation, which have only disappeared in the course of a second generation.

With William's death this monarchical guidance comes to a stand-still, and the rule of the parties of nobles returns, now intertwined with the party-tendencies of the financially powerful Lower House. Under the reign of the feeble sovereign, *Queen Anne*, party-principles are so deeply interwoven with family interest and party-spirit that one seeks in vain for the constitutional ideals of the respective parties. The Whig standard bears the inscriptions: Septennial Parliaments, French war, the old mercantile policy, "No Popery." The Tory standard: Triennial Parliaments, opposition against the French war, against protective duties, and commercial restrictions, union with the Catholic faction in England, and with the National-party in Ireland. The want of monarchical guidance had been to the advantage of the Tory-party, and, to please them, a batch of twelve Tories was introduced into the House of Lords (1711). In the extreme elements of the party the hope of seeing the old dynasty restored again springs up. At the death-bed of Queen Anne, the return of the Stuarts seemed only to hang upon an intrigue of the nobility. It was one of the after-consequences of this government by intrigue, when after great successes in

foreign policy, the peace of Utrecht brought about the last great impeachment against Ministers, against the Earl of Oxford, in which once more the "honesty and utility" of a ministerial administration in foreign affairs was questioned.

It was only at the commencement of the reign of the House of Hanover, (1714,) under *George I. and II.*, that the lasting preponderance of the great Whig-party is decided, which, by their party-principles, maintain the legitimacy of that dynasty. And with the consciousness of decided power, the great complex of nobles begins to feel, also, a responsibility for the welfare of the country. Foreign affairs have been managed by the two Georges more independently than appeared to the outside spectator. But to gain the necessary majorities in Parliament for internal State-rule, the old ways and means could not be made use of any longer by the parliamentary-party, but only a cleverly-managed handling of ministerial patronage, honours, and offices, a careful management of personal and local interests, as also a strict party-discipline, for the maintenance of the majorities, was left to them. It has taken more than a generation before the schooling of the parliamentary-parties, under the discipline of an acknowledged leader, got recognized. The actual necessity of a uniform will, and the charm to possess political power, have at last accomplished this task. The administration of Walpole has furthered anew material interests; the extension of commerce, the increased finances, and the welfare of the land, are owing to him, and have scarcely been acknowledged by his contemporaries as he deserved. Whig-rule, now in close connection with the kingship, was in a position to hold the reins of government with tolerably firm grasp; it was computed that the Whig nobility had at its control 140 electoral districts, and the Crown, about 70.

The hare-brained attempt at invasion planned by the Jacobites (1745) dealt an incurable blow to the Tories, and put an end to any further intriguing with the expelled dynasty, and to all conspiring at large. In this state of affairs, the policy of *laisser aller*, inaugurated by Walpole, was assuredly the right one. It served to concentrate the strength of the nation, both reconciled and accustomed it to the rule of parliamentary-party, now become inevitable, and while the too great fondness for peace displayed by this Government was blamed, yet in the course of the seven years' war England certainly derived the chief advantage from the conflicts of the Continent, and laid the foundation for its world-renowned naval power. In the now soothed classes of English Society, a general sense of security prevailed, which has led the present generation to assign to that period the name of "Merry Old England." The Whig-party has certainly, by this fashion of governing, relinquished the ideal groundwork of its structure, since the principle of "resistance" had lost its bearing. It is now become a complex of high noble families, combining in the Lower House a majority for the promotion of agricultural and commercial interests, but this once assured it splits up into sections. In such state of things, in all matters affecting personal interests, intrigue and a mercantile spirit are found to prevail. A kind of bribery had been first initiated in Parliament, in the shape of fees for attendance, ("retaining fees,") in respect of the Scotch members, and developed subsequently into direct money-payments, pensions, and sinecures. The kingship had allowed this style of proceeding to hold head. In 1742, however, there was launched a new "Place-Bill," which declared that the holding of certain offices was irreconcilable with holding seats in Parliament. Significant at this period of developed party-rule is the extension of the Parliamentary Sessions from three to seven

years, through the "Septennial Act," 1 Geo. I., c. 38; and further by a fruitless attempt to restrict the Crown from the nomination of Peers, (1719,) and likewise the immoderate pretensions of Members and the prevalence of disputes in the matter of privileges, just as at the time of the Restoration.*

George III. (1760—1820) ascended the Throne with the determination to put an end to the party-government prevailing, and to bring to bear in the State the personal will of the monarch. Born on English soil, he was the first sovereign of this dynasty who felt himself an Englishman in the full sense of the word, but in order to encounter successfully a parliamentary-rule for two generations in the ascendant, there was needed a dominant spirit, a solution of great national questions in sight, and a skilful choice of men of capacity to lead the Parliament. But in the first decade of his reign, the youthful sovereign lacked both measures and men. The beginning of his rule, with Lord Bute as Prime Minister, and the attempt, after the fashion of his German Electorship, to punish refractory Members of Parliament by the withdrawal of their pensions and offices, could prove of little avail in England. He reverted soon to the method of Walpole—to buying-up votes by means of acts of favour, and money-presents. In one day alone, under Lord Bute's Ministry, £25,000 are said to have been expended in the purchase of votes, and this practice was continued under Lord North, involving a heavy encumbering of the Civil List. George III., through such devices, managed to thwart, by means of his personal adherents, ("the king's friends,") the rule by parliamentary-party, and more than once, despite the honest endeavours on his part, he contrived to procure harm to the true interests of the State. Still less was he successful in setting aside the firmly-established power of the nobility. Abortive attempts in that intent compelled him, for the first time, and greatly against his

openly expressed intention, to have recourse to a Coalition Ministry (1782). Contemporaneously, by the "Civil List Act," the fountain-head of the bribery that had prevailed was stemmed, by the "Revenue Officers' Act." The number of taxing-officers, through whose intermediary George III. had disposed of seventy seats in Parliament, were deprived of their right to be elected to Parliament, and from this turning-point begins the regular practice of change of Ministry, dependent on the majorities in the Lower House. The kingship had, however, become anew a positive factor in the will of the State, and it exercised great influence, since later, in conjunction with the parties newly formed, it pursued popular purposes and aims. Such important aims had originated, in the case of the English Government, in the struggle for the American Colonies,* but the greatest effort was that of the mighty contest against the French Revolution. Only with the entrance of the kingship into the strife of parties, does the era of great statesmen begin, respecting whose glory the mind of Europe, in relation to the English constitution, is closely engaged. The real aim of George III.'s life, and that of his statesmen, was the contest against France, whose social revolution was utterly at variance with the inmost being of English Society. For this very reason, on this State and to its energetic aristocracy, the great task had devolved to countervail the universal empire of the new Cæsar, and to assume the leadership in resisting the overflooding of Europe with the destructive doctrines of that social upheaval. At the period of this struggle, the comprehensive mind of Pitt stands at the head of a firmly-disciplined party, which, in accord with the king and the mass of the people, exercises influence over a safe majority of the Lower House, and an unlimited State-power, to the triumph of the nation and of interests international (1815).

Even at this height of success, there remained unsolved

the difficulty as to obtaining and preserving the necessary unity of State action by means of an assured majority in the Cabinet, in Parliament, and throughout the electoral bodies. Party-rule found itself for the time planted thereby in a new and critical position. Since it was no longer consistent with the increasing influence of publicity to purchase the votes of individual Members of Parliament, it assumes to itself the practice of gaining over bodies of electors by recurring to crafty devices. Direct action for the furthering of Ministerial elections, through police intermediary, such as constitutional Ministers on the Continent so promptly learned how to bring into use, was in England utterly barred. As "self-government" and administrative jurisdiction did not admit of any threat of consequences to influence votes at elections, there remained over only the promise of benefits to come—a kind of corruption, certainly not for private advantage, but for the carrying-through of a system of government, regarded as being the right one. The smaller towns and the Scotch electoral districts afforded a fruitful ground, where the smaller landed gentry and the classes grown wealthy in towns eagerly strove, in foremost rank. For the votes of the smaller boroughs, there had already, somewhat earlier, been established a busy traffic, determining the prices at which the "Brokers" should offer such seats, at from £2,500 to £9,000. Even the numerous electorates in some counties showed themselves at times purchasable, as in the case of Gloucestershire, which was once sold for £30,000 (1779). Repeated Bills introduced for the severer punishment of such abuses (1782-1786) found no acceptance, as neither side was in earnest about the matter. No less a man than Sir Samuel Romilly held dissent from such means being resorted to, as being distinctly "a moral superstition." This system it is which disfigures the most renowned period of parliamentary-rule, and brings

ever anew home to one the fact that even this Parliament was in no wise a mirror of virtue; and with the history of party-views and party-men, with their enchainment of family connections, with their human weaknesses and petty jealousies, renders it hard to grasp the grandeur of such a State-system in all its combined development.

At no period has parliamentary-rule obtained, without exercising a gentle violence on the lawful endeavours of Society, and yet it has never been otherwise under a free Constitution. Inertness and progress in the State alike demand, in such a Constitution, an independent activity of parties amid their internal conflicts, which involves now disorder, now intense passions, throughout the wide range of Society. This firm concentrating of a large number under a single will, calls for the employment of drastic party-remedies, the submission of the individual under the iron control of the party, and so many feelings of slighting and surrender on the one side, and of disenchantment on the other, that the period of a free State has never been one of ease and contentment for Society in general. It seems to be the destination of mankind that, as in the case of a single individual who, from amid the constant temptations and feelings of his sensual nature, has to fight his way towards moral rule and right, so the entirety, by frequent errings of their social being, has ever to turn a backward gaze to the laws abiding in the State and the Church. The knowledge of the practices of those Parliaments, even when at the height of their activity, may serve to convince the people of the civilized world that one may tack on an elected House of Parliament of any cast whatsoever to the State-body, but that one can only achieve thereby an imitation of the *outward uses and misuses*, but not the essential qualities, nor the successful results of the British Parliament.

This powerful body has drawn such indestructible, sound vitality, not from itself, but from the communal-system wherein it is founded, just as with the modern rising of German State-life. The mighty expansive power pertaining to the nation is centred in the free development of individual capacity not hemmed by any class privileges, by the enterprizing spirit, the energy of a sea-faring nation, which, favoured since the time of the seven years' war, by its position in the world at large, was able to found an empire, which, at the present day, comprises a seventh part of the known world, and nearly one-fifth of its population. Measured by the final result, this State development presents an imposing picture; the inner vitality of this communal life is not centred however in parliamentary forms and rights, but in the fact that, amid all struggles of social interests, the education of the people was directed towards the State as a goal, that it quickened the sense of the nation for public life, and united in this sense all classes of Society, and, above all, imparted to the higher classes a manly endeavour and energy which finds its realization in the position the individual assumes in the State. Not the forms of parliamentary-rule, but the personal activity in the daily work of the State has fashioned the power of England, as it erewhile constituted the grandeur of Rome. The respective elements comprising the grand whole are uniform, sober, and earnest, even as in old Roman life, far removed from the glowing portrayal erewhile flashed throughout Europe by the author of the *Esprit des Lois*.. Yet these institutions, sober as they are, when put to the proof on great tasks, show firmness and endurance, and bring into relief the energy and largeness of character of a proud and free nation. In the struggle against the American colonies, and still more against the French Revolution, it was made evident, by the successes

that attended, what the training of a people for the *ardua negotia regni* really means. In old England, on a material groundwork, representing, in extent, some three provinces of Prussia, there grew up a State, which incorporates Wales, Scotland, and Ireland, colonizes the North of America, makes its own the more favoured part of Asia, and a new portion of the earth, wins the empire of the sea, and takes even rank, in deeds of arms, by the side of the powers most renowned in war.

The colossal grandeur of this development attracted invincibly to England the wondering gaze of all civilized nations, at a time when a free development of Society, whether in France, Germany, or the United States, offered no ground for comparison. Down to the end of the 18th century, England stood forth in the European world as the sole free first-rate power among the great powers which were at the pinnacle of the *ancien régime*. Saving a few State-formations on a small scale, England, amongst all the races of the Old World, was the only nation which in honourable struggle had achieved mastery over absolutism in State and Church. It seemed as if this race were destined to safeguard the European world in the 18th century in the conception of the free State, in order to make it a common good for Europe in the 19th. There was not here, as in the ancient State, any sacrificing of social and individual liberty for the sake of political. For the first time in the history of the world there came to be, in a great State-system, the conception of liberty fully realized: social liberty, in other words, the possibility for the lowliest, through services rendered, and through intellectual gifts, to attain to fortune and honours; personal liberty, which, amid the plenitude of the State-power, maintains respect for the person and the property of the individual; political liberty, as embodying the capacity of

the people to legislate for itself, and tō carry-out of itself its own law, through its own free "self-government." That which, to a one-sided survey, might appear a limitation of liberty, was, in fact, only the fulfilment of its whole scope, so far as it lies with human nature to reach such an ideal. Even amid the full glow of light however there were not wanting shadows.

ADDENDA.

*266) For the parliamentary proceedings of this period, *vide* "Parliamentary History," vol. V.-XXXVI., from the year 1668 to 12th August, 1803, with which the work closes, and is continued in (Hansard's) "Parliamentary Debates" as a new series. About the middle of the period appeared the world-renowned work of Blackstone, "Commentaries on the Laws of England," in the first edition of 1765, and by the close of the century in the eleventh. A complete survey of the abundant literature on State Law is given by A. v. Mohl: "Die Literatur der Staatswissenschaften," vol. II., 1856, S. 3-236. For the Constitutional History: Hallam, "The Constitutional History of England," vol. III. (down to the Reign of George II.); Lord Mahon, "History from the Peace of Utrecht," &c., 1836-1854, 6 vols. (Tory leaning); Massey, "History of England under George III.," vol. I., II., 1855; Th. Erskine May, "Constitutional History since the Accession of George III.;" Ranke, "Engl. Geschichte," vol. VI., VII.

