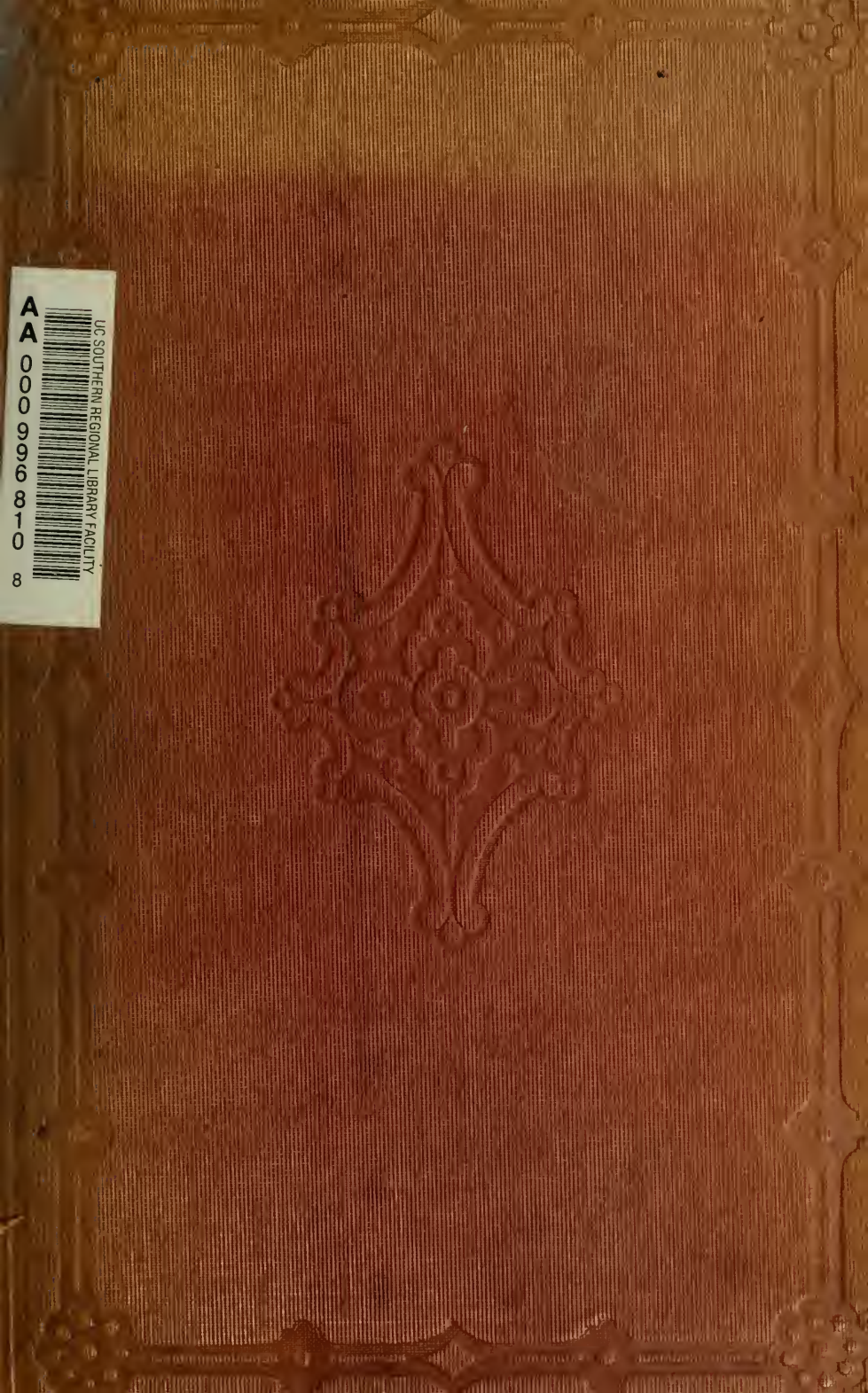

A

POPULAR SKETCH

OF THE

ORIGIN AND DEVELOPMENT

OF THE

ENGLISH CONSTITUTION,

FROM THE

Earliest Period to the Present Time.

BY HENRY RAIKES, M.A.

BARRISTER-AT-LAW,
AND REGISTRAR OF THE DIOCESE OF CHESTER.

VOL. II.

FROM THE ACCESSION OF JAMES I. TO THE PRESENT PERIOD.

LONDON:
W. H. DALTON, COCKSPUR STREET.
1854.

Τέιχεα μὲν κἀι λᾶες ὑπαὶ ῥιπῆς κε πέσοιεν
Στρυμονίου Βορέαο· θεὸς δ'ἀεὶ ἀστυφέλικτος
Δῆλε φίλη, τῶιός σε βοηθόος ἀμφιβεβηκεν.

Callimachus, Hymn to Delos.

PREFACE TO VOL. II.

No apology would have been due for the delay in the appearance of this volume, were it not that in a work intended to be useful for educational purposes, the utility will much depend on the integrity and completeness with which the whole subject can be at once received. And the author has therefore to regret that more than two years should have intervened between the appearance of two volumes on a connected subject, where unity of design and compendiousness of execution was more required than either extensive research or elaborate composition. He can only plead in extenuation of apparent neglect, that the duties of his office have so completely engrossed his time and attention since the summer in which the first volume appeared, that it was not till the end of April, 1852, that he was able to write a line of the present volume. It was then too apparent that in proportion as the materials for the work were more abundant, and in some sense more trustworthy than for the preceding period; the labour and responsibility of perusal and discrimination were increased in an almost equal degree. Under these circumstances it is not likely, that the present

volume is free from the faults very fairly noticed in the former one. Thanks again have to be rendered to the great Historians and Jurists whose aid was gratefully acknowledged in the earlier volume, with the addition of Lord Mahon, whose valuable work has been found a safe guide and great relief of original research during the period it illustrates.

The author would again, as on the former occasion, renounce any claim to either the merit or responsibility of learned research, or indeed of access to any sources of information beyond the ordinary histories and biographies to be found in any library. While whatever there may be of originality in the deductions and opinions founded on these data, is rather due to the simple search of truth, with as little of party or class bias as is possible for an Englishman, who has taken some humble and not very recent part in public affairs. Least of all can I appropriate the tribute of praise conferred on me by one of the critics of the first volume, who spoke of the work as a proper homage to public opinion from the holder of a wealthy sinecure, as showing that he would do something for his money. On the contrary I have to apologise to one portion of the public, for a certain amount of time and thought that may have been diverted from the duties of my office to the elucidation of this subject. The only claim to peculiarity of treatment has been, the subordinating every question of moral right to the principles of Revealed Truth, and the viewing

every passing incident of political history less in reference to its assumed importance at the time, than its ascertained influence on subsequent developments. And though parties must in their turn be reviewed with praise or blame, according to their varying deserts, yet the opinion and interest of the great neutral body of the country will be mainly held in view, as at once the object of all political progress, and the great inquest, that must decide on the more conspicuous men and measures that tended to that result.

The concluding chapter on the Law of Property and Jurisprudence generally, will naturally be omitted by most readers of the preceding pages. But while the criticism of professional brethren is respectfully deprecated, at so humble an attempt to popularise a peculiarly technical subject; it is yet submitted in recommendation of these remarks to the general reader, that no political view of the history of a country would be complete without some idea of the modes, in which private rights were acquired, held, and defended. While it might be added that in no other book at present in print could be found in so compendious a form the pith of the subtle learning of the Conveyancer; together with a clear and popular view of the existing jurisdiction of our several Courts, and the real or intended improvements generally passing under the name of Law Reform.

Almost as these sheets pass through the press,

two difficulties have arisen, the one at the very root of limited monarchy and responsible government, and the other indefinitely affecting our relations with other nations. We have no precedent and scarcely an analogy from strictly constitutional periods, as to the degree of participation of a Prince Consort in public affairs, and are therefore, from necessity, thrown back on first principles. And though any actual interference, by despatch or statement, with the responsible Ministers of the Crown, by one who however identified with the Crown partakes in the same manner of the Crown's irresponsibility, must be deprecated as unconstitutional; I cannot see how the influence of a Prince Consort with his Royal spouse, or his participation in her ministerial conferences can be prevented or objected to. Following out the principle that has been recognised throughout these volumes, that the laws of nature as the laws of God are paramount to all merely human and conventional institutions, and that the character impressed on race, class, sex, and creed, are to be profoundly regarded in their reference to any political system, we must, I think, come to the conclusion that a husband must counsel his wife, even when she wears a Crown, and must share in the conferences of her Ministers. In fact, in no instance of married life is the principle of the unity of person and interest arising from the connection to be more devoutly recognised, than in that of the union of a Queen regnant. That there may

be disadvantages arising from this view is not denied, any more than the extreme delicacy of the discussion itself. But when the British people accepted with a rational joy the marriage of their Queen, as contributing to her domestic happiness, and the hopes of lineal succession, as well as establishing an example of domestic virtue of advantage to every hearth; they might well submit to some of the necessary embarrassments of married life, but ill exchanged for the nauseous gallantry and peevish fears that disgraced or saddened the latter years of Elizabeth. With reference to the far more difficult subject of the obligation to assist Allies, however remote and however incongruous, it has been already observed that no general rule can be laid down. But the decision in each case must depend on the contingencies involved in such aggression, or more probably, will be precipitated by the actual sympathy of public feeling, and the emergencies of party or government. Admitting that every expressly stipulated contract should be religiously observed, and that no statesman will overlook the remote consequences of any actual movement; yet some limit is imperatively demanded of locality, or religious and political analogy to a system, whether of diplomacy or hostility, that will otherwise embrace the globe, assume the police of a planet, and embroil us indefinitely in every movement. And unless it can be shewn that we are bound by stringent contract, as well as by the prospect of

distant eventualities, to guarantee the *status quo* of the Turkish empire, there is certainly nothing in the creed or constitution of that barbarous and intrusive race, to command the sympathy of the British people, nor even on more general grounds of cosmopolitan philanthropy, to recommend the maintenance of a power, whose history is the martyrology of nations, and the desolation of the garden of the world.