*270) The notion that a standing army leads to a direct overturning of the parliamentary constitution, was so ingrained during the Commonwealth, that at the time of intense loyalty (1663) the Parliament declared this a "public grievance." In consequence of the course of events under James II., this notion took all the deeper root, and in conjunction with the fact of England's insular position, induced a conception in all respects unadapted for the States of the Continent. The first "Mutiny Act" (1689) was introduced on account of the insubordination of the first regiments of the Guards, (Scotch,) in consequence of the nomination of a colonel who was not Scotch.

*272) The next occasion for the suspension of the spiritual synod was the Bangor controversy, an embittered conflict, wherein the elected Lower House of the clergy met to deliberate with the Upper House of the Bishops touching a sermon of the Bishop of Bangor. The determining ground, however, lay in the experiences presented of the overbearing intolerance of either assembly, which got constituted by the election from among the professional class of ecclesiastics.

*279) No "separation between justice or administration" was necessary in England for this end and aim. The office of Justice of the Peace was in its origin at once of a police and judicial character. It had continued developing in this sense. There existed no cause for changing the system. For the Justice of the Peace stands closely enough allied to the local police

administration, to judge the requirements and conditions of police action it exists in the midst of civil life, in order to keep itself free from departmental red-tapeism. He possesses, on the other hand, from the fact of his property the entire independence of the judge's stability of office; in like manner, also the security of the office of judge, as the official holding an office of honour, cannot be dismissed by mere party-considerations. The habitual activity and co-operation of a body of functionaries in the duties of a superior office, unites in one person the office of honour, the feeling of honour and duty of the higher class, and the feeling of honour and duty of the State-functionary, and nurtures thereby the character of the office of judge in its best guise. Where in the newer legislating the office of honour was filled up by paid magistrates, there also a separation of justice and administration has cropped up. By reason of the civil and judicial function combined in the person of the Justices of the Peace, the designation of a "jurisdiction" is maintained as regards administrative regulations, and, together with the name, the form and spirit of a judicial sentence.

*284) A survey of the various aspects of "Entails"—so difficult to be apprehended—and of "Marriage-settlements," is conveyed, for German readers, by the work of Th. Solly, "Grundlage des Englischen Rechts über Grundbesitz und Erbfolge," Berlin, 1853, and by Ompteda in "Preuss. Jahrbüchern," 1880, vol. XXXXVI., s. 401, and together with the statistic survey of the results, according to Arthur Arnold ("Free Land," 1880): 7,000 landlords, as holders of 10,900 estates of more than 1,000 acres, possess more than four-fifths of the cultivable land in the United Kingdom; the Peers alone possess nearly one-fourth; in Scotland, 5 Peers possess a full fourth of the soil. Consequently, the half of England is in the possession of 150 persons, the half of Scotland in possession of 75 persons, the half of Ireland in the hands of 35—the remaining fifth of the soil being divided among a little more than 100,000 owners of more than one acre.

*287) In the 18th century the old system of periodical assents to subsidies passes into taxation by law, the taxes till then granted periodically by custom, get now fixed by means of taxation laws and levied for the State-treasury without any special assent of Parliament, and fresh taxes, legally determined, are added on from time to time. By this new course of tax-legislation the whole system of Customs and taxes on articles of consumption gets inordinately stretched in the interest of the ruling-class. A fresh and considerable income-tax (in lieu of the tenths and fifteenths merged in the Land-tax) comes anew into activity, during the course of the great war against France, (1798-1815,) as a temporary tax. These as well as the indirect taxes remain withdrawn from the communal-system of taxation. On the other hand, parliamentary legislation has closed once for all the book of State ground-rent, making since 1692 no more entries into the register of lands, and even declared it redeemable, (1798,) so that it now only endured as a *residuum*, amounting to £1,050,000 (presenting an average of 1 per cent. instead of the 20 per cent. originally understood). The margin thereby procured is now left free for the communal taxes. A comprehensive survey of these tax relations is conveyed by Geo. Göschen, "Reports and Speeches on Local Taxation,"

1875. The total value of the real property was at that time estimated at £143,872,000. According to more recent statistics (Gneist, "Engl. Verwaltungsrecht, II.) the communal taxes from immovables have increased to £25,000,000.

*291) Still more evident becomes this expansion of the Peerage and the Gentry, as one advances further into the 19th century, and reflects that in the interval from 1761 to 1870, 591 new Peerages were created, and that by the Pitt Ministry alone in the period from 1784 to 1801, 140 were created. The dozen of Peerages created in the later centuries of the Middle Ages represent but a very small fraction, in comparison.

*294) An attempt of the great Whig-party after the accession of the House of Hanover, to limit the right of the king to nominate to Peerages only up to a fixed number, was speedily detected in its bearing and thrown out by the Lower House (1719).

*295) After a few years William III. convinced himself of the necessity of a united Cabinet, and let it tacitly occur that at the sittings of the Privy Council, only his Ministerial Council for the time, and a small number of councillors like-minded, should be summoned. In the parliamentary proceedings of 1701, however, the Cabinet was still designated as "a hurtful innovation and cabal."

*297) The influence of this categorical abolition of the dispensing power of the Crown was rightly recognized by the Upper House, and on that account a "proviso" was inserted, to the effect that the scope of dispensations occurring must be defined by a special law. A formula in that intent could not, however, well be happened on, as lies in the very nature of the power paramount. The maxim remained therefore as an abstract negation, only with the moderating addition in respect of the dispensing power: "as it has of late been exercised" which, with such indefiniteness, could not ensure any kind of protection against impeachment of ministers.

*299) One consequence of the solidarity of the Cabinet is the development of the several departments into ministries of a bureaucratic character. This may be said even of the office of Lord Treasurer, although since George I. his functions are supposed to be discharged by a board. This corporate character in the central departments amounted to a mere form for the building-up of a number of higher official posts. The First Lord of the Treasury takes, as a rule, in the position of chief of the Ministry, the general control of the Administration without any special reference to the Financial Department. The "Junior Lords" are men of trust from the Parliament, whose duties are restricted to giving a joint signature to certain "orders." The sole head of the Financial Department is the Chancellor of the Exchequer. The office of Secretary of State is split up at the end of the century, into three ministerial secretaryships of State.

*302) During the Civil War a distinction was drawn between Cavaliers and Roundheads. In the course of the Restoration, Royalists and Presbyterians; the Court-party and the Country-party; at the time of the Exclusion Bill, "Petitioners" and "Abhorrers;" directly after, "Whigs and Tories," nicknames which were first used at the elections of 1680, "Whig" was originally

a designation of contempt applied to Scotch Covenanters; "Tory" indicates an Irish highwayman.

*304) From the time of George III. the relation of party-governments to the kingship has been thoroughly treated by May, "Const. Hist.," I., c. 1, 2, 7, 8, in an incomparably objective manner. Compare v. Noorden, "Die Parlamentarische Parteiregierung in England," in v. Sybel's "Hist. Zeitschr.," XIV., 45-118. G. Lewis, "Essays on Administrations of Great Britain, 1783-1830," London, 1864. Compare also Bucher, "Der Parlamentarismus," II. ed., 1881.

*307) Parallels might be cited from our day. "After bringing into play the noblest faculties, and achieving the highest ideal aims, there comes a reaction, a rebound, and therewith an unchaining of those social interests which, under the name of 'liberty,' means merely the freeing of its own individual efforts. After the grandest result has been achieved for the Commonwealth, man begins to cast up the net result for the centre of his own little world, of his own 'ego,' and begins to count up how much of the happiness and glory of the common wealth has fallen to his share. Disheartened at the small amount accruing to him, nay, by the very paucity of his prosperity, he yields to the promptings of his social being, and pays his tribute to the imperfections of human nature by taking a pessimistic view of the great achievements, after his former sublime aspiration for a lofty and sacred goal" (Gneist, "Die Preuss. Finanzreform, 1882," s. 247).

*311) The intermingling of the ministerial administration with the parliamentary body had, further, the result that many abuses of bureaucracy crept into the uses of Parliament, to wit, secrecy,—while in the years 1680-1694 the printing of the parliamentary debates and votes had been carried out without objection raised, the Parliament now insisted strictly on the secrecy of its proceedings, and on the exclusion of strangers. In the years 1728-1738 the publication of the proceedings was sternly moved against as a breach of privilege. Still more marked in this character was the arrogant pretension assumed of the personal dignity of a "High-Councillor of the Crown." The hallowed nature of a representative of the people was at this period extended to his servants, and even to the hares and rabbits belonging to a member, till in 1770, in consequence of flagrant abuses, all such excesses of extension of privilege were set aside. In the course of this century the Lower House was more than once reminded in an offensive manner that its resolutions are no laws, but only bind the House itself. The most offensive case is that of the scandalous election of Alderman Wilkes, which by the fault of all concerned led to the avowal that Parliament possessed no omnipotence. On the other hand, party-spirit was so powerful in this elected body that the Lower House was not able to carry out with due decorum its quasi-judicial decisions as to the validity of the elections to Parliament. Walpole had himself, as head of the Ministry, issued the watch-word that "no quarter should be given" in these contested elections. The coarse party-spirit had become so offensive that the Grenville Act of 1770 substituted the decision of a small committee, craftily composed, in lieu of a decision of the whole House. But as these committees in course of time fell under the influence of the old party-spirit one hundred

years later, (1868,) the decision as to contested elections has been made over to the civil judges of the Courts of Law.

*312) In the course of the American War, George III. often, of his own accord, and in his own person, represented the interests of the State, in firm and manly fashion. The question must not be judged according to the colonial policy of the present generation. The reproach of being cowardly lovers of peace, directed against the administration of Walpole, might have been deserved by George had he (regardless of the consequences of maintaining all the English colonial possessions) left the rebellious colonists to their own devices. The United States of America, further, could hardly have achieved a vigorous constitution likely to endure, had they gained their Independence through "abandonment," instead of by the honest and manly struggle to which they owe all the good of their constitutional "Union." In like manner, George might, with full right, assume to himself the credit of being, amid the savage Gordon Riots directed against the Catholics, the only magistrate who did his duty. Again, it was his merit, that by a quick resolve at the last moment, the country was preserved from the inconsiderate India Bill, which Fox had already piloted through the House of Commons (1783). George III.'s stern opposition against the Catholic Emancipation did not proceed merely from a scruple of conscience in respect to the oath taken on his accession, but was founded on his far-sighted glance at the immeasurable consequences of the step, as regards the constitution of the country

VII.

The Parliaments of the 19th Century up to the First Reform Bill (1832).

IT consorts with human nature, that every onward step in Social, Ecclesiastical, and State progress should evoke contradictions, inequalities, and acts of injustice, creating problems ever new in the evolution of nations.

Though the grandeur of the State-transformation was achieved since the epoch of Magna Charta, in the main, by the courage, insight, and love of freedom of the higher-classes of Society, yet even these blessings have been procured to the advantage more particularly of the aristocracy. The English State-system has, therefore, also its darker aspects, which inhere to every aristocratical State-structure, by reason of a continued pressure being exercised on the weaker-classes. Albeit in the hands of the best aristocracy in Europe, yet the advancement of the interests of the weaker-classes, for which the Stuarts, certainly, had not bequeathed any example, was lacking in the State during the 18th century. For the maintenance and increase of small holdings, next to nothing was done at this period, whereas the large landed-properties were being continually increased. The land-owners had never shrunk from the burden of taxation; but only under their influence could that accumulating system of indirect taxes and protective duties be brought into active operation

in favour of agriculture and commerce, to the detriment of the working-classes, as also the squandering of the State-savings, and the lavish incurring of debts, to the disadvantage of the people at large. Only under a ruling gentry could be kept in existence a condition of civil justice, such as rendered it inaccessible to the humbler-classes, by reason of the cost incidental, and wherein side by side with the efficient forms of criminal procedure, there was found existing a confused mass of criminal laws, disfigured by enactments, introduced to suit the occasion. In addition, there was an inefficient care of health, and a Poor-law Administration that merely dribbled away its energies in interpreting the regulations as to "settlement," to the advantage of the land-lord class, but in a narrow-hearted way so far as the poor were concerned, rendering life, despite the high Poor-rate levied, burdensome and embittered to the working-classes. The manner in which the Anglican Church and the parliamentary constitution had made terms with each other, had proved to the benefit of the structural uniformity of the constitution, but the corporate independence of the wealthy State-Church, which had now grown too grand, left the humbler-classes to neglect. In a like position came the Universities, holding out for corporate independence, at the cost of their literary achievements. Science, so far as it was not established in corporations and foundations, was left to the energy of the individual and to the protection of the great, the paths to it remaining inaccessible to, and unsought for, by the people at large. But, above all, the rich Anglican Church now kept pace with the mighty Roman Church in stinting popular education. Neglect, poverty, and immorality sink down to the lowest depths in the social structure, and in the cumbrous framework of the parliamentary constitution the difficulties accompanying every

social reform became so manifold that the most prominent statesmen of the 18th century, in England, were almost as undisguised admirers of enlightened absolutism, as the highly-educated ranks of the Continent had become worshippers of the English Constitutional-system.

In spite of all shortcomings, so firmly established was still the *cohesion* that, at the turning point of the century, there seemed as little prospect of revolution as of reform. The mass of the working population was, in fact, attached out-and-out to the soil, and revolutionary ideas were likely to find access in but few circles. On the other hand, the position of the ruling-class was so firmly grounded and established during the national struggle against French Cæsarism, that all immediate attacks against it had forcedly to remain an utterly hopeless endeavour. The ideas of the French Revolution, and of the emissaries of the Jacobine Club, proved indeed, to a certain degree, contagious; but only in case of a small bustling circle of fanatics, and of some few doctrinaires belonging to the ruling-class. This fanaticism prompted even to acts against the person of the monarch, and to violent tumults, which were brought into action periodically, when occasion suited. But with the usual police measures, and, in a few cases, by resort to military force, these attempts were suppressed, and necessitated merely a few parliamentary enactments for the repression of revolutionary pamphlets and clubs, a "Traitorous Correspondence Act," &c., an Alien Act for the control of intercourse with foreigners, and certain moderate measures connected therewith, which were passed, by great majorities, in Parliament. The ruling feeling of the nation was to such a degree taken up with the issue of the war against Napoleon, that no interest remained free for internal reforms.

The conclusion of the mighty struggle (1815), was at first

followed by hard years of bad crops, and crises in commerce and industry, which afforded a fertile soil for social-political agitation. This is the period for extravagant demands, and of great, and even violent popular meetings, which do not occur without serious loss of life and property, and necessitate a series of provisional parliamentary enactments, (Lord Sidmouth's Six Acts,) which are again passed by great majorities, though they did more towards restricting the Right of Petition than was needful, under the circumstances, and according to the actual state of the Constitution. The course of Government appears to be rather fluctuating under George IV., not without the king's fault, through oft-repeated change of ministers (at one period as many as four ministries in the space of eighteen months). The bearing of the propertied-classes leaves no doubt, however, as to their resolve to maintain their position, by means of all the power the State could afford them.

Just as formerly, in the 12th century, so the first breach in this firm bulwark originated from *clerical* lines. If the National Church, after the abortive attempts of the Stuarts, achieved unquestionable sway in England, and in the course of the century had become reconciled and mixed up with the ruling-class, this great result was gradually followed by a worldly-mindedness on the part of the clerical body, allowing the upper strata of the clergy to drift into the high life of the aristocracy, and to get unconcerned as to the growing religious wants of the quickly-increasing population, and leaving the greater part of the local parishes to be looked after by poorly-paid curates. The period of enlightenment has here (as on the Continent) brought about, together with the sense of religious tolerance in the higher strata, a carelessness as to the education of the labouring classes, which, in the latter half of the century already, urges on numerous sections of the populace towards Methodism,

offering as it did to yearnings of the mind, what the State-Church withheld. This Methodistic dissent, though still without political endeavours, serves nevertheless to loosen social unity, and one might even say, to induce a separation of the political bond of the nation. The "glorious revolution" had, out of fear of "Popery," allowed the Test and Corporation Acts which excluded dissenters generally from offices and from political rights, to remain intact. But in manifest contradiction with such exclusive recognition of the State-Church, was now interposed the union with Scotland, where the Presbyterian Church established by law, shut out the English State-Church, at a time too when Presbyterian and Anglican members alike had to exercise the highest political rights side by side in the English Parliament! Since the accession of George II. to the Throne, this contradiction was got over by ignoring Protestant dissent in the matter of official appointments, and by declaring, through the continually-recurring "Indemnity Bill," any transgression of law which had occurred, as unpunishable. Thus gradually the dissenters were in reality brought on an equal footing, and this was further helped on by an increasing spirit of religious tolerance. On the other hand, the exclusion of those professing the Roman Catholic faith from all political rights, was strictly adhered to, with undeviating persistency. There even still existed statutes excluding them from the acquisition of landed property, as also draconic criminal laws, but which, in reality, were little availed of. George III., and the greater part of the nation, looked upon that Church, not only as an ecclesiastical, but as an eminently political institution, which, by its extension to all nations of the habitable world, by its claim to the outward control of the life of nations, as well as to a total submission to their Spiritual Head, as being irreconcilable with the constitution of the

land. In George III.'s mind this notion was so firmly rooted, that all attempts at passing an Act of toleration broke down before his dogged will.

The breach on this side resulted at first through the "coercion," which was brought into play consequent upon the *union with Ireland*. The government of the Emerald Isle had formed, for long centuries, the darkest spot in English parliamentary government. The antipathy of races had been deepened since the Reformation by the resistance displayed by the Roman Catholic Church, to which the greater part of the population had remained faithful, whereas the conquering and settled Protestant population preponderated in the landlord class, in trade and industry, as the "propertied class." To these, the island remained a conquered—in some measure, a colonized land, which, even in the 18th century, was administered in a way that reminds one only too vividly of the Provincial administration under the ancient Roman Republic. This state of utter neglect and inconsiderate plundering could no longer be continued, since the war against the American colonies made the military occupation of Ireland a task difficult to execute, yea even made the employment of the natives in the standing army, and as volunteer corps unavoidable, and soon after the wave-beats of the French Revolution were being sensibly felt in Ireland. The English party-government now decided upon making conciliatory concessions, first of all by an attempt to grant to the land an independent Parliament (1782). But it soon seemed apparent that the *want of coherence* in the electoral bodies, and the animosity then obtaining between the nationalities, made a Parliament, likely to endure, impossible. The Union with Scotland had already become necessary in 1707, from the fact that the English and Scottish Parliaments had begun to issue conflicting decisions, which threatened to bring the Constitution and Administration into disarray. The same

thing happened when the independent Parliament of Ireland began to urge resolutions at variance as to the Regency, and in regard to other matters. But a still more dangerous consequence became apparent, that the independent Parliament offered to the Irish National-party an organization for separating from the clerically and nationally-hated Saxon-land. This increasing tendency to secession resulted, in the years 1794-1798, in open rebellion and French invasions, wherein the native population went to work with a passion and ruth reminding one of the Indian wars. Pitt deemed there was no other expedient remaining but to effect the "Union" of the land with England, with security of equal rights, civil and economic. For the apportionment of State-burdens, a simple measure was resorted to, viz.: the number of members (based on an average of population and on taxation) was fixed at 100; and to the Upper House was added a more restricted number of twenty-eight members, elected for life, from among the Irish Peers. The carrying-out of the Union has been considered one of the great master-strokes of this statesman's schemes of policy.

But through the Union with Ireland, the clerical basis of the parliamentary constitution has entered into a new phase. Even in England a great part of the population no longer belongs to the Church Anglican, since the number of dissenters already at the beginning of last century, amounted to some millions. In Scotland, more than three parts of the population belonged to the Presbyterian Church, which strictly excluded even the Anglican. In Ireland, more than three parts of the population, now possessing the like political rights, belonged to the Roman Catholic Church, placed side by side with which the Anglicans, as the class solely privileged in Church and State, could not hold head. The unity of a "Church by law established," as basis of the parliamentary constitution, had, therefore, become no longer tenable. In 1828, there

ensues the formal abolition of the Test Act and Corporation Act, and therewith a thorough dissolution of the old bond of union between Church and State, which, especially in the case of Protestant dissenters, had already become disrupted. Only now, after a struggle protracted through more than fifty years, does there follow, as an inevitable sequence, the "Emancipation Act," in behalf of Roman Catholics. Remembrance of the fateful policy of the Stuarts, had been still so vivid in people's minds, that already the Saville Act of 1778, which only repealed certain criminal statutes of a draconian character, directed against saying Mass, against the education of children in Catholic schools, and against the inability of Catholics to acquire landed property, led to a perilous conspiracy, and, two years later, to the dangerous Gordon riots. The constant uprisings and hostile attitude of the Irish population had kept up this strong feeling to such a degree that Pitt, (in 1801,) was debarred from adding an Emancipation clause to the Act of Union. This was the sole reason why the great statesman resigned. In 1804, by George III., he was called anew to office, but under condition of setting this urgent matter at rest. In 1807, the Grenville Cabinet was, upon this very question, stranded. In 1813-1817, the Grattan Bills failed, in 1819 the new measures failed in the Lower House, and in 1821 and 1825 in the House of Lords. But the threatened rise of the Catholic Association, and the election of O'Connell, in contravention of law, as member of the Lower House, as also the recently-passed abolition of the Test and Corporation Acts, forced on the solution of the question in 1829. After George IV. had once more refused his consent to the proposed alteration of the Oath of Supremacy, he at last submitted to the resignation of ministers consequent thereon, whereupon the Act was passed by 320 votes to 142 in the Lower House, and by 213 to 109 votes in the House of Lords.

The breach into the fortified position of the ruling-class was now effected, and thereby further reforms were introduced.

A somewhat changed spirit in legislation is apparent already in the first decade, through the introduction of various *social* reforms. As the glorious ripe fruit of the unwearied task, continued through twenty years, there appears, in 1807, the prohibition by law of the Slave-trade, which, though involving heavy sacrifices, gets enacted, with all its consequences. Of great importance for the labouring-classes was the repeal, in 1824, of the old criminal enactments against Trades' Unions, and against all obstacles to free locomotion. Factory Acts, for the protection of the working-classes, also begin gradually to make their appearance.

Just as modestly is the improvement of reforms in the *administration* initiated, tending to secure the abolition of a vast number of sinecures that had been created in behoof of the ruling-classes; the appointment of a commission of inquiry into the system of the antiquated Court of Chancery; reforms in the Customs' tariff, on the ground of the excessive protection duties; the abolition of the Trade monopoly of the East India Company, and amendments in the Navigation Act.

Farther-reaching *political* reforms, on the other hand, had little prospect of success, so long as the composition of the Lower House continued on the base of those electoral bodies, so irregular, but so favourable to the influence of the landed gentry. To set aside this, was tantamount to trenching on the sensitive point of the dominant controllers of Society. The difficult anomaly of the accumulation of boroughs was fully acknowledged, for they were still represented ten-fold more than they had any right to be, averaged on population. The first heedless proposal of the Duke of Richmond (1780) to launch a uniformly-adjusted franchise in their stead, was thrown out without being even put to the vote. Pitt's very

moderate proposals (1782, 1783, 1785) to sweep away 36 rotten boroughs, and distribute the vacant seats among the counties and the metropolis, had been already thrown out by the Lower House, as the import of such an encroachment on the standing of the actual parties could not well be overlooked. The recently-formed "Society of the people," in 1792, in vain offered to bring proofs, that at that very time 200 members of Parliament were chosen for small boroughs possessing less than 100 electors, and that, upon the whole, 357 members were as good as nominated by their powerful patrons. According to a later calculation, 300 members were elected under sway of Peers, 171 under influence of powerful Commoners, 16 under control of the Crown, so that only 171 members freely elected, remained over. But the Lower House refuses to make known the number of electors, and the scenes of horror now being enacted in France, as also Burke's fervid "Reflections on the French Revolution," filled the public mind with such horror of universal suffrage, that the subsequent motions of Grey (1793, 1797) fell through, in the face of overwhelming majorities in the Lower House. The international strife against Napoleon absorbed the interest of the population to such a degree, that even Brand's proposals (1810 and 1812) met with little sympathy. After the conclusion of peace in 1815, there followed years of famine and commercial crises, of dangerous riots, and a brutal attempt on the life of the Prince Regent (1817), a "Cato Street Conspiracy" for the assassination of the Cabinet Ministers (1820), so that the so-called "Radical Reformers" found a very unfavourable ground for their efforts. The radical motions of Sir F. Burdett were thrown out by by 106 votes against 0. Only in 1821 and 1822 did Lord John Russell venture upon the introduction of proposals, which, though still rejected by the Lower House, by 269 votes against 164, yet showed, through the Press, a feeling which pointed to a

different state of affairs. A petition of 17,000 free-holders of the County of York, (1823,) made it apparent that it was no longer a question of mere artificial agitation, but that there had been a sensible change in the fundamental condition of Society, in consequence whereof, a respectable class of the Commonwealth supported the demand for reform.

In the course of the mighty struggle against France, at first some slight changes had been brought about in the interior of the country, rendering the 19th century a perfectly new epoch in English State-life. The *invention of machinery* began to draw several sections of rural labour into towns; found larger application, at first in cotton, wool, flax, and silk, which again led to a speedily-increased consumption of coal, iron, and raw materials, concentrated trades and commerce to a degree theretofore unknown, began since the Peace of 1815, to exercise its influence beneficially on agricultural pursuits, and, in alternate operation with the improved means of communication, to change the economic aspect of the whole country. From decade to decade the transformation of the system of producing goods by steam-power becomes quickened at a rate more apparent, and soon likewise through railroad traffic. Landed property and movable property, manual and intellectual labour are placed in combinations new and diverse, which, gradually extending, shift the centre of gravity from landed property to capital. Production, consumption, and exchange pass over into a new uniform system, all tending to the general expansion of commerce. This system achieves, in England especially, by reason of its world-wide commerce and its colonial possessions, a magnificent development.

With this new shaping of the conditions of property and industry throughout the nation at large, there arises also a new structure of Society in relation to the State.

By the accumulation of capital in financial-investments

and industry, a great number of new householders, with independent "movable" property, equalling the average income of the hitherto ruling-classes, in the acquisition of landed property, through the civil offices of Justices of the Peace and City Magistrates, gets graduated into the same rank with the old gentry, without taking part, withal, in the wonted toil of public life, and for that reason also, without the influence of the ancient gentry.

The new combination of capital and labour, the fuller application of intellectual and technical knowledge, the course of business followed in conducting commerce and industrial pursuits, result in a corresponding increase, on a large scale, of the middle-classes, which contribute their quota to the taxes in quite as full a proportion as the free-holders in counties, and the free-men in towns, but who, by reason of the institutions then prevailing, are, for the greater part, excluded from the franchise.

The working-classes, lastly, are forced, through the employment of labour on a large scale, into dependence on industrial capital, and generally without being allowed any individual share in the communal privileges of their respective district, and without any electoral franchise.