CONTENTS OF VOL. II.

CHAPTER I.

CHAPTER II.

LONG PARLIAMENT—CIVIL WAR—COMMONWEALTH.

CHAPTER III.

THE RESTORATION.

CHAPTER IV.

PRELUDE TO THE REVOLUTION.

CHAPTER V.

THE REVOLUTION.

CHAPTER VI.

HANOVERIAN EPOCH.

PAGE

CHAPTER IX.

CHAPTER X.

JURISPRUDENCE.

DEVELOPMENT

OF THE

ENGLISH CONSTITUTION.

CHAPTER I.

Title of James—Scotch connection and consequences—Puritans and Romanists—Gunpowder Plot—Parliamentary opposition—Privileges of Parliament—Fiscal prerogative—Bates' case—Peacham's case—High Commission Court—Star Chamber—Foreign policy—Raleigh—Arabella Stuart—Milder close of James's reign.

THE reign of James I. may, in a constitutional point of view, be regarded pretty much as a continuation of that of Elizabeth, partially indeed modified by the altered character of the sovereign, and in a less degree by the introduction rather than the combination of Scotch politics. The character of James deserves a little consideration, both from its influence on the history of his reign, and as affording almost the last instance of such personal influence. His successors were either themselves under the influence of overpowering circumstances, or later still have filled the honourable but definite and ministerial office of constitutional sovereignty.

James's character has been pointedly and not unfairly described by a popular modern writer as being at once that of a witty well-read scholar, and of a debauched and dastardly idiot. And this mingled pride and pedantry, coarseness and cowardice, tinged the policy of his reign both with regard to his own subjects and to foreign powers.

The ease and tranquillity of James's accession was, as far as public opinion went, the most satisfactory proof of the legality of his title. The later acts of Henry VIII.'s reign, dictated by his capricious tyranny to the servility of his Parliaments, appear to have carried so little weight as the precedents of a bad and violent age, except where ratified and confirmed by the enactments of a more regular period, that I am not disposed to attach the importance which Hallam attributes to the statute of 35 Henry VIII. which authorised that prince to dispose of the inheritance of his kingdom by will. To the three other propositions of the great constitutional authority, I conceive there can be no valid objection—That such a statute did pass, that a will was formally executed in pursuance, and that legitimate descendants of the favoured line were in existence at the accession of the Stuart family. There may be some doubt on the latter point, owing to the clandestine and informal manner of a certain marriage by which the Suffolk-Hertford title was transmitted. But here I conceive the opinion of canonists, as well as of the interpreters of our own late mar-

riage acts would be in favour of the validity of a union, where any secrecy and neglect of form not specifically required was the result of imperious necessity, and not resorted to by the parties or either of them, with a view to fraud and repudiation. But I would rather doubt the authority of Parliament itself to concede so vast and undefined a privilege as that contended for, which far exceeded the unconstitutional dogma that the king's proclamation had the force of law. Inasmuch as a will was in its nature most indefinitely revocable and operating after the reign and interest of the willer had terminated. Instances it is true were not wanting in our earlier history of arrangements or compacts for establishing the succession, such as at the close of the reign of Henry I. for confirming the succession to his daughter. But that public appeal and open discussion, in which the Crown and the Peerage, the only then existing elements of legislation took a co-ordinate part, must be held to differ widely from a secret and indefinite privilege conceded by the Legislature to the Executive, affecting the whole community, and coming into operation when the moral responsibility of the agent had ceased. Moreover as we have shewn before, some declaratory Act of the State as then constituted was partly held necessary in the rude feudal age of Henry I. to secure the Royal succession in the female line, in contravention to the ideas of military and sacerdotal chiefship that the Normans had brought from the

land of Clovis and Charlemagne, and which seem likewise to have obtained among the Anglo-Saxons. While so far from such a confirmation being needed in the age of Henry VIII., his own best title as well as that of his sisters was derived from their mother as heiress of York. The change of succession on the abdication of Richard II., whether sanctioned or not by that Prince, bears no analogy to our present question, as having been evidently a violent and revolutionary act in itself, though legalized as a constitutional fact by subsequent parliamentary sanction.

Demurring, as we see reason to do, to this dogma of a prospective parliamentary sanction to a testamentary bequest of the Crown, there is little ground to dispute Mr. Hallam's other propositions—that such an act passed, that such a will was made, probably with the due formalities, and that lawful issue of Henry's favoured sister, the Duchess of Suffolk, survived at the accession of the Stuart Line. The descent traced was as follows:

Henry VIII.	Margaret of Scotland.	Mary of Suffolk.
	James of Scotland. Angus	Frances, m. Ld. Grey. Catherine m. Ld. Hertford.	Eleanor, m. E. of Cumberland daur. m. E. of Derby.
	Mary = Darnley.	
	James I. of England.	

The title of the two lines derived from the younger sister of Henry VIII. is discussed with great learn-

ing by Mr. Hallam, though his view would have been clearer to ordinary readers by a genealogical chart or table of descent. The question is curious and little understood, though at the time of an importance which later parliamentary settlements have superseded. And it is only alluded to in an elementary treatise of this nature, because though with great reluctance I must dissent from Mr. Hallam's doctrine that the will of Henry VIII. was able to reverse the feudal principle of primogeniture; which in the descent of an indivisible hereditament such as a title or advowson, invariably overrules the coparcenary admitted for other objects, between coheiresses and their issue.

The only positive constitutional change in this dull reign, the ominous prelude to the stormy period that followed, was the permanent introduction of the English Universities to Parliament, by summoning them to send two representatives each to the House of Commons. It is an instructive fact, as throwing light on the origin of our representative system, that once before, in the 28 Edw. I., Oxford and Cambridge had been invited to depute four or five, and two or three respectively, of their learned men to advise on the great question of the day, the King's title to the Crown of Scotland. This privilege had not been continued, but it was now renewed and made permanent by James, influenced no doubt in some degree by love of learning, which with him was a real and powerful feeling; but also

with a view inimical to constitutional liberty: by introducing the professors of the civil law into Parliament, and accustoming the knights and burgesses to the maxims of the imperial code. The Common lawyers appear to have had no difficulty in entering Parliament from the earliest times, from their connection with territorial property and circuit renown. But the jurists of the Canon law, the expositors of an alien and unpopular code did not find the same opening to parliamentary existence in either the counties or boroughs of England.

The natural policy of James in ecclesiastical matters would have been to continue the middle course of Elizabeth with reference to the Romanists and Puritans. But his pedantry and vanity tempted him to plunge into personal controversy. While the instinct of despotism, and his hostile experience of Presbyterianism urged him into a partial leaning, to what might already be termed the High Church party in the Anglican Establishment, as distinguished both from the men of Puritan predilections within its pale, as well as from the bolder separatists who were already raising the sectarian banner on diverse and often opposite grounds. The conference at Hampton Court, ostensibly convened for the healing of wounds and the settlement of differences, had the result that might have been expected from a debate of religious disputants, and reflected little credit on the Prince and prelates who obtained an easy and

predetermined triumph at the cost of a permanent schism and temporary destruction of the Established Church. At the same time it must be admitted as in every other ecclesiastical crisis, it is much easier to condemn what was done than to suggest a more excellent way. For of the many points urged with equal zeal and importunity, both in the Millenary Petition of the Puritan Divines and by their leaders at the conference, some were what no good man would have rejected, and others what no wise one would have pressed. And it is doubtful how far any compromise was possible in matters of opinion, where each side believed every one of their own dogmas to be perfectly and entirely right. It is one of the great difficulties of religious controversy too often lost sight of by secular politicians, that while interests admit of compromise, opinion—the subtle, independent, eternal dominion of the mind—recognises no surrender, which seems only to double guilt instead of securing peace, by the mutual betrayal of conviction and duty.

But though, throughout this reign the Puritans, who ventured on overt separation from the Church, were subject to much harassing persecution as revolters from their ecclesiastical rulers, and as a sort of religious seditionaries, it does not appear that mere opinion was made a ground of punishment, except in the well known case of the two Arians or more properly Socinians, who suffered

in 1619. One of whom probably owed his fate to the perilous honour of having sustained a disputation with the royal polemic.