The inclusion of these new factors in the communal bond, (which, even to the present day, forms the main difficulty of German communal institutions,) was carried out with great ease in England, as the English communal taxes, according to the elastic system of the Poor-rate, were charged, from the outset, on the actual "occupier." The communal taxes on house property and industrial investments, according to this system of taxation, have exceeded even the communal burdens of the landed property now-a-days. On the other hand, the introduction of the new elements into the parliamentary right of election, met with the like opposition as in the case of the legislative

Assemblies of the Continent. The franchise had been granted in the Middle Ages to the possessors of feudal and free-hold property, who were then the bearers of the actual State-burden. But this fundamental principle had been long forgotten. From generation to generation these political rights had got transferred and acquired together with the property, and as such were they maintained, on their broader English basis, with the like jealousy as the political privileges of noble land-owners on the Continent. This view was so firmly ingrained that Pitt, in his Reform proposals of 1782, wanted to buy up the franchises from the thirty-six rotten boroughs for the sum of £1,000,000, and he actually carried-out such system of "purchase," on occasion of the Union with Ireland. The privileged free-holder in England, could not, however, be easily persuaded into granting to the old copy-holders, to the lease-holder for longer terms, and still less to the mere tenants-at-will, the same right of vote, even if the qualification of forty shillings, having regard to the altered value of money, were raised in proportion. But the town proprietor was more easily persuaded to abide by such an equality of position of the occupier as the system of close select bodies was no longer tenable, and the occupier had long ere this become the discharger of the chief communal taxes. The boroughs were, consequently, on the whole, in favour of reform. The conflict as to the reform of the franchise appeared thus, from the outset, to be a struggle as to the privilege or equal right of certain *tenures*, and it has kept up this tendency to the present day.*

In the meantime, the first epoch of the development of the industrial element in Society was achieved, and there was no longer an agitation of the extreme apostles of radical reform, to uphold this reform movement, but a well-grounded sense of being slighted made itself felt in the new

elements of the propertied-classes, and of the middle-classes. The centre of gravity lay in the larger cities, which, in the election-scheme of the parliamentary constitution, were either not represented at all, or at most, insufficiently. But even in the boroughs summoned to Parliament, the old-fashioned municipal constitution, limited to select burgesses, excluded them, as a rule, from any political right. In the country, generally, the exclusive electoral franchise of free-holders corresponded as little now to their social position, as to the heavy burden of taxes now paid by the middle-classes. The representation of the northern and the southern counties of England appeared in flagrant disproportion to the actual population. In Scotland, the whole body of electors in counties was limited to the number of 2,500; in boroughs, to 1,440; and in the capital, Edinburgh, to 33 voters. The powerful influence of the Press, and the right of association, gave to these endeavours an importance, which the ruling-classes began now for the first time to be aware of.

The consciousness of this new state of things was forced suddenly and unexpectedly to the surface through the *July Revolution in France*, which gave to the propertied classes of the industrial society a commanding influence over the State-power, and by its constantly-recurring contagion, now rendered parliamentary reform unavoidable.* The stern resistance of the High Tory-party had lost foot-hold through the enactments of 1828 and 1829. While in September, 1830, Wellington had solemnly declared that the parliamentary constitution did not require any reform, already in November, 1830, Lord Grey began his ministerial programme with "parliamentary reform." On the 1st March, 1831, Lord John Russell brought in his first proposal of a Reform Bill, which passed the first reading, after a debate lasting seven nights, and after 71 members had

spoken, but only passed the second reading by a majority of 302 against 301 votes. In consideration of the prevailing feeling of the population, William IV. was persuaded to dissolve Parliament, and the new elections resulted, by a very considerable majority, in favour of Reform. On this occasion, at the second reading, the Bill passes by 367 against 231 votes in the Lower House; and after much difficulty, at the third reading, with 345 against 234 votes. On the 8th of October, 1831, there follows in the House of Lords, the rejection of the Bill by 199 votes against 158, in consequence of which a far-spread excitement is felt throughout the land, which leads to numerous violent outbreaks. Already, in December, 1831, there follows a third Reform Bill, which is passed at the second reading by a majority of 162 votes, and now also by the House of Lords by 184 votes against 175. Nevertheless, the passing of the Bill is again placed in jeopardy, through the dilatory amendment of Lord Lyndhurst. The feeling throughout the country seemed still more critical during this interregnum. Several Lords had been insulted by the mob, Nottingham Castle had been set fire to, and violent riots at Bristol had led to much loss of property. No verdicts could be obtained from any jury against inflammatory pamphlets. Lord Grey considered the number of crimes committed in connection with the Reform Bill, to amount to 9,000 cases. The Ministers demanded anew a batch of Peers, which is refused by the king, whereupon the Ministry tenders its resignation. But after the Duke of Wellington has tried in vain to form a new Cabinet, the king intervenes, personally, by requesting the dissenting Lords, by private letter, to withhold their votes, whereupon the Bill passes by 106 votes against 22, as well as the Reform Bills conjoined therewith for Scotland and Ireland. The new fundamental laws for the House of Commons now take shape as follows :—

I. As regards electoral *districts*, the Reform Bill upholds the right idea, viz., to retain only as electoral districts the real *Communitates*, *i.e.*, the counties and municipal corporations but by withdrawal or restriction, however, of decayed boroughs, and by apportionment of the vacant seats to great communities which had been placed, up to now, in the background. In consequence thereof, 56 small boroughs, with a population under 2,000, foremost among which the now famed "Old Sarum," lost their franchise altogether; 30 smaller boroughs, having a population ranging from 2,000—4,000, are restricted to one member. On the other hand, 22 more important, but up to the present unrepresented towns (Manchester, Birmingham, Leeds, &c.), now receive two members; 20 others, having a population ranging from 18,000—25,000 respectively, one member each. The 25 larger counties are separated into two divisions, each of which henceforth elects two members; 7 counties receive three instead of two members; 3 counties in Wales, two members instead of one. The seats remaining over still allow of apportioning 53 to Scotland (instead of 45) and to Ireland 105 (instead of 100) members.

II. In respect to electoral *rights*, the old franchise, of the 40*s.* free-holders, is kept up in counties, subject, however, in case of a tenure for life, to the condition of actual possession, so as to prevent any increasing of votes by parcelling out free-holds (faggot votes). Without such preliminary condition, the free-hold confers right of vote only on a £10 yearly value; and now in like manner, also the copy-hold on £10 value, and so also the leasehold for 60 years or more, whilst leaseholds for 20 years and more, confers the franchise only on a £50 value. Next, through the Chandos Clause, introduced in the Upper House, the franchise is conceded to every tenant-at-will and other occupier, when the rent amounts to £50 or more.

In boroughs, through the disintegration of the Corporation Charters, every previous principle had disappeared to such a degree that, according to Statute 2 Geo. II., c. 2, that right of vote should continue to be valid, which, according to the "last decision" of the Lower House, had been accepted as existing. The Reform Bill confers the franchise comprehensively on the middle-classes *i.e.*, on every occupier (owner, lessee, or tenant) of a dwelling-house, warehouse, counting-house, or tenement, of £10 yearly value.

All electoral rights are, after the old fashion, not meted out according to rates and personal duties towards the State, but are based on tenure. For the maintenance of coherence in the electoral bodies, there is required an actual tax-payment, and a prolonged abode in the electoral communal district, or an acquisition of free-hold by inheritance, or through marriage settlement.

III. As regards electoral *proceedings*, after the example of France, the important innovation is introduced, that complete electoral lists are taken by the district authorities, with a fixed revisional proceeding on the part of Revising Barristers, with power of appeal to the Courts of the Realm. The entering of the name on the electoral list is a condition preliminary to the carrying-out of the franchise. Whereas formerly the protracted examination of electors' claims dragged out the election for weeks, the poll became now restricted to two days, and subsequently to one day, and already thereby the occurrence of electioneering riots, as heretofore prevailing, was considerably diminished. A stern Corrupt Practices Prevention Act, 1854, next sought to get rid still more thoroughly of bribery at elections.*

The number of those qualified to vote, which was computed at 400,000 at the time of the first Reform Bill, has been nearly doubled through this Reform Bill. After the thorough carrying-out of the new electoral system (1852)

at the county elections in England and Wales, 322,619 free-holders, 23,097 copy-holders, 21,104 lease-holders, 99,019 tenants have been reckoned up. Further, the number of the borough electors has been set down, on occasion of the proposal of the second Reform Bill, at 488,920. Moderate as such extension seemed in comparison to the constitutions of the Continent, yet it sufficed as regards the position of the English parliamentary constitution, to render the middle-classes no longer the moderating, but rather the "determining" factor of the parliamentary constitution.

ADDENDA.

*334) The classes now being re-fashioned through the relations bearing on capital and industry existing in Society as newly constituted, can be understood from the census lists recurring every ten years, and from an examination of the Income-tax, and of local taxation; from the latter especially, one may infer to what a rapid degree, as compared with agricultural holdings, the income is augmented from inhabited houses, and from factory and mining works,

*335) The contagious influence of the July Revolution, with its ideas of sovereignty of the people, showed itself, at the commencement of 1830, by a series of indications which, later on, have been forgotten. Attention might be called to the following, that in the district meetings of the Metropolis, the free-men of the City of London drew up formal resolutions, according to which the Members of Parliament were to receive henceforth "binding instructions."

*338) The technical details of the Reform Bill are purposely omitted, and especially the not very important deviations of the Reform Bill for Scotland and Ireland. These details are treated of in separate English works, in very characteristic technical style, and are presented in the most thorough manner in Lely and Foulkes, The Parliamentary Election Acts, London, Clowes and Sons, 1885.

VIII.

The Parliaments of the 19th Century down to the Second Reform Bill (1867).

IN the ancient world, an aristocratic constitution, such as existed in England at the beginning of the 19th century, in all its exclusiveness, would have ended in reducing the lower-classes to mere slavery. It is a splendid testimony to the power of Christianity and of this nationality, but especially as concerns the ruling-class in England, that from amidst such a condition of things English Society has entered upon an æra of social reform and of Reform Bills. One cannot refrain from acknowledging that the old Whig--party, consistently with their stand-point, have carried through with courage, steadfastness, and wariness, the great purpose of ensuring the reform of the representation of the people, without any rending-asunder of the bodies empowered to vote for the House of Commons.

In January, 1833, the first reformed Parliament met, wherein only 172 Conservatives stood confronting 486 Liberals and their followers. In the first Session already, a long array of Reform measures pressed to the front, which went forward in lengthened course, and were soon to present great difficulties for the actual majority, and for the respec-

tive cabinets. The coming Reform movement from now forth is separated into the threefold lines of Social, Administrative, and Political Reform.

(I.) The *Social line* of attack is directed first against the political privileges of the ancient ruling-class. With great moderation this branch of the movement contents itself with the abolition of the electoral qualification of £600 and £300 ground-rent for members of counties and boroughs. This qualification had been introduced a century previous, with a view to render it irksome to capitalists to compete as candidates against the landed gentry. It is now simply abolished (1858). Proposals for divesting Bishops of their political functions in the Upper House, and for the creation of a number of life Peers, side by side with the hereditary Peers, are for the time rejected.

More decisive are the attempts directed against the privileges economic of the ancient ruling-class; foremost against the great trade monopolies which, in consideration of a slight compensation, are brought to an end; next against the widely-prevailing system of protective duties which, acknowledged generally as burdens detrimental to Commerce and Industry on a large scale, are in the main set aside, and are only retained in a few productive financial matters. After sturdy opposition, the Corn-tax is likewise done away with. Although Lord Melbourne had declared (1839) that "he regarded as adventurous and mad" the scheme of leaving the great agricultural interests unprotected, yet the "Anti-Corn Law League" and the power exerted by the Press in the years 1838-1846, availed to carry the question successfully through, under the lead of Sir Robert Peel. The powerful land-owning interest had to accommodate itself to the abolition of tithes, to the modifying of the burdens weighing on the copy-holder, and to a system of enclosures of land.

The principle of equality of rights in matters ecclesiastical, involved the repeal of certain obsolete penal laws, and some measures of relief given to dissenting communities, necessary for the administration of their property and for the cure of souls. The admission of Jewish members to the Lower House was for a long time countervailed, through the opposition of the Upper House, but was ultimately, (1858,) through an expedient not very praiseworthy and of doubtful consequences, rendered possible, inasmuch as to either House it is permitted to determine for itself as to the form of oath to be taken by its members.*

As formerly, at the turning-point of Magna Charta, so now, in the 19th century, the higher-classes have not forgotten that a solicitude for the weaker-classes remains as a living necessity for every free community. The noble purpose of abolishing the Slave Trade was now extended to the still more difficult task of procuring the abolition of slavery itself, which, even at a sacrifice of £20,000,000 out of State-revenues, was carried through with just as much success as it was in its consequences fruitful in good. More difficult to deal with by far and in manifold degree, stood marshalled forth the social reforms for the benefit of the industrial-classes. Advantageous as steam-power and industrial works had appeared, during the first decades, to favour the outward independence and the wages of the industrial-classes, just as unfavourably do the relations of wages, in their progressive shape, get developed. Within one generation, among the new proletariate, there is exhibited a picture of domestic life in relation to dwellings, food, clothing, sanitary conditions, the degradation and distress of women and children, such as, through several decades, shows Society as it stands, in gruesome aspects. The very years succeeding the Reform Bill, by reason of the agricultural distress prevailing, were calculated to awaken in those

classes hostile to capital, an overwhelming sense of misery, and of common sufferings calling for remedy, which, from 1839, assume in the Chartist movement a threatening character, and is expressed (1848) under guise of a popular demonstration, failing, however, in its effect. Without allowing itself to be intimidated by the threatening attitude of the working-classes, the Legislature with untiring persistence occupies itself with social problems, in removing the influences most detrimental to family life; that is, by restricting the labour of women and children and shortening the hours of labour, by setting aside all direct risks to life and health in factories and mines, by the nomination of factory-inspectors, on the ground of whose reports, measures of protection are carried still farther and extended from year to year; to secure the warding-off by strong prohibitory enactments any return to the practice of the truck and cottage system; to ensure the legal protection of the weaker-classes by vouching a ready application of civil justice, and of an effective procedure in cases of arbitration and agreement; by guaranteeing the liberty of association and the enforcement of higher wages, accompanied, however, by penalties against any misuse thereof, such as had from time to time occurred in the most flagrant way. Directly and permanently beneficial proved the reduction in price of all the requirements of life, in consequence of the removal of protection duties on corn, meat, and, subsequently on tea, coffee, &c., whereby the domestic outlay of the poorer-classes was diminished by about one-third, while the liberty of association, and the relations of the international market, smoothed the way towards a slow, but, on the whole, continuous, advance in wages. The far-reaching and very valuable reforms in respect of sanitary and structural measures resulted, by means of a long series of Public Health Acts, mainly to the advantage of the working-classes. In behalf of elementary education, which had been

so grievously neglected, a parliamentary grant of £20,000 was first guaranteed in 1833, which in the course of some decades was increased more than a hundred-fold, and has expanded into a system, ever-progressing, of popular education. Comprehending economic and domestic life in every aspect, this social legislation has been able to afford scope at the same time to independent self-help, by means of a well-ordered regulation of the system of association through savings-banks, burial-societies, sick-funds, friendly-societies, and co-operative companies (occasionally under State-security and State-aid). There is bound up therewith, and supplementing the same, a progressively milder treatment of the poor, setting aside at least the narrow-hearted locking-up and isolating system that had prevailed in the preceding generations. This aspect of the duty incumbent on the State remains truly, from its very nature, a never-ending one, and mayhap one wherein, under the exceptional conditions obtaining in the greatest industrial and commercial centre of the world, the requirements of the weaker-classes will never be adequately reached. Looking back on what has been done and achieved in the course of a generation, it must be acknowledged that, in the laws enacted, the propertied classes in the free State, worthily conceiving the scope and measure of their duties, have proved true to their vocation.

(II.) The domain of *administrative reforms* is next trenched upon, so far as concerns the abuses that prevail under the assured sway of a ruling-class, in the patronage and administration of offices. Thereby, however, the exaggerated fixation of administrative law by parliamentary statutes, greatly though they served as a protection against abuses of party administration, imparted, on the other hand, a ponderousness and stiffness to the entire system, which rendered it difficult to carry out the reforms. The generation subsequent to the Reform Bill exhibits likewise

herein a prudent energy, which advantageously contrasts with the contemporaneous condition of affairs in most Continental States.

In the sphere of *military* administration, the experiences of the Crimean War led up to a grouping-together of the entire system under a Secretary-for-War. In lieu of a general duty to serve in the army, which was not realizable in England, a comprehensive system of volunteer corps was set on foot, which affords a nucleus for further development.

Very energetic reforms has the domain of *Justice* been submitted to by medium of the new County-courts, which for the first time ensure to the public easy recourse to civil justice, further, very thorough reforms of civil procedure, procedure in Chancery, and through the newly-organized Courts of Bankruptcy, Probate, and Divorce. Criminal procedure gains a practical organization for the Metropolis through the Central Criminal Court, as well as by a code of criminal examination, by the codification and extension of summary criminal procedure. Very searching are the reforms introduced into the cruelly savage Criminal Law. Whereas, in the time of the Restoration down to the accession of George IV., no less than 187 offences against law had been punishable with death, to-day capital punishment is substantially limited to high treason and murder, the punishment of the pillory and forfeiture is abolished, and transportation is replaced by a rational system of imprisonment.

As regards the administration of the *finances*, after the protection system gave way in the main to the financial duties, a consolidation of the Customs, Inland Revenue, and Stamp Acts, was rendered possible by the repeal of many hundred parliamentary statutes. Sir Robert Peel's Income-tax has, with certain amendments, taken good lease of life. The broken-down system of the Post Royal

has been transformed into the Penny-Post. For the control of the Finances, so grievously shelved by party-governments, the Treasury has established, by means of arrangement with the Bank of England and an Accountancy Committee of Parliament, effective means of control, and so in like manner with the Committee for the National Debt.

In the *Home Department* in the domain of Police, the parish constables having become insufficient, were replaced in the Metropolis and throughout the country by paid bodies of police, organized on a military footing, in practical accordance with the police regulations and police jurisdiction pertaining to the Justice of the Peace. Newly consolidated are several regulations touching Trade, especially in regard to public-houses, which, after many experiments tried, return anew to the requirements of the magisterial licence. With due regard to agricultural and game interests, a Game Act is introduced, which puts an end to manifold social embitterments. In respect to the regulation of traffic, the codified "Merchant Shipping Act" is of great importance, as well as private bill legislation bearing on the still somewhat defective Government supervision of railways.

A greatly modernized sphere of the administration of the Home Department has been developed out of the economic "self-government" of the *Communæ*. It originates with the great Poor-Law Bill (1834) and its innumerable amendments, in the carrying-out of which the Central Poor-Law Board, with its host of inspectors and auditors, affords an example of centralization heretofore unknown. Through the combination of the greater District Boards and the establishment of Workhouses, the gross abuses of former administrations have been surmounted with vast energy, but, simultaneously, with great harshness. Next ensues the regulation of Highways,

(1835,) which, in the constituting of larger boards, follows the pattern of the Poor-Law. After manifold and ineffectual experiments, the Public Health Act (1848) introduces some order into inspection as regards matters sanitary and structural, in densely peopled localities, which are placed under the very searching survey of a Central Board. For municipal boroughs a new Municipal Corporation Act (1835) was issued, which, setting aside the ancient worn-out structure, establishes a uniform administration through Mayor, Aldermen, and Town Councillors, while retaining the police-organization through special Peace Commissions appointed by the Crown.—After the lapse of a generation, this communal administration, after a new pattern, has got fashioned into a uniform system, under a newly-created Local Government Board, as second Minister for the Home Department.

In the sphere of *ecclesiastical government*, the State authority had analogous tasks to deal with, as in the "self-government"-system, so far as through older legal relations, and the corporate organization of the Church, heavy abuses had crept in, which corporate bodies were unable to get the better of. In just as cautious and as well-meaning a manner, the administration of the revenues of the State-Church was regulated by means of mixed committees, the ecclesiastical districts and functionaries being increased according as required, thousands of Churches and Parishes being founded by Government and private means, and richly endowed to satisfy the requirements of teaching, and the cure of souls. Just as considerate, and with evasion of dogmatic points, have the questions connected with the Ritual, Church-discipline, and the shaping of the Oath of Office, been settled according to the advice of clerical committees, and thereby a fresh and advantageous activity has been imparted to the National Church in respect of doctrine and the cure of souls in

striking contrast with the state of things, which had, a hundred years earlier, deformed the Anglican Church.

In respect to matters *educational*, the Reform Bill rests satisfied with exercising a gentle pressure on the Universities and school foundations, to ensure the framing of new statutes. More marked is the progress in the elementary School Boards, for far-reaching regulations under the control of a new Ministerial Department (1856), and with a separate branch for the encouragement of schools of Art and Industry, by means of considerable grants from Government.

In respect of the administration of the *Colonies*, the mother-country decided, after hard experiences, to grant to the Colonies independent constitutions suitable to their position, population, and state of culture, reserving a supreme legislative control to the English Parliament. The administration of the East Indian Empire has, since the suppression of the great mutiny of the native army, by a new law of organization, (1858,) come under direct State-control, with fitting measures for the Government Councils, the Courts of Law, and the chief ordering of administration and appointments.

More than a hundred far-reaching administrative laws, and an organic regulation throughout the whole of the Civil Service, prove, also, in this branch, the ability of parliamentary rule.*

III. Only in the sphere of *political reforms*, that is, in the organization of the communal bodies, and the further development of the parliamentary constitution, attempts at a new order of things appear as failures. In respect of administrative reforms, the business capacity of its ruling-classes, and for social reforms, the practical sense of its men of business, had proved of avail to the country. For the enactments now in view, on the other hand, the English Parliaments were wanting in practical experience,

hardly less so than the parliamentary bodies of the Continent. The "organic laws," whence the parliamentary constitution had developed, had resulted from the initiative of the Monarchy when at its height under Henry II., Edward I., Edward III., Henry VIII., and Elizabeth. The Parliaments of the 18th century had only drawn their inferences from the institutions then existing. New projects of this kind emanated just as little from the party-struggles of the 18th as from the Civil wars of the 17th century, and the Commonwealth in particular did not bequeath a single organic law.

Such new laws have now become necessary, since by reason of the transition into a new order of Society, the old lines of coherence have got loosened, and have to be replaced by fresh ones, as has happened in Prussia, for instance, by a conjuncture of strong impulses and favourable conditions, in the years 1808—1815, and 1872—1876—certainly not by means of "public opinion," but through the initiative of the Monarchy. But the English Parliament has been as little able to fulfil this task, as the constitutive assemblies of the Continent, because such laws do not result from any contention of the social-classes, as to their respective share in the rights and liberties of the community and the State.

The main foundation of English parliamentary constitution, the *unity of the Church National* in the State, had been lost through the repeal of the Test and Corporation Act. The religious equality now acknowledged was only meant at first as a position of equality, for the *individual* member belonging to any of the various forms of belief. But as soon as those dissenting from the National Church formed organized Church-systems of their own, they were no longer content with the position of equality as concerns the individual merely; but this was followed by a demand for equal rights for their churches. These claims were urged to the extreme by the Roman Catholics, who claim their

own Church-rule as part of the doctrines of their faith. The Curia took steps, consequently, to establish a formal organization of ecclesiastical dignities and dioceses in England and Wales (1850). This new position had now to be considered, as requiring determinate legislation to mark out the limit of right, under which the existence side by side, of churches conflicting, is rendered possible (as in Germany). But the attempt to interdict, under penalties, the proclaiming of the Roman Catholic Hierarchy, and the assumption of episcopal titles, by means of the "Ecclesiastical Titles" Act, (1851,) proved to be a dead failure, and had soon to be repealed (1858). By way of reaction, on the other hand, the demand for the "disestablishment" of the Anglican Church in Ireland, and the further separation of Church and State was raised, confronting which the revival of religious feeling, rendered the position of the State all the more difficult. The Anglican Church, in spite of the firm hold it seemed to have taken in the nation, had not been able to prevent very numerous secessions in one direction or other, partly ritualistic, partly dissenting. The Presbyterian Church of Scotland had, in consequence of the dispute relating to Church patronage, split up into well-nigh equal parts (1842). The ecclesiastical relations in Ireland remained sundered, but with an undercurrent of antipathy of race. In all three parts of the Realm a powerful Church organization, deeply bound up with the life of the population, claimed respectively an exclusive right. Were this to prevail in the sense of either of the Churches controlling the whole domestic life, and the moral and spiritual development of the population, up to the measure claimed, then must the unity of the State be relinquished. Great Britain—after having attained to a higher degree of culture—had now arrived at the level reached by Germany at the Peace of Westphalia; that is, at a scission into a Catholic and a two-

fold Protestant country, the further development whereof must entail the loosening of the unity of empire (and would have ended in Germany therewith, were it not for the untiring energy of the territorial administration and legislation) after a fashion analogous to that which in the 19th century induced the separation of Belgium from Holland. Church-systems enjoying equal rights, whereof the one with its claims to be the only-saving, does not allow of any other by its side; the other, with its pretension to exclusiveness, is not wont to allow of any civil equality of right being recognized side by side with it, cannot advance in freedom autonomic, without severing the unity of State and people. Instead of recognizing what common State institutions and legal restrictions such a state of things calls for, English Society sought to solve the problem by means of a vague notion of a "separation between Church and State,"—as if such separation in the individual were possible, and as if the Roman and the Anglican Churches could ever surrender their respective coherence and their inherent hierarchy, even were the State (as in the Prussian Code) to bestow on them the modest style and title of "religious societies." The inevitable task of future legislation for the upholding of the State and nation is, in its inception at least, indicated by the introduction of a general registration of births, deaths, and marriages, (1836,) a civil marriage at option, a general Divorce Court, elementary schools, high schools, universities in common, and a common burial-ground, and so forth. For the time, however, only the negative result remains, that the equality of right and the intimate union of each contending Church breaks up the uniform basis of the parliamentary constitution, and introduces doctrinal sections into Parliament, side by side with the parties political.

The next determining foundation of parliamentary constitution, the inner coherence of the *Communitates* was,

indeed, maintained, as far as possible, by the Reform Bill of 1832, but the progress of the reforms, social and administrative, led only too soon to a transformation of the groundwork, by no means intended. The new municipal organizations (1835) assigned a share in the economic administration to the whole body of burgesses; but this civil administration, in its continuing severance from the police jurisdiction of Justices of the Peace, from the parochial care of the poor, and other important branches, had herein so scant a scope, that it could do but little towards revivifying and upholding the communal mind. Thereto came added the contradiction that in the municipal organization (against the urgent protest of Sir Robert Peel) a general uniform franchise for all householders, got introduced, whereas the Reform Bill in favour of parliamentary franchise summoned only £10 householders. There resulted a tendency to widen the parliamentary franchise, and a new antinomy to the County franchise. In the latter, the organization, as affecting the gentry, maintained, but with a diminishing influence tending downward. Already the suspension of the militia organization, which had become established since 1829, brought some detriment to such influence. Much further in this direction acted the reforms in the Poor, Highway, and Health administration, whereby Justices of the Peace were restricted to a jurisdiction purely administrative, and to individual duties of revision. The further development of these already dislocated communities now depended on the development of the local organization in the *Parishes*.