But the Court of High Commission, a sort of Theological Committee of the Privy Council established by Elizabeth, still continued its unwelcome labours during the whole of this reign, and extorted a pretty general show of outward conformity at the cost of universal unpopularity and secret schism. How general was the feeling against what may be called finality in Church government, is evident from the well known and unexceptionable testimony of Bacon. That man, no less great in intellect than he was base in servility and worldly-mindedness—at once the first of philosophers and meanest of courtiers—after suggesting a string of Church reforms, asked "why the Civil State should be purged and restored by wholesome laws made every three or four years in Parliament assembled, devising remedies as fast as time breedeth mischief; and contrariwise the Ecclesiastical State should still continue upon the dregs of time, and receive no alteration now for these forty-five years or more?" The solution of this query of course involves the still larger and more important questions of what Church matters are of Divine origin, and what of human ordinance—what forms and institutes man is competent to remodel, and what he is bound to receive as revealed. Such an inquiry would open an infinite

field of controversy; indeed, the whole theological question might come under review in the course of so wide a discussion.

To the Roman Catholics James was not disposed to be intolerant on political grounds, as his title had not been subject to the same Papal impeachment as that of Elizabeth. The laws of the late reign were indeed in force, but carried out with less severity. Even the Powder Plot of 1605 scarcely stimulated the resentment of the Government against the body in general, as much as the subsequent controversy of the King with Bellarmine; when the arguments of the Royal writer were enforced by the execution of two Romish priests. In an age when political arithmetic was so little studied, it is hopeless to approximate even to the numerical value of the several forms of religious persuasion in the country. But it may be conjectured, both from the insidious relapse of the Established Church towards Romish errors, and the apparent extinction of the Catholics as a popular body in this and the subsequent reign, that the lower and more national portion of that body had conformed to the Established Church. For we no longer recognise in the convulsions of the following reign that compact minority of the Catholic aristocracy, or tumultuary rising of the peasantry of the northern shires that had shaken the throne of Elizabeth, and might have supported the waning fortunes of Charles.

These observations, which are rather collateral

to the history of the Constitution, are yet necessary to give some idea of the bearing of religious questions on the points about to be considered, and the spirit of religious parties in relation to the Court, and the growing opposition in Parliament. The whole Puritan body, whether within or without the pale of the Establishment, were united heart and soul with the Liberal Opposition in Parliament, which, in its turn by a necessary analogy assumed a tone of ultra-Protestantism that was probably rather foreign to the real convictions of many of its members. The Catholic party, still a respectable minority in the upper classes, and agitating the scanty populations of Yorkshire and Lancashire, conscious of its weakness and unpopularity, remained on the whole neutral. Though, as the Romanists had more to fear from the zealots of the Liberal party than from the weak Government and relapsing Church, they lent a secret but steady aid to the Crown in its constant struggle with the Commons. The Church including that no very considerable portion of the laity in its communion, who approved of the despotic and semi-popish spirit now predominant at Whitehall and Lambeth, was the only decided party which could be relied on by the Court from what might be termed principle. The influence of the Crown itself was vast: the centralization of the Tudors, and of a rapidly advancing civilization being super-added to the large though indefinite claims of a feudal sovereign. In proportion to the

revenues of the country, the patronage and perquisites of the Crown were at least equal to those of the French monarchy under Louis XIV.; though as all power must be estimated, not absolutely but by the relation of other antagonistic elements co-ordinate with itself, the constant action of a debating and voting Parliament made a most material difference in the position and prospects of the two practical despotisms.

The constitutional history of James I. is more exclusively that of his Parliaments than that of preceding reigns; and every thing connected with those important assemblies, from the proclamations that summoned them, and the forms of their procedure, even to the abortive and inoperative legislation in which they often indulged, are worthy of note and pregnant with instruction and suggestion.

In James' proclamation of summons to his first Parliament, he indulged in the tone usual in the preceding reigns, but unauthorised by sounder precedent, and clearly opposed as far as it was attended to to the freedom of election. In no covert terms he recommended the largest proprietors and wealthiest burgesses to the choice of their respective shires and towns, and pointed out graphically enough the votaries of the old superstition, and the zealots of the new school, as candidates to be equally avoided. The first would probably have conformed so far as to take the oath of supremacy,

though not that against transubstantiation, which, as the true test of Popery was not enforced till the 25 Car. II. c. 2.

The case of Goodwin and Fortescue, which was a contested return for the county of Bucks occurring in the first Parliament, was a curious anticipation of the points in Wilkes' case. Fortescue was a courtier and a privy councillor, Goodwin an author but returned by the constituency. The points raised were less the propriety of such a return, than the tribunal that should review it. The King contended for the authority of the Chancery, suggesting also a reference to the Judges. The Commons dissented from both propositions. The Lords mediated at first rather officiously but afterwards with good effect; and after a second election in which the court candidate succeeded, and a good deal of despotic assertion and politic surrender on the part of the King, a compromise was joyfully hailed by issuing a new writ setting aside both the former returns. Shirley's case, which led to the first statutory recognition of Parliamentary privilege by 1 Ja. 1. c. 13, is scarcely in itself a precedent, as the Commons invoked for the liberation of their member imprisoned for debt, the kind offices of the King, who ordered the gaoler on his allegiance to set him free. However the warden's fear as to the consequences of his irregular act led to the important statute alluded to. The most important provision of which clearly assumes the right of the House itself to im-

prison, as it exempts such imprisonment from the enfranchising privileges conveyed by the general objects of the enactment.

The Canons of 1603, which early came under the review of James's first Parliament, afford a natural and fitting occasion for a few remarks on that singular anomaly of our system—the Ecclesiastical Law; — strange, whether we look on its independence, or its endurance under circumstances and crises the most unfavourable. That such a system should have survived the Reformation, the Great Rebellion, and the Revolution of 1688, is perhaps one of the most curious and suggestive facts of our legal history. But at the present moment, when the criminal part of Ecclesiastical jurisdiction, with its spiritual censures and temporal disabilities has fallen into a politic oblivion, or is wisely confined to the discipline of the clergy : and the vast increase of personal property has amplified the civil portion of its jurisdiction into the magnitude and arrangement of an ordinary secular tribunal, one can hardly estimate the odium and real impropriety of Ecclesiastical proceedings in the time of James I. When a Church, owing its origin to freedom of opinion, restricted the liberty in others it had exercised so largely in its own enfranchisement;— when based on a national modification of a divine institution, it assumed to identify itself with the State and enforce a spiritual despotism on every citizen of that State that seceded from itself. It is

not to be wondered at that Liberals and Puritans of every shade should have resisted such assumptions, and that Parliament should have restricted the authority of the Canons within limits which in practice make them of optional obligation only on the laity.

The ancient feudal claims of Wardship and Purveyance may come more properly under review at a later period, when they were extinguished and commuted for a more regular source of revenue. But as the first Parliament of this reign complained of and restrained the abuses incident to them, we may observe in passing, that the progress of civilisation and luxury would naturally render the enforcement of those rights more onerous and revolting than in a ruder state of manners and property. And it must be regretted that the imposts that pressed mainly and most severely on the upper or at any rate wealthy classes, should have been commuted for excise and custom dues that press widely on all classes of consumers; and in proportion to their means, most severely on the indigent classes.

It is one of the hardest problems in Financial Reform, when a substitute is sought for a vicious and condemned description of revenue, how far real equity is consulted by the equalisation of burdens hitherto partial in their pressure. But it is curious that the first attempt at an excise in the form of a very moderate Malt-tax, was arbitrarily laid on towards the close of this reign. Upon its legality being

questioned in Parliament, it was justified though unsuccessfully by the courtiers, as being a composition for the feudal right of purveyance, or purchasing necessaries for the King's retinue on journeys, at a minimum or nominal price. The attempt was very properly resisted, and does not appear to have been repeated. For though moderate in its exaction, being only fourpence per quarter on malt, it was destitute of Parliamentary sanction or even sufferance, and was enforced with a rigour that savoured more of compulsion than of voluntary commutation.

The Gunpowder Plot, the well known though abortive fact of this reign, did not produce the decided effect even in its failure, that might have been anticipated. For the cowardice of the King appears to have in great measure compensated for the natural excitement of his Parliament; and the persecuting spirit of the legislature, and more particularly the liberal portion of it, was to a great degree kept in check by the inertness or policy of the executive. But the instinct of the masses has in this case been livelier and more enduring than the notice of writers and the opinions of the educated classes. And the anniversary of the great anti-parliamentary *coup-d'-etat*, is celebrated to this day through the towns and villages of England, with a spontaneous or rather discountenanced ebullition of feeling, that is highly suggestive of what was purposed, and what was averted on that day.

Though it was clearly shown in the earlier chapters of this work, that from the fortunate balance or independence of sundry elements of the Constitution, due itself probably to the national repugnance to radical change of any kind, which thus perpetuated by a happy anomaly the antagonistic institutes of different ages races and classes, a large amount of political liberty had been enjoyed in this country through the worst of Popish times. Though it was also admitted that the direct consequences of the Reformation were not favourable to constitutional liberty; inasmuch as the power of the Crown was for the time vastly augmented by increase of revenue and patronage, the centralisation of Church authority, and the abatement of Papal competition. But as time rolled on, and these immediate consequences ceased or were converted into actual sources of weakness to the Royal authority, in the like degree did all reviving Constitutional opposition, every nascent hope of freedom centre in the Houses of Parliament. And between the English Parliament and the Church of Rome there had been from the earliest times an instinctive and implacable hostility. A body so truly national, at once aristocratic and popular from its hereditary nominative or elective origin, representing every varied interest of the community, could not be influenced by priestcraft like a fanatic rabble or penitent tyrant. And it is to me at least evident that had not the Reformation preceded and cleared the way for the triumph of Parliamentary Government

the two antagonist elements of Parliament and Popery would not long have existed together. But either the alien imposture must have annihilated the national legislature, or the national legislature abated the alien nuisance. It was therefore no blind or reckless instinct that pointed the designs of Rome against her constitutional foe, the representative and depository of English freedom. As has been well observed by the most philosophical of modern historians, the blows that Rome has struck have been always pointed with consummate art at those parts of the commonwealth where she not only saw a foe, but recognized an important element of national prosperity. Thus the expulsion of the Moriscoes from Spain decided in the negative whether Spain should or should not be a prosperous manufacturing country. The Eve of St. Bartholomew, by cutting off the independent provincial aristocracy of France by thousands, stifled in blood the germ of a constitutional opposition that was developing itself in that country, and rendered both that and a local self-government on which it might be based an impossible desideratum to all future ages. Nor within our own dominions should we forget that the Irish massacre of 1640, that swept off the Protestant yeomanry of whole counties, is felt to this day in the want of a middle class of rural proprietors, whether as a substantial tenantry, or as the depositaries of the elective and jury franchise in that country.

So in England, a blow aimed at the existence of

Parliament in the life of its members, was to all intents a national assassination, and would have given a permanently different character to the institutions and policy of the country. The session that escaped this tragic prorogation appears to have left little durable record of its labours, with the exception of establishing the principle that no Bill once rejected could be again brought forward in the same session. The declaration of Privileges made by the Commons in the session of 1604 may be referred to in this place; though extended comment would be thrown away on it, as it amounted but to a declaration, was not acted on at the time, nor apparently even submitted to the King. They resolve, 1. That their privileges and liberties are their right and inheritance no less than their lands and goods. 2. That they cannot be withheld from them denied or impaired but with apparent wrong to the whole state of the realm. 3. That their making request at the beginning of a Parliament to enjoy their privileges, is only an act of manners, and does not weaken their right. 4. That their House is a Court of Record, and has been ever so esteemed. 5. That there is not the highest standing Court in the land that ought to enter into competition either for dignity or authority with this high Court of Parliament, which with his Majesty's royal assent gives law to other Courts, but from other Courts receives neither laws nor orders. 6. That the House of Commons is the sole proper judge

of the nature of all such writs, and the election of all such members as belong to it, without which the freedom of election were not entire.

In the session of 1606 was first mooted the Union of England and Scotland, a measure naturally suggested even to the extent of a Parliamentary combination, by the union of the two Crowns in the same person, but premature in respect of the temper of the contracting parties and the general spirit of the age. The proper occasion to investigate the merits and result of this Union will be when it was actually accomplished a century later under Anne. But had an actual Parliamentary Union been effected at this period, as certainly was contemplated by James's wisest minister, I do not conceive that any very important modification of subsequent constitutional progress would have resulted from it. For though the Scots were in an inferior stage of development to the English, and their theory of Parliamentary influence very imperfect, yet practically a degree of liberty bordering on anarchy had been the valued privilege or bane of Scotland from feudal times. The combinations of the lowland lords, and the irresponsible power of the highland chiefs, together with the ultra-Protestant zeal and popularity of the reformed ministers, were so many rude and intractable elements to be contended with or conciliated ; and from which the stern centralisation and loyal reformation of the Tudors had delivered the English executive. But while the

introduction of these elements into the English Parliament would have conduced to discord rather than tyranny, the social advantage to Scotland would have been great indeed, from the intimate contact with a higher civilisation, the opening of commercial and colonial enterprise, and the cessation of private war. Nor is it likely that a single Parliament would have ever sanctioned the apparent anomaly and real inconvenience of two Protestant disciplines, and two distinct codes of law in divisions of an united country. The measure, though wise and well intentioned, did not meet with much encouragement from the Parliament of either country. While of practical measures of the same tendency, though of more limited application, the English Parliament rejected a Bill to naturalize the ante-nati, or Scots born before the King's accession. But the case of the post-nati or those born subsequently was held by the Judges as clearly constituting them natural subjects of the English Crown, and thus opening for them many valuable lines of employment and improvement. And the code of barbarous and obsolete laws, that treated as strangers and foes the inhabitants of the left bank of the Tweed was repealed from the statute book, though it could not be eradicated till a much later period from the hearts of the people. A curious point was raised in reference to the Spanish war, in which England was still involved at the King's accession, in

which the sticklers for the prerogative or personal authority of the sovereign appeared as the advocates of peace. It was urged, that the war was abated by the accession to the throne of a Prince who as King of Scotland was at peace with Spain. This idea was very properly overruled. But it would have been as well in later times if the converse proposition had not been admitted, nor England involved herself in wars for Dutch and German objects on the accession of the Princes of Orange and Hanover.

But we now come to the memorable decision of the Exchequer in Bates' case, that is scarcely of less importance than the ship-money question of the following reign, as to the exclusive Parliamentary right of taxation on imports and exports. The Confirmatio Chartarum of 25 Edw. I. after recognising and confirming the Great Charter generally, specifically abolished all "Aids, tasks, and fines, unless by the common assent of the realm, and for the common profit thereof, saving the antient aids and fines due and accustomed." And this principle we have seen was pretty generally acted on by subsequent monarchs as regarded internal taxation, which was only occasionally attempted on some special pretext of royal necessity, or loyal voluntaryism, but generally resisted, and never sanctioned by the Courts of Law.

But with respect to the indirect taxation of imports and exports, the same clear principle and uniform practice did not prevail. A vague notion

of an arbitrary right to tax aliens,* and therefore alien merchandise, and a juster notion of the supremacy and protection of the Crown at sea, which was entertained or affected by Franklin in the 18th century, admitted the hand of Prerogative to the marts of foreign traffic. The reservation too of the ancient though limited dues on wool and wine which unknown† antiquity annexed to the Royal Prerogative, suggesting the rude supply and demand of a pastoral and northern people, must have tended to the same confusion of ideas, by the custom-house arrangements and forms it would necessarily sanction. Yet the assigned limit here seems rarely to have been transgressed by Edw. III. and Richard II., and never by the Princes of the Lancastrian family, who appear to have received the regular grant of tonnage and poundage for life at the commencement of each reign, as a commutation for irregular perquisites. This wholesome limitation was observed by both Henry VII. and Henry VIII. though no neglect of revenue nor respect for law could be imputed to those monarchs. It was reserved for Mary, rather perhaps in ignorance and contempt of national usage, than from a settled purpose of tyranny, to lay arbitrary duties on the export of manufactured cloth and the importation of French wines. These duties were the subject of

* See Bacon's curious tract on this subject.

† Though Hale, p. 146, refers to a record of 3 Edw. I. as giving to the wool duty a Parliamentary title.

remonstrance and discussion at Elizabeth's accession, when they were probably given up; though this is not quite clear—but, at any rate, they were not renewed or enhanced. Bates' case arose from an arbitrary duty in the same way laid by James on currants imported from the Levant, in addition to the legal poundage he had by grant of Parliament in the usual manner at his accession. Bates, the merchant so surcharged, resisted the demand, and was proceeded against in the Exchequer. The decision of the legal Barons was adverse to him, and their language subversive of liberty or at least of its fiscal guarantee. Emboldened by this decision in favour of the Prerogative, the King published in the summer of 1608 a tariff under the authority of the Great Seal, laying heavy duties on almost all merchandise, a complete code that would have gladdened the heart of a modern protectionist; and amounting in some cases as that of tobacco, to a prohibition of the weed that offended the Royal taste.

The Commons however, who in 1606 do not appear to have had a clear opinion on the subject, were in 1610 enlightened by precedents adduced, and still more by the practical consequences they saw would follow the decision in Bates' case; now remonstrated against these encroachments, and even passed a Bill to abrogate the import dues, which however was thrown out by the Court party in the Upper House. Thus the matter rested for the present.