This lowest substratum of the parliamentary constitution had become such a decisive foundation of the *Communitates* through the offices of Constable, Churchwarden, Overseer of the Poor, and Inspector of Highways, and through the vigorous development of the communal taxation-system, that in the compact system of parishes, and in its

intimate connection with the office of Justice of the Peace, the true power of resistance on the part of the *Communitates*, in the great constitutional struggles, was to be found. Not without fault of the ruling-classes did the local officials of the *Communæ*, in the course of the 18th century, dwindle from their original significance. The ancient office of "Constable" had sunk down to that of a despised police functionary, and was discharged, on behalf of the better situated inhabitants, by deputy. The narrowness of the "settlement" of the poor and the insignificance of the highway district, which, in the interest of the great land-owners, had been pushed lower and lower, conduced even in such offices to a mechanical discharge of a duty that was thought little of, and held but in slight account. Even the far-famed English jury suffered from the growing abuse that all the better classes, by an unfair practice of the Sheriff's office, withdraw from the duties. While in this wise the offices sank lower and lower, the measure of the communal taxes increased year by year and again, in alternate operation, with an inefficient discharge of the duties of the respective offices. The requirement of a radical reform had, therefore, rendered the economic outlay of the taxes the important object. The reform from the outset aims at applying through men of trust, under form of a "board," a restricting check on the expenditure, often really exorbitant. What the tax-payers lay claim to, is a participation in the "resolutions" as to the appropriation of the taxes, and the appointment of the officials empowered to levy and expend (influence and patronage)—nothing more. The improvement in the care of the poor, and surveying of the highways, and sanitary inspection,—the whole range of social reforms did, it is true, require not only taxes, but a wider *individual* activity for the multifarious duties of the parish. But henceforth there is no longer, amid the whirl of party-strife, any further thought of these personal duties (which

are not yet out of mind in German communal life). The sinking into decay of the small parochial offices only brought as a consequence that the significance of the personal honorary office became, in this regard, entirely under-rated in England. But above all, it was in the nature of a legislation, originating from a parliamentary struggle, that only new rights were disputed about, but never new duties, for which there would have been no possibility to ensure a majority in the actual Parliamentary elections. Always in submission to "popular opinion," the legislation henceforth dropped out of view all personal duty in the case of the new boards and parochial offices, and even expressly released the parochial representation from all personal "responsibility."* In lieu of responsible functionaries for a legal communal administration, according to the principles of "self-government," there were created local committees of tax-payers, which soon got launched under the designation, assigned by Stuart Mill, of "Local Parliaments."

The perilous step of *setting-aside all personal duty and responsibility* in the communal body, has destroyed the whole structure, and this change, little noticeable at first, involves consequences farther-reaching for England, than would the abolition of the general duty to serve in the army, for Germany. The *organic defect* of the actual English State-body is perceptible herein, and provokes constantly fresh shortcomings. Through the abolition of the personal duties of the citizen, the communal body is virtually transformed into a system of shareholders, to whom the name of "self-government" still is assigned, though wrongly applied. The administration of the communal board, by reason of its peculiar nature, can be as little founded on a system of voluntarism as the defence of a country can be said to depend merely on volunteer corps. The administration of these integral members of the State at large, can only be

carried out conformably with the laws of the land, and the communal means raised by forced taxes can only be expended on lawful purposes. But as the new boards refused to assume any responsibility, the law was obliged to make of the subordinate paid officials, (clerks, bookkeepers, accountants, assistant - overseers, poor - house officials,) intermediate State-officials, responsible for the administration, and had, consequently, to render them subject to dismissal, and to official discipline, under control of a central board. So as to keep this law of supervision effective, all details of this administration had to be kept under strict control through Government Inspectors and auditors. Thus originated the present system of Home administration by "boards," which, in its centralization and tutelary administration, assimilates greatly to the French system. But, together with the responsibility, the official influence has reverted to paid officials, and leaves only subaltern functions for the remaining communal boards and honorary officials, so that the inclination of the higher classes to take part therein disappears more and more, and still less are Justices of the Peace inclined to take part in this fashion of carrying-out business, where they are only treated as *ex-officio* members. The unavoidable consequence of this system was that the office of Constables, which had fallen into decay, made over all police functions to salaried policemen, and was eventually quite given up by the Legislature, and that the offices of overseers of the poor and surveyors of highways came to be discharged by subordinate paid officials. The result of these reforms is outwardly recognizable in a police body, in uniform, comprising some 35,000 men, and by nearly as large a *personnel* of bureaucratic and subaltern officials as successors of the officials of the "self-government"-system—amounting practically to the virtual withdrawal of the well-to-do and educated classes from local communal life,

—and a final interweaving of the administration by a still farther-spreading system of ministerial commissaries and ministerial orders. The disappearance of all interest in matters parochial is a complaint more loudly raised, but no account is given as to how party-legislation, in its fervent zeal, has effected this dissolution of the moral and legal tie of the communes, and that the persons merely interested in the taxation are now planted side by side, but in a position as isolated as the shareholders of a private company. By this means the feeling of cohesion in the neighbourhood disappears also, and there results a further demand for *secret* voting, by which those qualified to vote are perfectly isolated, and shrink from all moral responsibility, even as the local representation staves off all legal responsibility. The bureaucracy also has met this public opinion by the invention of "nomination papers," (printed papers with the names of the candidates proposed by ten electors,) by which electors are spared all trouble of meeting, thinking, consulting, and counting up, and the election merely consists in a few strokes, which the elector appends to the election list. This is the last movement of "self-government," the only troublesome duty, with which this present industrial society exercises and keeps up their "sovereignty of the people."

Thus more and more disintegrated from year to year do the *Communitates* become, on whose personal coherence the parliamentary body, both in its origin and throughout every phase in reality depended,* and in consequent reaction, the changed views of the electoral bodies, as reconstituted, reflect back on the House of Commons, on the position of the party-leaders, on the Press, and on "public opinion."

The influence of tradition has preserved a certain steadfast character as regards the votes in the greater part of the counties, in like manner in a considerable number of the parliamentary boroughs; but least of all, of course, in the rapidly

increasing populations of the factory districts. But in the same degree in which the process of disintegration advances, purely social views of life, depending on the last impression awakened, and whose endeavours bear upon the interests that come most home, get into the ascendant. To the holders of such views, the Lower House no longer appears as a representative of the communal unions,—a connecting-link between State, Church, and Society—but merely as representing the temporal interests of the dwellers of certain districts, or classes. While in England exactly the institutions of the parish and the county, of the Parliament and the Church, have for centuries been striving to effect a counteraction and counter-organization to interests merely social, and seeking to urge and accustom the citizen to understand, and to acquit himself of his personal duties in the life of the community, in a direction contrary to his own natural interests; so does Society, after the parochial mind has drifted away, regard the feeling of patriotism, "self-government," and sense of justice, as being an outcome of voluntarism. In immeasurable variety, social ideas bearing on the improvement of the representation of the people, by new groupings and classifications, are ever on the increase, and in wonderful variety. Women's franchise has already gained an imposing minority in the Lower House, and the system of elections by minorities has attained to an effective support in the Upper House. Many a ministerial proposal, even in relation to the second Reform Bill, savoured of mere dilettante experiment. Every inkling of a notion as to some new grouping of interests, is hailed as an important discovery, till it gets forgotten on the next turn of the hand. In this only is Society at one, that the individual shall exercise his particular share of the sovereignty of the people on his own special account, and without any responsibility, and hence originates secret voting by *ballot*. The more appreciable the

douce violence had been, which the parliamentary constitution, when at its acme, exercised towards restraining social interests, all the freer the English voter believed he would become under the ballot.

As soon as the communal unions have ceased to form the bond of common interest, *the Press and the right of association* alone remain as the mutual tie.* As the latter can only transiently and locally prove effective, the Press which has now achieved its full freedom remains the principal motor. After the censorship had been done away with, (1695) a safeguard still very perceptible remained, in the draconic sentences of the Courts of law, according the old penal law against sedition, conspiracy, and libel. By the Fox Act (1792) this safeguard was considerably impaired, for now the jury had to give their verdict as to the criminal intent of the author. Already, since the Reform Bill of 1832, a criminal prosecution of the Press by the Crown-prosecutor was considered unadvisable and impracticable. Lord Campbell's Act (1842) declared in fact only an existing practice, by instituting, as sufficient justification, the intention of a "furthering of the public welfare." A statute of 1841 withdraws from judicial control, all publications under authority of Parliament. The year 1853 sets aside the tax on advertisements; the year 1855 the last remnant of the stamp duty. Already the strife for the Reform Bill, and the powerful struggle, on the part of all interested in the abolition of the Corn Law, has proved the now irresistible power of the daily Press, hitherto unknown. Free indeed it now was; the indispensable organ necessary in all directions for the upholding of public interests, in able, and, upon the whole, honourable activity; but not *responsible*, still less so even than the new boards, open to any mistake, and, therefore, insufficient to give moral and legal support to the social endeavours required by the State.**

These new unstable foundations of the electoral bodies explain clearly enough the altered *positions of party* in this generation. After the abolition of the Test and Corporation Acts, the time for the practical activity of High Tories and High Churchmen had drifted by. The moderate Tories, who took part in the State-government, now styled themselves "Conservatives." For the Whigs, the designation "Liberals" gradually came into use in conjunction, however, with an extreme party of Radicals, and many other associates, mostly unsuitable. The great Liberal majority (486) of the first Reform Parliament soon suffered a disruption, caused by its internal disunion. The later parliamentary elections resulted in (1835) 380 Liberals against 273 Conservatives; (1842) 286 Liberals against 367 Conservatives; (1847) 325 Liberals against 331 Conservatives; the latter, however, split up into 216 Protectionists and 105 Free-traders; (1852) 315 Liberals against 299 Conservatives; (1859) 348 Liberals against 315 Conservatives; (1866) 361 Liberals against 294 Conservatives. The distinction of Liberal and Conservative was, however, now a conventional one; in reality, *e.g.*, already in the Parliament of 1837 six sections sat in Parliament: 100 Ultra-Tories, 139 Tories, 80 Conservatives, 152 Whigs, 100 Liberals, 80 Radicals. It is easily conceivable how, by an increased crumbling-off of small sections, the difficulties to form a self-contained Ministerial Cabinet, to be held in agreement with the majority of the Lower House became ever greater. And these difficulties clashed with the even more complicated tasks of the government of such a world-wide empire. Scarcely a year goes by, in this interval of thirty-five years, which was free from bad harvests and severe famine, from crises in trade and industry, from disorders in Ireland, from riots of Chartists and workmen, revolts in the Colonies, from a general mutiny of the extensive native army of India,

from great foreign wars,—all traversed by struggles in regard to protective duties and free-trade, and in connection with great social and ecclesiastical interests at home. The necessary consequence was the rapid change of the ministries Grey, Melbourne, Peel, Russell, Derby, Aberdeen, Palmerston,—a change thirteen times repeated in the course of thirty-five years.

But the weakest point was, and remained, the organic structure of the communal system, and new reforms in the *parliamentary representation.*

Half a generation after the Reform Bill had been passed, public opinion was, it is true, still sufficiently occupied with other questions, to revert at once to the widening of the franchise. The manifold claims of the people to a reformed representation became so accumulated that the House (since 1839) was obliged to relinquish its interference in the matter of private petitions, and to content itself with the urgency of more important measures. The almost general right of election, which the municipal organization of 1835, and the new communal boards had maintained, pressed forward from the communal union into the parliamentary constitution. As at one time with the sound foundations of the "self-government," so now the faulty foundations of the boards, indicate the character of the body therefrom elected. Then, again, the February Revolution in Paris (1848) spread its contagion to England, and already in the year 1851, the proposals of Locke King found acceptance, which brought about the Russell Ministry, to introduce, on behalf of the Government, a new Reform Bill. In spite of his former assurance that the Reform of 1832 was to be "definitive," even Lord John Russell had now arrived at the opinion, that the lowering of the qualification from £10 to £5, would, in fact, have a "conservative" effect. But a fundamental *principle* of electoral reform was no longer to be found, since the obliga-

tion to personal service in the whole enchainment of communal institutions had been abandoned. The duty to pay rates also had, in the meantime, been relinquished, by allowing, for the convenience of levying the small amounts of rates, the owner, instead of the occupier, to be looked to in respect of the rates ("compounding rates") and this measure was largely availed of in well-nigh one-half of the cases that occurred. By a legal fiction, the occupier was to exercise his franchise "just as if he had paid the rates himself." If thereby the payment of the taxes, as the foundation of the right of voting, dropped, a limit of £5 was just as justifiable, or otherwise, as a limit of £10 value. Every dispute with reference thereto leads to a pronouncement in the majority, at the numerous meetings held in favour of lowering the qualification. A like outcome results from the discussion of the matter by the organs of public opinion. There now begins and continues, through half a generation, a rivalry between Liberal and Conservative, with party-ministries and Reform schemes, whereby each tries to take the wind out of the other's sails. At the last turning-point (1866) Gladstone offers in favour of occupiers a lowering to £14 in counties, and to £7 in towns, but is out-trumped by Disraeli, who now (with certain amendments on the part of Gladstone) is led to lower to £12 for counties, and to a general equalization of household franchise for boroughs. In a Parliament harassed by contested elections the third reading of the Reform Bill of 1867 passes, even without going to a division, with the following results:—

I. In reference to *electoral districts*, the Second Reform Bill goes to work cautiously. It does not withdraw the right of vote altogether from any electoral district; 38 boroughs (under 10,000 inhabitants) are limited, however, to one member. Liverpool, Manchester, Birmingham, and Leeds obtain a second member; ten new boroughs are

created. In electoral districts, which have to elect three members, only two votes are to be given, in order that the experiment of the minority vote may be tried.*

II. As regards the right of voting, the 40*s* free-holders in counties retain their right, the free-hold for life, however, only in case of being in actual possession, the £5 free-holders receive it also without any such presupposed condition. In like manner the £5 copy-holders and lease-holders, and all other tenants, as £12 occupiers. In the towns every house-holder (owner or occupier) of an inhabited house, or of an independent dwelling; also sub-lessees, when the unfurnished dwelling represents a £10 value.**

III. The *mode* of election remains for the time being unchanged, the introduction of secret voting, however, is already in prospect. Simultaneously, the Lower House relinquishes the decision as to contested elections, and lets it be transferred to the Judges of the Realm.