The Crown enjoyed its illegal imposts, the Commons recorded their protest against it—but actual legislation on the subject, whether in sanction or abrogation, was suspended by the differences of the Houses. While the Commons were thus opposing the encroachments of Prerogative, and making by their protests or resolutions a basis for future and more successful resistance; the clergy were exalting the Prerogative with a view to extend the power, or at least the independence of the Church, which was more threatened by Parliament than by the Crown. The Canons of 1606 were as we have seen criticised in Parliament, and the Church presented twenty-five *articuli cleri* or petitions of the Clergy, chiefly complaining of the interference of the Courts of Common Law by prohibition or suspension with the operations of the Ecclesiastical Courts. The Judges' admiration for the Prerogative did not extend to an unprofessional admission of a rival jurisprudence, and they strongly supported the right and practice of prohibition, and defined the limits which have practically confined Ecclesiastical judicature ever since. A literary though not insignificant triumph also accrued to the popular party, by the suppression by Royal Proclamation of a book by Cowell a civilian absurdly enhancing the Prerogative at the expense of every other power and part of the Constitution. To this resistance, in which both Houses cordially joined, the King was fain to yield and give up the mischievous production

of a writer, who was nevertheless high in his favour and that of the Prelates. The growing importance of the House of Commons was indicated by the first avowed organisation of Parliamentary managers; clever and not unpopular members not decidedly compromised, who were employed by the Minister Lord Salisbury to influence other members, and get measures passed with as little resistance and modification as possible. Like other novel inventions this management did not perfectly succeed, but rather disappointed the expectations that had been entertained of it by the Sovereign and his advisers. One abuse clearly unauthorized by the Constitution, and which appears to have been removed by the efforts of this Parliament in their last session was, the erection of new provincial jurisdictions with groups of counties attached, and which were thus taken from under the protection and privilege of the Common Law, and subjected to a novel, and of course undefined judicature. The Council of Wales, erected at the arbitrary date of 34 Henry VIII. had gradually extended to four bordering English shires, much to the dissatisfaction of the inhabitants, and the just apprehension of their neighbours. The plea, more plausible* than real, of the lawlessness of a border country that required a special or summary authority to control it, did not save this Court from its merited fate. Though the same prin-

* Bacon, ii. 102.

ciple in the next reign seems to have dictated the erection of the Court of the North at York, which from its connection with Strafford's career acquires an historical interest not otherwise due to its short-lived pretensions. A still more important effort of Parliament to extinguish the feudal tenures, or at least their oppressive incidents, appears to have been on the whole favourably entertained by the King, but to have gone off on the negotiation of terms. There appears too to have been some doubt how far so great an organic change so subversive of the feudal basis of the Constitution could be guaranteed by the contracting parties—more particularly, as the King not unnaturally insisted on retaining the principle of military tenure as essential to the dignity of the Crown and defence of the kingdom; though willing to give up the lucrative incidents of Wardship, Relief, and first seisin, together with the oppressive Court or Commission that managed the first branch of this revenue. The Commons offered £200,000 a year in commutation, while the King stood out for more. This difference gave time for reflection, when Parliament seemed to be aware they were offering too much in compensation for a surrender which, however much it might bind the contracting Prince, was held by Jurists to compromise so intimate a part of the monarchy as scarcely to bind future occupants of the throne, particularly as the military tenure the source and pretext of the whole was retained. The subject now dropped

will again engage our attention in the reign of Charles II. when the feudal tenures with some honorary and nominal exceptions were, as regarded the Crown, finally abolished. Though it is matter of surprise and regret that the same reform was not extended to copyholds, where one subject stands to another in the same relation of feudal superiority, that the Crown did to freeholders in general. By this omission still strangely uncorrected, a large portion of land probably an eighth of the soil of England is still subject to a precarious tenure and inconvenient incidents, which though absurdly exaggerated by theorists, still do detract from the value and capabilities of the soil, and give a ground of complaint against this relic of feudality.

As the foreign policy of the country does not come within the scope of this treatise, except so far as it affected the internal Constitution, it is only necessary to advert here to the first instance of an attempt to refer differences of nations to the arbitrations of a third party. James's aversion to war and pedantic taste for discussion, naturally led him to favour this mode of settlement, or at least of interference, with the affairs of foreign countries. And it is a curious fact that if his intended award in favour of the succession of the House of Brandenburgh to the Duchies of Cleves and Juliers had been admitted, the establishment of the Prussian monarchy, and its extension to the Rhine would have been anticipated by two centuries.

Later on in this reign, the defection of Coke from the Court and his sturdy opposition to prerogative, though his character and temper must have rendered him a doubtful partisan, yet conferred this advantage on the popular party, that they now had an acknowledged first-rate lawyer the oracle of the Common Law, detached from the cause of Prerogative and enlisted though on narrow grounds on the side of Parliamentary right. Proclamations, forced loans, and sales of honours, were pretty constantly resorted to until the close of this reign, to raise money without consent of Parliament, or to enforce measures sometimes really beneficial by an arbitrary fiat. It was remembered however in respect of these pretended ordinances by proclamation, that the judges in Mary's reign had said that a proclamation was only in *terrorem populi*, as a reminder and declaratory of actual law preceding, and not to impose any new fine forfeiture or imprisonment not already inflicted by law.

The forced loans already alluded to in the last reign were now oftener refused, and as it would appear with impunity. They were generally repaid, but bearing no interest, were a very inconvenient form of Exchequer bill to the capitalist who was obliged to invest in them.

The prostitution of the honours of the peerage by the sale of titles does not appear to have excited the alarm and opposition, that might have been expected from such an offensive encroachment on hereditary

right and legislative power. That the creation of baronets dating from this same cause and epoch failed in producing the evils, a secondary nobility, with its ambiguous position and pretension produced throughout the continental monarchies, was mainly owing to the weight of public opinion and the senatorial position of the Peerage, which agreed in defining the constitutional state of these wealthy knights as simple commoners.

The Parliament that assembled in 1614, renewed the attack on the illegal customs on foreign imports alluded to above. And notwithstanding the efforts of the parliamentary managers in the interest of the Court, the mediation of the Lords and the indignation of the Episcopal bench, which throughout this reign seemed to glory in the shame of a voluntary Erastianism, would have abated the abuses of the fiscal system, had not a sudden dissolution anticipated the passing of a single measure.

Peacham's case though it established no principle and formed no part of a series of constitutional formations, deserves a passing notice, both as being I believe the last instance of torture having been employed under sanction of our law with a view to confession; and from the monstrous position urged by the prosecution and maintained by the judges, that the mere composition of a paper, neither published nor preached nor intended to be so, was an overt act amounting to treason, when the performance itself a fanatical puritan sermon would have been held nothing more than a seditious libel. Coke,

who opposed the Court on this occasion though not firmly, came out stronger in his opposition to the extension of chancery jurisdiction, which has a less defined jurisprudence, and through the Keeper of the Great Seal being more immediately connected with the government, was naturally favoured by the Court.

He also instigated the other Common Law judges to address a joint and very proper remonstrance to the Crown, refusing to attend to any letters addressed to them by the Attorney-General to influence their decision in any case before them. It was not to be expected that a successor of Henry VIII. and one so jealous of his rights as James, would overlook this continued and unexpected opposition in both his Parliament and his Judges. The Session was followed by the imprisonment of many members, for words spoken in the course of the discussions on the revenue and other matters. From their names the men appear to have been of good family and county members, which would suggest that their imprisonment was intended to check and intimidate their party, rather than personally directed against themselves for any particular violence of language, or opinion. The Judges, when admitted to the perilous honour of a personal conference with the sovereign, certainly shewed a cowardice unworthy of their high function, but yet what might have been expected in that age from placemen who held only during pleasure of the Crown.

Coke more intractable and feared than the others

was dismissed from the Bench, though later still by another court intrigue he was restored to the Privy Council.

The Star Chamber as I have before observed, was in design if not in practice a sort of criminal chancery, where offences unknown or unpunished at Common Law, might have meted out to them on equitable principles such amount of fine and imprisonment as the Judges might deem suitable. This tribunal obviously open to great abuse, was as is well known, generally employed by the Government against members of the upper class obnoxious by their opinions, or whose wealth rendered them desirable defendants, where the practice of the Court sanctioned enormous fines. But so useful an engine of vengeance and lucre was also occasionally employed by one court faction against its predecessor in the Government. One of the latest and not the least just of its decisions was the conviction of Lord Suffolk of embezzlement in his office of the Treasury. Could an irresponsible power be ever safely trusted to man, the idea of a Criminal Equity Court was not a bad one to chastise offences rather against morals than law, and consisting rather in the design than execution. Nor were some of the proceedings of this notorious tribunal undeserving praise, when they inflicted on the profligate intrigues and wanton outrages of certain members of the aristocracy more summary justice, than the Common Law would have sanctioned, and heavier fines than any middle class jury would have assessed. But to the Constitu-

tional student no less than to the general reader, the Star Chamber is inseparably associated with the practice and support of tyranny. Fuller, Whitelocke and Selden were its most illustrious victims in this reign. The two first practising barristers were imprisoned: the one for moving for an *Habeas Corpus* for Puritan clients committed by the High Commission Court; and the other for a mere professional opinion to a private client, adverse to some point of the Royal prerogative. Selden, the learned jurist incurred the jealousy of the High Church party and the animadversions of the Court, by his admirable historical defence of tithes; by which he was thought to have indirectly weakened their Divine institution. The two last defendants were discharged on a submission unworthy at least of the great constitutional writer.

The well known cases of Raleigh and Arabella Stuart belong rather to general history of which they are touching incidents. But two points render them worthy of a passing allusion here. In Raleigh's case the sentence that should have followed his conviction at the beginning of this reign had been suspended, and he had been even partially restored to favour or at least employment. And it was reasonably urged, that the Royal Commission under which he had acted in the interval should operate in bar of the original sentence being carried into execution. The point is not likely to occur again, nor a convicted traitor entrusted with military command between sentence and execution be compelled to plead it in

arrest of his capital punishment. But the point, I conceive, is as clear in law as it undoubtedly is in honour.

Arabella Stuart owed her misfortunes to her illustrious birth that suggested a title to royalty, which suspicion was most unluckily confirmed by her marriage with Lord Hertford himself, the representative of the ambiguous pretensions of the Grey family, from the younger sister of Henry VIII., alluded to at the beginning of this chapter. This ill-starred union, which love alone appears to have dictated in his most unlucky moment, naturally awakened the suspicion of the Government, who saw in it the dreaded coalition of the claims of both Henry VIII.'s sisters to the Crown. Arabella, relying like the King on the primogeniture of Margaret their great-grandmother, and Hertford bringing the parliamentary and testamentary title of the Greys from the younger sister Mary. That the Stuart title was not only recognised but really thought the most to be dreaded, appears from the greater measure of vigilance and severity exercised towards Arabella in consequence of this marriage; and to which otherwise as a female, she would scarcely have been exposed.

The Parliament that met in 1621 successfully attacked another illegal form of revenue derived from the grant of Monopolies, or exclusive licenses to deal in certain articles to certain persons, who paying largely for the privilege, indemnified themselves by a still larger enhancement of price to the consumers

generally; an enhancement that would naturally be rendered more onerous by the high rate of interest of the capital to be replaced. It was very creditable to the House of Commons that in their successful prosecution of the monopolists and their instruments, in the course of which they had been hurried away into committing them to prison, they halted in their own unconstitutional course; and after consulting precedents, and some discussion as to the extent of privilege voted, "They must join with the Lords "for punishing Sir Giles Mompesson, it being no "offence against one particular House nor any "member of it, but a general grievance."

The earliest instance of a formal parliamentary impeachment, or of a solemn accusation of a party by the Commons at the bar of the Lords, was that of Lord Latimer in 1376, though we have seen Mortimer's conviction was a rude precedent of the same procedure. This regular mode of procedure had been lost in the troubled times of the Roses; and the arbitrary spirit of the Tudor princes preferred the iniquity of bills of attainder, in which the two Houses voted as partisans the guilt of a party, without either evidence or defence.

The constitutional form was now resumed against the monopolists without exciting the sensation that might have been expected. The Commons prosecuted, and the Lords judged; with this variation only from the later and more correct practice, that the accusers did not exhibit specific articles, but only

a general information, which the Lords carried out into a full inquiry on their own interrogatories; and eventually passed a very heavy sentence on the demand of the Commons, and full assent of the Crown.

The notoriety and extent of the abuse complained of was probably held to justify this deviation from the correct form, but nevertheless involved great injustice to the accused, who had no specific charge to meet but only a general accusation, of which the main part was as notorious as unpopular. This powerful instrument of the Commons' wrath was not, once regained, allowed to grow rusty from want of use. Not only the holders of patents were punished for their extortion, but a Bishop and a Judge were soon the objects of impeachment. And greater than these, or any other man or men of his age, the philosophic Chancellor Bacon incurred the disgrace of a national prosecution,—the loss of office and character,—and the early, though ineffectual exposure of the malpractices of the Court where he presided, and which his acuteness and corruption still seems so strongly to haunt.

Floyd's case, as disgraceful an instance of blind party-spirit and consequent injustice in the Houses as they had evinced moderation and regard for precedent in Mompesson's case, followed in the same session. The violent rage and disproportionate punishment which both Houses joined in inflicting on a private Roman Catholic gentleman, for indulging in some

coarse levity of expression in reference to the Elector Palatine and his wife, shocking and unaccountable as it seems, is also curious as an early indication of the instinct of the nation towards that fortunate offset of the Stuart race that was destined a century later, permanently to supplant them on the British throne. The King, to whom this ultra-Protestant and anti-imperialist zeal, even on behalf of his own daughter, was rather unwelcome, appeared throughout the affair in the unusual character of an advocate for mercy and moderation.

In the same spirit was the earnest address of the Commons, and protest against Popery and Popish connections in reference to the marriage of the heir apparent. This, as an interference both in foreign policy and the domestic arrangements of the Royal family, was naturally resented by the King as an importunate and unwarranted intrusion, and had certainly no recent precedents in its favour. But, with the instinct of a wise political party, the majority of both Houses leant strongly, not only against a Popish connexion, but also against a French and still more Austrian or Spanish alliance. And thus the King's matrimonial plans for his son clashed with the wishes of his subjects. For while his pride naturally sought a union with one of the great European monarchies, the English Parliament and people deprecated a connexion with families that had never shaken off, or had even resumed the Romish yoke. On the whole, the

French alliance that was ultimately adopted was the least unpopular that could have been contracted with a first-rate power. For the old national antipathy to France fostered by the Plantagenet wars had at this period ceased, though to be renewed again by the Whig policy subsequent to the Revolution. And the religion of the House of Bourbon, even after the scandalous apostasy of Henry IV. was not considered as irretrievably committed to Rome; while the despotism of the monarchy, though quite as real, was not displayed in so repulsive a form as the sombre character of the House of Austria gave to the policy of Madrid and Vienna. It was truly characteristic of an English popular party, that while in this session they blamed the King for not keeping up 30,000 men in the heart of Germany, they reluctantly granted a subsidy of £70,000, that would scarcely have enlisted such a force.

The early dissolution of this Parliament at the close of 1621, was owing to recriminatory declarations that passed between the King and the Commons. The Commons addressed the Throne at length on a variety of subjects, but mainly in reference to the freedom of discussion in their House, compromised by the post-sessional imprisonment of its leading members. The King made an indiscreet answer, to the effect that their privileges were only on sufferance, and that the prerogative was paramount though tolerant of them. The Ministers—such as Lord Cranfield in the Upper

House, and Secretary Calvert in the Commons—could not justify their master's language, which embarrassed them like the injudicious speech of a Premier; but they oddly passed it over as a slip or mistake. The Commons, looking on it in a graver light, entered on their journals the famous Protest of 18th December, 1621, setting forth the extent, antiquity, and independence of their right of discussion.

This Protest was erased from the journals by the King's own hand, the Parliament dissolved, and many eminent members committed, or sent as a sort of honourable exile into Ireland. The commencement in this session of a steady opposition in the Lords is worthy of notice. For though liberty was first born in the Barons' House: yet, from the accession of the Tudors, that limited and distinguished body had never moved in opposition to the Crown, except a little at the time of the Reformation, in reference to the religious changes they disapproved. The breaking off of the Spanish match, on grounds well known to have been anything rather than public, yet among a people so incorrigibly careless of foreign politics as the English, contributed some undeserved popularity to the Government, and secured the respect and liberality of the next Parliament. The King too in the decline of life sought peace rather than power, and perhaps felt the need of some popular counterpoise to his heir and his favourite, whose coalition now con-

trolled the Court. So that the session passed in interchange of courteous regrets and confessions between the Crown and the Commons; and both parties seemed, by expressions of liberality and respect, to wish to cancel the reminiscences of the last Parliament. The impeachment however of Middlesex the actual Lord Treasurer for bribery and other offences, was deprecated by the King, and urged on grounds of private pique by the favourite. The proceedings on this impeachment were in the regular modern form, except that witnesses were not examined *vivâ voce*, as at Common Law, but their written depositions were read aloud by a clerk. It is rather curious, that in the course of this trial, Sir E. Sandys a Liberal leader of the Commons, referring to an illegal duty laid by the Treasurer on foreign wines, expressly said they were not now questioning his Majesty's right to levy such imposts, but only maintaining a claim which would be open for discussion hereafter—an admission which, though possibly intended to propitiate the Royal assent to their present object, yet seems to imply some doubt as to the prerogative of Custom dues. An important Act also passed this session, though purporting to be merely declaratory, against the practice of Patents and Monopolies.

It is well here at the close of this peaceful struggle of twenty years' duration, to review in the words of Mr. Hallam, the amount of progress attained by the Commons. The Act declaratory

against monopolies was perhaps the only actual statutory trophy. But they had rescued from disuse their ancient right of impeachment. They had placed on record their claim to debate all matters of public concern. They had remonstrated against the usurped or extended prerogatives of binding the subjects by proclamation, and of levying customs at the out-ports. They had secured beyond controversy their exclusive right to determine the contested elections of their Members. They had maintained and indeed abused, as in Floyd's case, their power of judging and inflicting punishment even for offences not committed against their House. Of these advantages some were evidently incomplete, and would require the most strenuous efforts of future Parliaments to realize. But such exertions the increased energy of the nation gave abundant cause to anticipate. Peace and prosperity, commerce and learning, and above all the emancipation of mind and personal responsibility by the Reformation, were rapidly forming the character of such a people as Henry VIII. could not have trampled on, nor even Elizabeth ruled with so despotic a sway.

The reign of Charles I. which until the meeting of the Long Parliament in 1640, resembled in its constitutional character the tenor of the last reign, has always been thought the most difficult to trace with fairness of all the crises of English history. But I conceive the great moral to be drawn from it

is the best light to guide one's judgment in reviewing it. The temptation to abuse power, whether in kings or popular assemblies, is the great fact and great moral of this reign. The interesting character of Charles, his tragical death, and the assumed connection of that event with his support of the Anglican Church, have enlisted the sympathies of a wide class of readers with the royal cause. While the oppression of his government and the undoubted benefits we have derived from the parliamentary resistance to it has blinded a still larger class to the ambition, cruelty, and in many instances, hypocrisy, of the popular leaders who precipitated the struggle and benefited so largely from the result. It is if possible a greater mistake to believe in the pure patriotism of Cromwell and his accomplices, as to talk of the holy martyrdom of a monarch, whose final catastrophe was more owing to his personal failings of pride and insincerity than to the arbitrary principles of his earlier administration. It seems almost puerile to notice so obvious and notorious a fact. But an hebdomadal critic of my former volume took occasion to inform its provincial readers that Charles forfeited his life for laying taxes without authority of Parliament. Whereas the question of arbitrary taxation had been settled, and settled in favour of popular right before the commencement of the Civil War, which was excited by the more stimulating questions of the Church and the Militia. Nor was it ever contem-

plated at the commencement, or even close of that calamitous struggle, that regicide should have been resorted to as a measure of self-defence by those who respected and vainly negociated with their dangerous captive. It is but fair to the Parliamentary leaders to vindicate them from the defence of their own advocate.