The result already on the passing of the Bill showed an increase of about 2,000,000, and this doubling of the First Reform Bill allowed fair ground to predict the tripling of the Second.

ADDENDA.

*342) An Act of Parliament for the admission of Jews to equal rights as citizens had been introduced already in 1763, but in consequence of the adverse manifestation of public opinion, was already in the following year withdrawn.

*348) Administrative law, which pertains as essentially to the being of the English State as does the right parliamentary, was, at the time wherein constitutional theories in France and Germany were settled, as good as unknown. From the systematic treatment of the subject in Gneist, "Engl. Administrative Law," III. Ed. 1883—84, vol. 2, only general excerpts can here be inserted.

*354) An apparent exception is met with in the Municipal Corporation Act of 1835, which, conformably with the tradition relating to municipal corporations expresses an obligation to undertake the town offices. But such a precept remains mere paper, if such general duty incumbent on the citizen gets extended

to every household. Nine-tenths of the small householders could not undertake any civic office or even serve as juryman, are never required to do so, and still less forced. The self-imposed deception of democrats in this particular can be established statistically if, as in Prussia, by means of the three-class system of tax-payers, the actual services rendered by the small householders is brought into evidence. The author had upon one occasion (1860) from the municipal statistics of Berlin, and also from other towns, demonstrated that the share taken by the third-class tax-payers in the municipal administration, falls short considerably of what they contribute in taxes, and that this class, through the claiming of universal suffrage in the *Communa*, pretend to from ten to twenty times more than their contributions justify.

*356) The full bearing and character of this new organization of the municipal administration is described by Gneist, "Engl. Self-government," III. (1871) cap. ix—xii.

*358) It would be a delusion were one to cherish the belief that this disintegration of the groundwork is improved if the land-owning interest, professional bodies, religious societies, &c., are bound together as "Corporations." The want of a common bond of union of Society becomes thereby only all the more perceptible, and all the more does the Press alone and the political right of association remain the only bond through which, under such circumstances, a representation of the nation may be connected with the government.

**358) The developed significance of the Press, which first made itself felt a hundred years ago, through the celebrated and notorious letters of Junius, can only here be summarily pointed out.

*362) Elections by minorities, after the Reform Bill of 1867, are quietly set aside in the third Reform Bill—as mere experiments that have missed fire. The endeavour to exact that actual payment of taxes shall have been made as a condition precedent to the right of exercising the franchise will be treated of in Part IX. Respecting the modifications in the Reform Bill for Scotland and Ireland, as well as in regard to the technical peculiarities, I would refer to the special treatises, particularly to Lely and Foulkes, Parliamentary Elections Acts, 1885.

**362) The most important difference between the first and second Reform Bill in regard to the right of voting are the following:—

(1.) In parliamentary boroughs the first Reform Bill confers the vote on every occupier, whether land-lord or lease-holder, of houses, shops, warehouses, or other buildings of an annual value of £10. It was subsequently computed that, according to this proportion, about one-fourth of the voters in towns belonged to the class of journeymen, very unequally divided, it is true, and concentrated in greater masses in the chief cities and in manufacturing districts. The second Reform Bill lets the £10 qualification drop, and takes thereupon the working population in the mass, so far as they possess a dwelling of their own. But the principle that each household ought to be represented did not well suit the position of the sub-lessees, whom one did not, however, wish entirely to shut out. There was

consequently, in their regard, a conditional right of vote adjoined, provided they have been for some time occupiers of a dwelling-place which, as unfurnished rooms, would represent a value of £10, as also under condition that the occupiers are personally inscribed on the voters' list.

(2.) In the counties, the second, as well as the first, Reform Bill retains the right of vote for the 40*s.* free-holder. On the other hand, the qualification of free-holders for life, copy-holders and lease-holders for sixty years, is lowered from £10 to £5. The qualification of £50 for tenants at twenty years and more, and according to the Chandos clause for tenants of every kind paying £50 rent, there is substituted a right of vote for every occupier of a rural holding of £12 value.

(3.) In like manner in both Reform Bills, the fundamental principle is carried through, that the manner of ownership which the character of the ownership bears, (free-hold, copy-hold, lease-hold) retains the right of vote as unconditionally *virtute possessionis*; the temporary occupiers of a real estate (tenants, lessees, and other occupiers) exercise the franchise only on the presupposed condition of a longer possession, and that they have been duly assessed, and have contributed to the public taxes. The duration of occupation, moreover, was shortened in subsequent enactments, and the requirement of the prepayment of taxes was set aside, by means of "compounding rates."

IX.

The Parliaments of the 19th Century

down to the Third Reform Bill (1884-85).

THE second Reform Bill, since its fuller development, has settled the electorate for England and Wales, according to the last returns, as follows:—

I. In the Counties:—

Free-holders, Copy-holders, &c. .	514,226
Occupiers and Tenants	252,493

II. In Boroughs:—

House-holders and Lease-holders	1,592,225
Sub-lessees.	21,918
Free-holders.	37,589

III. Together, electors in counties, 966,719; in boroughs, 1,651,732; thereto 310,441 empowered to vote in Scotland; 224,018 in Ireland, and, further, 30,642 for the Universities — sum total, 3,183,552.

Compared with the electoral systems of the Continent, this presents no immoderate extension of the franchise. For England it sufficed to render visible and sensible, more especially in the region of political reforms, the organic fault committed through displacing the foundations of the parliamentary constitution.

The group of *social reforms* which already two decades

ago had set aside the electoral qualification for Members of Parliament, directs its efforts now against the remaining bulwarks of the old ruling-class. On occasion of the army reform, the qualification for officers and holders of commissions in the militia, as well as the right of nomination, so far as the Lord-Lieutenant is concerned, are abolished; and in the standing army the entire system of purchase is set aside. In the Upper House, proposals for divesting the Bishops of their legislative functions are rejected, but a beginning is made in that direction by the exclusion of Irish Bishops. In like manner, a great movement in favour of completing the Upper House by adding life-Peers (1869) is rejected; but on occasion of the reform of the Courts of the Realm, certain life-Peers do get tacitly added to the House, who will surely find many to follow. Of earnest account is the position taken by public opinion, on occasion of every attempt at opposition on the part of the Upper House, whereupon the influential Press launches out into comments concerning the utility of "another House," which no longer reveal any recollection of the constitutional significance for England of such an institution.

Through the unhappy condition of things prevailing in Ireland, a violent blow is levelled at the economic privileges of the land-lord class, the heavy wrongs of ancient growth being sought to be made good by trenching on the rights of ownership of the actual holders, through the medium of thoroughly radical land-laws. The further attacks levelled against family settlements, and the obstacles in the way of transference of ownership, have only resulted in introducing certain limitations of the former, and simplifications, to some extent, of the latter. The agitation against the immoderate extension of farms on a large scale, and in favour of the transformation of the relations bearing on "occupation" into peasant proprietaries, under the cry of

"free-land," appears to take ever greater proportion, and in coming years must assume a truly threatening shape.

The demand for an equality of religious rights, directs anew its energy against the Anglican Church in Ireland, whose standing, as the solely legal State-Church for a little more than one-tenth of the population, was not any longer maintainable since the passing of the "Emancipation" Act. Encountering but slight opposition, the "Disestablishing" of this Church is effected, accompanied by the partial divesting of her revenues (1869)—as one step in advance towards the further process of disestablishing, which is initiated in England (1868) through the abolition of Church-rates.

Worthy of recognition, at all events, is the continuous carrying-out of social reforms in favour of the working-classes: the more comprehensive extension of the Factory Acts, the thorough improvement of sanitary regulations, involving withal heavy sacrifices for the community; the energetic enforcement of compulsory education with the lowering, with a view to the abolition, of the school-pence; the rapid and progressive formation of School-board schools for children of all denominations; the gradual establishment, by comprehensive enactments, of a *jus æquum* and of a mutuality of contract between employers and workmen; the earnest solicitude manifested to procure fitting dwellings for workmen and measures therewith connected, which do not, in reality, prevent social movements, but do serve to keep them, in some degree, within legal courses.

The second group of *administrative reforms* assume, in like manner, a more decisive character.

The standing army becomes a normal institution of the country by the passing of an army-organization law with settled rules (with right reserved of an annual ratification in respect of any amendment introduced), by the abolition of "Purchase," (involving a sacrifice of £8,000,000,) by the

incorporation of the Indian Army with the army at large, by the settled organization of all branches of the army, by the forming of reserves, by the incorporation of the militia and volunteer corps into the army reserve, and by the strictly uniform administration of the whole through the newly-instituted Secretaryship-for-War.

The judicial reform imparts, after long opposition, a modernized structure to the Superior Courts by combining into one great Court of the Realm, in five divisions, and one Court of Appeal, the Lord Chancellor, Vice-Chancellors, and all the superior Judges, merging the Courts of Common Law, Equity and Ecclesiastical and other Courts into a system, as near as possible, of uniform jurisprudence, and an entirely refashioned mode of procedure.

In the province of the finances, the combination of the fragmentary taxing-department into two chief Revenue-offices, the extension of the postal-system through the taking over by the Government, of the telegraph-service, and the extension of the State supervision of railways is of great moment.

In regard to Home matters, the municipal administration advances by means of elected boards, without halting. The charge of maintaining the poor is transferred from the Parishes to the small Unions. The control of Highways and Boards of Health is progressively incorporated with the same system. The new unions of combined parishes are made to correspond with the official district of the jurisdiction of the Justice of the Peace (Hundred). In boroughs, endeavours are made to legislate towards a possible merging of the town councils with the special Poor, Highway, and Health Boards. The bureaucratized-system of the Home Department, is (1871) combined into a new Ministerial Department—" Local Government Board." A similar course, though in more limited range, is adopted

by the Elementary School organization. Therewith the last remains of local communal activity certainly disappear. The parish sinks into a mere district for the levying of rates, and the election of boards. As total result of these combinations, there now exist, according to the Census of 1881, for the economic communal administration: 242 Towns possessing a municipal-organization, 649 District Unions, 424 Highway Unions, 1,006 Urban Sanitary Districts, 577 Rural Sanitary Districts, 2,051 School Unions, 5,064 Parishes for administration of Highways, 14,946 Parishes for Poor-administration, 13,000 Ecclesiastical Parishes, and a few other organizations less numerous, which stand in urgent danger, on occasion of the next reform, to merge into a mere mechanical, similarly-shaped system of boards, under control of a central department. On every hand, however, the boards, with their universal suffrage and ballot, prepare the ground for further parliamentary reform.

University reform is well handled in the thoroughly-searching Acts of 1880, and the popular School-system by the comprehensive Education Acts, (1870, 1873, 1876,) which bring into effect the Elementary School-system, by carrying-out energetically, with considerable outlay of Government means, compulsory education, the simultaneous introduction of committees for school administration and inspection, and equality of rights for all denominations. In Parliament itself utterance was given to the notion that, by the powerful extension of the franchise, "our future masters" should, however, in some degree be trained for their calling.

By a radical setting-aside of the abuse of party patronage, the reform of the Civil Service, although somewhat pattern-like, is, however, carried out with good results.*

From this aspect likewise an unbiassed judgment as to the practical insight and energy of such parliamentary legislation, so far as the attainment of the nearest purpose

sought to be realized is concerned, cannot withhold due recognition.

The dark side is shown most in the third region—namely, in the *organic legislation* bearing on communal and parliamentary constitution, wherein the breaking-up of the coherent parts advances at a rapid rate.

During the deliberation concerning the Reform Bill of 1867, the Conservatives had made a serious effort to insist on the "payment" of the rates as a condition preliminary, and as a standard whereby to determine the exercise of all electoral rights. The difficulty of carrying this out consisted in the fact that the rights of election were hitherto based on the quality of "tenure," as held by owner, lease-holder, or tenant. The clause was, however, enacted that the occupier, for whom the owner has undertaken the compounding-rate, by payment of the taxes, is only to have a vote on "personally" undertaking to pay them. But the influence of recognized habit and convenience and the difficulty of execution, and above all the desire of social equality, was able to stave off this difficulty. The law for assessing the Poor-rate (1869) reverts promptly to the principle that the occupier is to have the right of vote, whether he pay the tax himself or through his landlord, provided that somebody pay. This solution may certainly be recommended for its simplicity and for its seemingly humane consideration, which emancipates the working-classes from tax on rent and all direct communal taxes, just as much as the higher-classes have, on their side, freed themselves from all personal obligations. The consequences, therefore, show first of all, that the legislature by divesting the citizen of all civil duties has, in great measure, left as sole basis of claims to the highest political privilege, the universal right pertaining to man. The reduction of the civil standing in the State to the abstract notion of the "citoyen," the decomposition of Society which, otherwise, was wont to be attributed to one political

party only, was here, in an eager competition to capture "public opinion," carried out alike by both sides. From this time forward there is no principle which could be placed in opposition to any right of vote, not even the right of suffrage in the case of women and minors. There is now opened out a veritable chaos of new reform ideas, the inborn right so framed claims to be exercised as an act of *personal* sovereignty, independently of connection with any particular district, and without any kind of responsibility, through secret ballot, which speedily becomes the all-engrossing question of the moment, and follows immediately upon the second Reform Bill (1872). The House of Lords attempted further opposition, but yielded assent to the bill in the session following, looking upon it as a temporary measure, and under such mental reservation the Ballot has held on from year to year.