Charles on his accession was involved in a Spanish war, which from its object might have been popular, had not the notorious motive to it been the personal pique of the favourite Buckingham. The unpopularity of Charles and his favourite, which had been transmitted from the late reign is the only explanation, though no excuse, for the ominous reserve of the Commons in their financial reception of the new sovereign. Tonnage and poundage, that had been for centuries granted like a modern civil list for the life of the sovereign, was now voted only for a year; an unconstitutional step which the Lords resented in a way to make it still more inconvenient to the Crown, by rejecting it altogether, so that in constitutional strictness no supply at all was decreed. However the revenue appears to have been collected for the year, and without much opposition. Indeed, if certain grievances had been redressed according to their petition, the Commons expressed themselves willing to make a further grant beyond the two subsidies they had actually voted. But an immediate dissolution though unwise was the natural, and just penalty of meeting

a new prince by an ostentatious piece of illiberality. Notwithstanding considerable efforts of the Court in the elections, among which the most notable was the nominating the popular candidates sheriffs of their respective counties, and thus disqualifying them for the representation, a new Parliament shortly assembled, as jealous of the Crown as its predecessor, and more personally hostile to Buckingham.

Though the prosecutions of Bacon and Middlesex in the late reign were undoubted precedents in favour of the Commons' right to impeach ministers of the highest grade, yet Buckingham's impeachment, as the first instance of a national prosecution of a favourite as well as functionary, was naturally regarded as a bolder step, inasmuch as it was directed against the personal feelings of the Sovereign. Speeches from the throne in deprecation of the measure and resolutions of the Commons in favour of their right, and the imprisonment of some prominent members and their subsequent release ushered in the formal impeachment of the favourite at the bar of the Lords on eight articles.

The abuse of proxies on this occasion, which were held in scandalous number both by the leader of the opposition Lord Pembroke, and also by the impeached favourite, led to a standing order not I believe now observed, that no Peer should hold more than two proxies.

The early dissolution of this Parliament was obviously intended to avert the impeachment that threatened the favourite. But it was a most im-

prudent step in a financial point of view, for it likewise arrested the progress of the Bill of Supply, which had been voted to the extent of five subsidies, but not formally passed. This led to further financial embarrassments, for the Government proceeded to levy further subsidies as though fully enacted, and to raise loans through the country under the Privy Seal. The subsidies were generally refused; and the loans solicited in detail from wealthy individuals, whose names had been returned by the Lord Lieutenant of each county, though more productive, excited great alarm, as both the sum specified and the machinery by which it was to be enforced appeared formidable encroachments.

The imprisonment of five country gentlemen who refused to make the advances assessed on them led to the full discussion of the important question of Habeas Corpus. For on the formal application for that writ of delivery, the Warden of the Fleet returned to it that his prisoners were detained by a warrant from the Privy Council, specifying no particular cause of imprisonment, but that they were committed by the special command of His Majesty. This gave rise to the important question whether such a return was sufficient in law to justify the Court in remitting the prisoners to custody. The arguments on the side of the subject and of the Prerogative are given so fully and fairly in Hallam, in vol. i. p. 524, that the reader who would wish to see what could be said on either side is referred to that eminent writer. But as the sub-

ject will come again more properly before us when the Habeas Corpus Act finally passed in the reign of Charles II. it may suffice here to observe that the Court of King's Bench determined in favour of the Prerogative, mainly on the authority of a resolution of the judges in 34 Eliz. This resolution as far as it is intelligible, seems certainly to recognise the special command of the King or the authority of the Privy Council to be such sufficient warrant for a commitment as to require no further cause to be expressed, and to prevent the judges from discharging the party from custody even on bail. Such then was the law as settled by judicial decision in a most important case, though clearly opposed to the spirit and even letter of Magna Charta, "that no free man shall be taken or imprisoned unless by lawful judgment of his Peers, or the law of the land," unless indeed the Royal prerogative could be deemed a part of the law of the land. Though this subterfuge was hardly available, as the partisans of Prerogative disdained so low a ground, and asserted it to be something paramount to the Common Law.

It seems strange that at such a crisis Charles should have assembled another Parliament in 1628. But financial embarrassment attendant on the French war, obliged the Government to have recourse again to the regular and most productive sources of revenue. This Parliament, though short-lived like its predecessors, forms a great constitutional epoch, by the passing of the celebrated Petition of Right,

as the well known statute is still called, from its not being drawn in the common form of an Act of Parliament. It was presented by the Commons in the shape of a declaratory statute. The four grievances that were complained of in this celebrated declaration, were the exaction of money under the name of loans; the violation of Habeas Corpus, by the commitment and remand of those who refused to pay; the billeting of soldiers on private houses; and the extent of martial law by military commissions issued without cause. The two latter, which were less insisted on, and appear novelties in constitutional history, seem to have been mainly owing to a defective police, and the necessary irregularities of an ill-paid and occasional force, in this transition age from feudal levies to regular armies. Charles was naturally reluctant to pass a measure which implied condemnation of his past policy, and precluded any legal return to it. He would promise personally to observe all the requirements in detail, or give a formal recognition of the Great Charter; but would not assent to this Bill. The Lords wavered, and were condemned by many for an insidious design to frustrate the measure, by proposing weaker amendments. But the Commons stood firm. And the King, having first assented in a long querulous and equivocating address, instead of the usual compendious form, was requested by both Houses to be more explicit. He at last consented, and pronounced the words of Norman-French, which called into

statutory life the important principle of constitutional liberty, dormant in the practice of the Common Law, but resting on no narrow basis of early prevalent and general belief. I fear it must be admitted that Charles throughout this controversy evinced not only a very natural reluctance, but no little insincerity. There was a very ominous consultation with the Judges prior to giving even his qualified assent as to how far such a statute would limit the prerogative as to arbitrary commitments. Their answers were more evasive than satisfactory. But still less creditable than this reference was the employment of the press to circulate through the kingdom copies of his first equivocal assent, after the latter unqualified one had been given. It is doubtful whether the language of this statute, known to lawyers as 3 Car. I. c. 1. was comprehensive enough to include import duties, as well as internal taxation, particularly as the decision of the Judges in Bates' case, though justly deemed unconstitutional, had given a sort of sanction to the former exactions. But the Commons proceeded to set that question at rest by preparing a regular bill for granting tonnage and poundage, but premising their liberality by a remonstrance against the late exaction of it without a regular parliamentary sanction. This remonstrance, which though firm in its assertion of right, was respectful in its language, and concluded rather in the tone of entreaty than refusal was never presented, the King antici-

pating it by a sudden prorogation. This step, which gave offence and argued insincerity, was followed by a still more unwise dissolution. Ill-timed, inasmuch as the assassination of Buckingham had just relieved the King and Parliament from the most serious embarrassment to their amicable relations. The immediate motive to this step was the growing interference of the Commons in Church matters, which seemed to Charles like the opening of a new battery, and on his most sensitive side. It is scarcely within the scope of this work to trace the offensive relations of the Church with the people entrusted to its guidance at this epoch. While to a churchman who holds, in their strength and simplicity, the great truths recovered at the Reformation, it is no less painful a task to trace the rapid lapse of the rulers at least of the Church on many important points of doctrine, since the accession of the Stuart dynasty. Both these embarrassments may be referred to the Erastian position which be it for weal or woe, the Church undoubtedly holds with regard to the State, or its rulers for the time being. Under Elizabeth the Church, as represented by the Bishops and the High Commission Court, or Committee of the Privy Council intrusted with Church matters, maintained an even tenor between Popery and Puritanism, with a leaning not unjustified by her Articles and Offices to the tenets of the one and the ceremonial of the other. But Elizabeth's masculine and worldly mind never for a moment indulged the Church with a

spontaneous action, either of its piety or ambition. She was a believing member of it, but the national chief of it too; and it was as much a branch of her government as her Chancery or Admiralty. James, pedantic in his tastes, and timid in his tyranny, welcomed the Church as a school of learned controversy, and as an engine of vicarious despotism. He entered into the theological controversies of the Church with the zeal of a polemic; and the Church repaid his zeal by an extravagant loyalty, which, though it did not exceed its practical obsequiousness to Elizabeth, was more revolting to the spirit of the age, and more ostentatiously paraded as a doctrine. On another important point, not directly connected with politics, it is easier to perceive a lapse in the opinions of the Church, than to assign a date or probable cause for it. The Reformed Church of England, which had been Calvinistic under Elizabeth, and down at least to the synod of Dort; had become decidedly Arminian in its governing body at the accession of Charles I. While among the inferior and rural clergy prevailed still some latent Popery, and a still larger amount of ignorance and indifference. In such an inauspicious relation of the Church to the Government and the People, it followed according to the natural analogy of party, that the liberal opposition attacking the ruling party in the Church as a corrupt department of the Government, were led to assume a more ultra-Protestant tone and more decidedly

Calvinistic opinions than probably they would have cared to enunciate under other circumstances.