Proposals for *enlarging* the franchise follow at this conjuncture directly after the passing of the second Reform Act, the greed for equality is directed forthwith against the inequality of representation in town and country; why should there in the one case be a like equality in regard to householders, and in the other a qualification? The cry of "Equality of Franchise" makes itself heard already in 1872 in fresh proposals for reform. Still further-reaching is the demand for equality of electoral districts, that is, in regard to the fixing of an equal number of electors in the electoral districts. The well-known principle of Pitt also, that electoral districts should be formed according to an average number of inhabitants, and the amount of taxes paid, now appears to be a standpoint that has grown antiquated. The opposition of Parliament could only hold out for another half century against the rapid pace of the demands, up to the *Third Reform Bill*, the Representation of People's Act, 1884, and the Act as to the Distribution of Electoral Districts, which now, (1885,) with some related acts, forms a group of nine new constitutional laws.

I. In regard to electoral *districts*, the equalization, in other words, the radical refashioning of electoral districts, having about the same number of inhabitants, is carried out. For this purpose, 79 towns, having less than 15,000 inhabitants, are divested of the right of electing a separate member; 36 towns, with less than 50,000, return only one member; 14 large towns obtain an increase of the number of the members in proportion to the population; 35 towns, of nearly 50,000, obtain a new franchise. The counties are throughout parcelled-out into "electoral districts" of about the like population, to elect one member each. This single-seat system is, regularly, carried out in towns, with the exception of 28 middle-sized towns, which have been left with two members. The County of York forms, for example, 26 electoral districts; Liverpool 9. To sum up, the result stands thus—the counties choose 253 members, (formerly 187) the towns 237 (formerly 297). The average population of the county electoral districts is now 52,800 (formerly 70,800); the average number of the town electoral districts 52,700 (formerly 41,200).*

II. In respect to the *franchise*, the third Reform Bill is founded on the simple principle of equalization, in such wise that the householder-tax in boroughs gets now extended to counties. The occupying of a dwelling-house, or of a separate abode, or of a lodging of £10 yearly value, unfurnished rental, suffices also in counties to assign a right of vote. For equalization with the towns, the qualification of the occupier in counties has been reduced from £12 to £10. All former electoral rights are maintained, as in all previous Reform Bills; and in addition, a few electoral privileges, for instance, in favour of the occupiers of official residences, have been newly created.**

III. In regard to the *mode* of elections, the hours for voting are fixed generally at from eight in the morning to

eight at night, during which the voter's ticket, based on the system of nomination papers, is deposited according to the convenience of the person empowered to vote. The further amendments of the Bribery at Elections' Bill, and the Proceedings at Elections, are of little importance.

The number of the newly-enfranchised is supposed, according to an average estimate, to be 2,000,000; it is certain, however, that the newly-added are still less qualified to keep parliamentary government alive than the previous 2,000,000.

The exaltation, amid which the first Reform Bill was carried, had already toned down at the second. The third passed with a feeling of resignation in both camps, after each had at least, by exhausting all means of agitation, tried hard to get the better of the other.

The hope entertained by the Conservatives that the increase of members for counties, and the division of the large towns into separate electoral districts, would redound to their advantage has not been realized. For any such advantage is outweighed by the fact that the gentry acting as Justices of the Peace in the county loses its stronger cohesion through the General Sessions of the peace, and finds itself divided into smaller sessional districts, confounded and set on a level with the Poor Law Boards, in their loose connection with the parishes. Combined with all this is the want, moreover, of a well-to-do peasantry and of a settled agricultural population. Both parties are now equally, and in a twofold degree, dependent on the interests and fluctuating opinions of the day.

Just as in Church reforms, so also in the transition into the new order of Society, England takes a direction wholly different from that of the Continent. On a higher level of development, England arrives, towards the close of the

19th century, at a position analogous to that of the Continent at the beginning of the formation of its constitutions. In name, at least, there does exist a House of Commons, but there are no more *Communitates* in existence, no more those old-fashioned, quaint associations, bound together by a sense of duty, but social groups which find their link of connection in the Press, and in the right of association. Inasmuch as that corrective has disappeared, which, in the old *Communitates* reconciled the interests of law and order, and accustomed electoral bodies to that measure of self-control in political insight and reverence for the law with which parliamentary party-government might honourably exist; those social views of life are now in the ascendant which have their being in conflicts for electoral rights, and ever in one and the same direction go repeating themselves, with measured movement, throughout the cultured races of the world.

The striving on the part of Society for "equality," always puts forward its claims on the ground of fundamental rights: freedom and equality of the person, of property, the right of association, of the Press, freedom of churches, of denominational teaching, &c.—assumptions of the Society of to-day, in themselves rightful and immutable, but which, as abstract party-cries for dissimilar suppositions, lead up to claims contradictory and ever unsatisfactory.

The striving on the part of Society for "equality," under the designation of self-government and communal freedom, does not claim the responsible execution of the laws and State-duties by responsible citizens, but by boards freely elected, invested with autonomous authority to pass resolutions, and to appoint to offices.

The striving on the part of Society for "equality," sets its whole mind on securing the free election of the popular House which, as Administrative Committee of the nation,

frames resolutions and points out the ministers who are to carry them into execution.

The striving on the part of Society for "equality," when it graduates from the middle to the labouring-classes pretends to something beyond; an equality of property and an equal value of the different kinds of labour, which is at cross purposes with the striving for political equality, urging on to harmful contradictions with the essential being of Society, of Church, and State, and opens up a free field for all the tricks of the demagogue.

Apart from an earnest compliance on the part of the individual, with civil duties towards the State, no dam is ever or anywhere interposed against the elementary power of these currents. If after the second Reform Bill that striving for equality came into the ascendant with redoubled energy, so after the third Reform Bill a triple power of impulsion, and a more positive character will be imparted to reforms social, administrative, and political, and towards a rendering of the administration more democratic, the "Era of Radical Parties" having now arrived, and therewith the sway of the Caucus and of political wirepullers, small though the inclination which the nation had from the outset felt, for any aping of these American institutions. Street mobs now no longer, as in former decades, create a peril to the living generation, inasmuch as popular education has greatly improved, but a Puritanic fanaticism displayed in favour of equality, which will follow in the track of Bentham rather than on French lines, but will penetrate all the more deeply.*

On the other hand, one might anew levy the objection, that the present structure of the electoral bodies is in reality such as has been tried more than once in Continental States, (under strong monarchical initiative and guidance) without involving very great dangers. But it must be borne in mind that the tenfold increase of votes in the lapse of half a century

has another import for England, inasmuch as the existence of Ministries and the course of State-government have become almost exclusively dependent on the House of Commons. After all correctives for the moderation of the social conflicts of interest had ceased, *this* kind of party-rule falls into a helpless dependence on unforeseen combinations of social interest, on prejudices relatively stronger, on political agitation, and the tactical skill of party-movement, to which already, under the second Reform Bill, Disraeli, as well as Gladstone, owe their respective positions.

The twofold division into a Conservative and Liberal parliamentary party, which previous to the present parliamentary government was necessary, in reality now no longer exists. For a length of time, side by side with the two parties, there have existed (as in Germany) radical, denominational, national sections, having their special interests, with "independent" members and others, whose number is slowly, but steadily, on the increase. The bearing of the English Parliament had already become so changed under influence of these factors, that it was found expedient to impose stern restrictions on the liberty of speech, once even (in 1881) by the exclusion of thirty-two fractious members. Already since the Reform Bill of 1867 the dismemberment of parliamentary parties has, in substitution of a party-government on traditional lines, led to the quasi-dictatorial position of a single statesman, as personal interpreter of the actual average of "public opinion." Til the advent of Radical Governments, therefore, there is nothing for it but Coalition Ministries.

In this state of things, a comparison with the past experiences of the Continent presses upon us; it bears on the wonderful heedlessness of the propertied classes as to the crisis impending, which results from the fact that in limited social circles, the difference in the main relations are not perceptible. The do-nothing Peer who, in former generations, was

seldom to be met with, is an every-day apparition at a time when the very existence of the House of Lords has become a burning question. An irresistible desire to wander at large lays hold of the landed gentry, at a time when their presence on their estates should be more urgent than ever with them, lest they lose utterly their local influence, already in so shaky a condition. The daily Press and the literature of the day busy themselves with a zeal indefatigable in every branch of natural and moral science, just as if the great English State-body were in a safe haven of rest. The daily Press seems to dwell in a region of unconsciousness and of self-delusion as to the actual condition of State-life, as if the question of "to be or not to be" of the parliamentary constitution were to go on being decided, as with a kind of infallibility, by mere force of public opinion; just after the same fashion as erewhile in France and Germany, when on the brink of a catastrophe.

At the same time however, our earlier experience points to the solution of the problem. Little as the opinion of the day seems inclined to be made aware of the downward tendency which is shown in the State, all the more wonderful and mighty will be the reaction when the political and social catastrophes have occurred, whether they proceed from within or from without, or, as is wont, from both simultaneously. The outsider may venture to prophecy that it will be hard to recognize the present public opinion at the close of the century, and that the leading periodical Press of this day would be wonder-struck were it allowed to read and to recognize its own influence, and to perceive how fateful has proved for the destiny of the nation their worship of public opinion. Assuredly the propertied-classes will not exhibit their loftiest qualities while engaged in the defence of their property, but the nation, taken as a whole, will. The blows of fate and hard trials evoke the real spirit of heroic and

noble races; only then will start up in full power that consciousness of duty towards the State, which now lies dormant. In such time of trial France and Germany alike gained the faculty of rendering the greatest sacrifices of which Society is capable, namely, in the personal duty of the citizen at large to serve his country in arms. Does the courage, the strength of character, and the practical insight possessed by this nation, as it stands arrayed before us in the transformations of a thousand years, not afford the assurance that even now the sense of duty to the State will be quickened, and will attain to a reconstruction of the groundwork of the free State-system that had disappeared? Just as the human frame possesses the faculty of restoring or re-constituting the impaired or mutilated functions, even so does the organism of the State retain a like faculty.

The next task for organic legislation is, the now necessary refashioning of the county-administration, in which the restoration of personal civil duties in the "self-government," means almost the same thing for England, as the general military duty does for the states of the Continent. Already in respect of this matter the propertied-classes will, at last, more clearly perceive the process of disintegration going on in the body of the State, and it is likely that already, under the *moderamen* of the monarchy, a check may be interposed and a turning-point for the better be secured. At all events the Crown will ward off the extreme dangers of a democratic guidance of the *foreign affairs* of an empire so widespread, even as it has, erewhile, with wise forethought, (1850,) upheld this prerogative with firm hand. In the life of the multitude as in that of the individual, the real friends are they who, instead of flattering, predict the tempest impending. Just as the direction of the social movement in the central European world was similar in character, so,

according to the differences of nationalities and their previous histories has the result proved varied.

For the well-being in life of the multitude, as in the case of the individual, it is decreed that such trials have to be encountered; so does the whole past of England, standing before us as the creation of the moral and rightful conscience of the nation, fashioned through the development of a thousand years, justify the confidence that this nation will overcome the storms impending, and will, in its own past, find the wherewithal for the reconstruction of its free State-system, even as the German nation, whose latent power has always resided in the cellular system of the *Communæ*.

ADDENDA.

*369) The improved drafting of Parliamentary Statutes is very acceptable to the outside public, since, effected as it is by means of a duly-qualified Commission, appointed from year to year and constantly at work, a wholesale revision of the old Parliamentary Statutes takes place, the obsolete being struck out, and the application of available statutes being rendered possible.

*372) The schedule of the electoral districts appended to the Bill facilitates the arranging of each individual district. The electoral districts of the counties consist, as a rule, of one or more sessional divisions, which generally conform with the district-poor law unions; then again, of one or more municipal boroughs, or former parliamentary boroughs, and, in the main, of a large number of parishes, which are separated from other unions to make the electoral district assume a better shape. The town electoral districts are at least compounded of wards unseparated, but partly also considerably extended by addition of a rural population. The electoral bodies thus newly amalgamated bring about, under the present conditions, radico-liberal majorities, which are, at first, among themselves very disunited, but soon become capable of action through the strong predominance of Radical elements. The confusion of political principles, in consequence of the next advantages in view, is so great, that this most faulty point of this system of equalization is carried through by the Conservative-party!

**372) Omitting the less important details, the rights of election are fashioned as follows:—

(1.) By means of the preliminary conditions common to all, these remain excluded: minors, women, such as have been sentenced to more than twelve months' hard labour, the paid police-corps, and poor-law inspectors.

(2.) Common to the counties and boroughs is the "Lodger's Franchise," for

every inhabitant, occupier of a dwelling-house, or of a self-contained abode during twelve months, assessed to the communal rates during this period. To this is added the right of vote of "lodgers," *i.e.*, of sub-lessees holding an abode of £10 value (reckoned as unfurnished) under the preliminary condition that they are inscribed on the electors' lists.

(3.) Special electoral rights for counties:—

a. Free-holders' qualification: free-holders of 40*s*. value, if in possession for six months, or transferred by inheritance, &c.; for free-holders for life, only under preliminary condition of actual possession, or inheritance, &c., without which only free-holders of £5.

b. Copy-holders of £5 value, in possession for six months.

c. Lease-holders (leases for at least sixty years) of £5 value, if in possession for twelve months.

d. £10 occupiers; temporary holders or other possessors of land of £10 value, if in possession for twelve months, assessed to all communal taxes in the same time.

(4.) Special electoral rights for boroughs: the £10 occupation has, for the sake of equality, been transferred to towns, for every occupier of lands of £10 value, &c.

The election lists are yearly posted up in September and October, and the requisite periods of possession reckoned back to the previous 15th July. The requirement of a longer possession counts as being satisfied, if the possession is dependent on inheritance, marriage-settlement, or office. The requirement of assessment to the municipal taxation counts as being satisfied, if the occupier is assessed himself or "by his land-lord." But the tax must also be paid within a certain period.

*375) It is again a self-delusion, if one believes that the thoroughly-ingrained aristocratic feeling of the English nation will be maintained ere these crises are passed through. It will only bring about, as a consequence, that one will find at the head of the Radical movement very celebrated ancient names, just as in the struggles of the 17th century, to which the approaching future will in all likelihood offer many parallels.

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