It was this unfortunate form of the alliance of Church and State, as represented by an arbitrary Government and Romanising Hierarchy, that added bitterness to the civil dissensions already rife, though perhaps in some degree generating the reaction that restored the Monarchy.

In the spirit of an alliance so constituted, the High Commission Court persecuted the Puritans, not only avowed sectaries, but members and beneficed clergy* of the Established Church, whose leaning was towards the earnest tenets and simple ritual of the Puritans.

As far as regarded executive measures, the advantage lay greatly on the side of the High Church party, having the weight of Government, an organization of their own, headed and represented by the High Commission Court; which though now exercised to repress freedom of opinion and enforce uniformity, yet clearly originated in the Reformation, and was based on the principle of the Royal supremacy. The Puritan party had however a legislative engine at their command too, ready to be employed against the High Churchmen; and the observance of the Sabbath was the curious, though perhaps fortunate ground chosen for party warfare

* Three hundred were deprived, according to Neale; but forty-nine on the opposite authority of Collier.

and theological retaliation. Doubtful as is the wisdom of any legislation on this subject, more stringent than the immunity of trade and labour demands, it was certainly happy that the winning and movement party in England so early committed itself to recognize in its legislation the obligation of the law of God. And happy too, that a singular association with political freedom should have for ages enforced on an industrious and self-willed people, that solemn weekly pause of rest and reflection, which distinguishes to this day British society from any continental community; and which, while it certainly has not arrested our progress, may have contributed to that tone of moderation and considerate movement which may be observed in our political and mental development.

It was in futile and offensive opposition to this feeling that King James had published a Book of Sports, enjoining people to pass a portion of the Sundays and Holidays in amusements and exercise; and ordered it to be read in churches. This notable project, which seems neither in the spirit of a despotic monarch or zealous churchman, served nevertheless as a test of Puritanism in its mildest and most latent form; and as such was probably designed to purify or emasculate the Church by the expulsion of ministers, who refused to read this strange parenthesis in spiritual worship.

The Romanists also, as quasi protegeés of the Court, were objects of great aversion and censure to

the liberal majority in both Houses. We have seen above that the connivance rather than toleration they enjoyed under James in consequence of the suspension by the executive of the penal laws against them, was more owing to the fear than favour of that Prince. In 1604 he had spoken vaguely of revising the penal laws that might have been too strictly construed. He opened diplomatic correspondence with the Pope as Bishop of Rome, and gave juster cause of alarm by the matrimonial negotiations with the great Romish Courts of Spain and France, that had a direct bearing on the status of Romanism in England. And these inauspicious preludes now seemed realised in the French retinue and Popish chapel of Charles' queen. So that what with the non-observance of the Sabbath, the progress of Popery without, and the ascendancy of Arminianism within the Church; this Parliament had no lack of spiritual topics of censure, which it is not perhaps uncharitable to suppose were dwelt on with an earnestness more intended to excite the masses without than to express the real apprehensions and zeal of the Parliamentary orators themselves. Though as regarded the toleration or connivance extended to the Romanists by the executive, it was so partial and capricious, as to seem intended to supersede the long code of statutes on the subject and the action of the Legislature. While the avowed Arminianism and Romanising tendency of the higher clergy lost none of its offensive character by being assiduously coupled

with the doctrines of Divine Right and Passive Obedience. Doctrines no doubt in their personal application agreeable to the spirit of Christianity and the course of Divine Providence, but as applied to communities necessarily qualified by regard to the interests of others and the reciprocal duties of the ruler and subject. Oxford censured a preacher who justified a recourse to arms against tyranny in a hypothetical case; but the Commons made their weight fall more effectually by impeaching and convicting at the bar of the Lords another divine who had preached the doctrine of Passive Obedience to an unwarrantable extent, and with an offensive allusion to the constitution of Parliament itself. I do not on mature reflection see anything to condemn in the conduct of this Parliament, which from the long interval that elapsed before the assembling of another, seemed destined to be the last of the long series that ascended to the feudal times of Henry III. They had done what they could in the way of opposition and resolution to protect the subject from arbitrary imprisonment and exaction, they had interfered perhaps too minutely in Church matters, and entered too partially into the controversies of the day, but they had certainly stopped short of success and perhaps of duty in neglecting any formal assault on the very constitution of the Star Chamber and High Commission Court. The first of them was clearly illegal, and the latter though based on a statutory title had been extended in

practice beyond the limits contemplated at its foundation.

The reign of Charles down to the assembling of the Long Parliament in 1640 may be broadly divided into two periods, the anti-parliamentary administration of Buckingham that we have already considered; and the quieter and severer administration of Strafford, which may more properly be termed unparliamentary, as spurning the co-operation rather than contesting the rights of the national representatives. Buckingham's wanton and audacious conflict with public opinion had been closed by the assassin's knife—Strafford's graver and systematic struggle was to be closed by a more solemn tragedy. It is easier to form a correct estimate of this distinguished personage in his purely constitutional relations without allowing the mind to be dazzled by his great abilities, or the feelings wrought upon by his tragical end. Sprung from that wealthy well-born and well-educated rank of untitled gentry peculiar to England, and which has contributed to her Courts and Cabinets her most illustrious statesmen, Wentworth's first entrance on public life was on the liberal side of the House of Commons. His change of party has been of course ascribed to different causes. But at that early stage of the great controversy, the Commons had done so little that could be deemed either dangerous or disloyal, that I am inclined to attribute Wentworth's change of policy to ambition, and the

instinct perhaps of an imperious and fastidious temper that sought a unity of action, and little relished the tone or manners of his abandoned party. His administration, which comprehended the only peaceful and prosperous portion of Charles's reign, was eminently able, but no less clearly a continued strain or violation of the Constitution. As the King's principal adviser, he may be considered as a Prime Minister throughout this period, though his specific functions were either the Lord-lieutenancy of Ireland, or the Presidency of the Council of York, which conferred an anomalous sort of military judicial and ministerial authority unknown to the Constitution, over the northern counties. For the time Strafford fully succeeded in his object of exalting the Royal authority, which was identified with his own, in enforcing an outward uniformity in matters of religion, which he deemed salutary, and in promoting the peace and prosperity of the nation by strict administration of the law and economy in finance. But after all this is only styling him a great Minister of a despotism—it is only enrolling him in the list of continental statesmen the Ximenes, the Richelieus, the Metternichs —but not entitling him to a name in the long list of English Constitutional Statesmen, who from Pembroke to Peel, have walked in the light of the Constitution, and at once the loyal ministers of the Crown and the great masters of assemblies, have reconciled co-ordinate powers, and have used party

for the consolidation of a government, without abusing it for the oppression of the community. The policy suggested by Strafford, and pursued during the long parliamentary chasm from 1629 to 1640, was decidedly on the model of the continental despotisms, except that it was the Anglican and not the Romish Church that was the favoured persuasion. But in other respects, like the policy already fully developed, or in rapid progress of development in the dominions of the Houses of Austria and Bourbon, there was the same strain of personal government, centralization, economy, and severity. There was oppression rather of the great than of the little—the prosecution of members of the late Parliament; the renewal of the Forest laws, to the detriment of adjoining proprietors; the degradation of honorary titles for the extraction of revenue. Proclamations were again heard throughout the land, monopolies crippled trade, and perhaps more than any other arbitrary act of temporal government, brought the prerogative into hostile collision with the feelings and interests of the masses. Nor were the Courts of High Commission and Star Chamber inactive. The latter, which had experienced a singular toleration or neglect from previous Parliaments, extended its jurisdiction, and enforced it by heavy and indefinite fines, odious to an avaricious and law-loving people.

Yet, as if to shew how little the same rule is applicable to the two countries, and how absurd

and fruitless has been the constant effort in later times to extend English institutions to Ireland, and govern it on English principles, Strafford's severe but enlightened and impartial despotism, was neither unpopular nor unsuccessful in Ireland. Tranquillity and obedience to the law unknown before was maintained, commerce arose, the revenue for the first and only time in history exceeded the expenditure. Parliament, now suspended in England, sat in Dublin and transacted business without sectarian jealousy or party violence. The leaning of the Court towards the Catholics, which was so unpopular and suspicious a feature of their policy in England, seems to have been very successful in Ireland. For though the native Romanists were still depressed as savages rather than as sectaries, it yet appears that county and municipal office was open to Romanists of English descent; and their presence in Parliament would probably balance the sectaries who must have already been appearing in Ireland.*

In England at this time the character of Laud, his influence over Charles—less justified by superior abilities than that of Strafford—his vexatious exercise of the High Commission Court in the vain attempt to secure uniformity; the leaning to the tenets and practice, if not to the communion of Rome, and the mutual hatred of the Prelate and the Puritans, are

* See a curious and painful tract, 1640. Bishop Atherton's penitent death.

all well known points of general and ecclesiastical history; and gave the tone to this period of constitutional suspension, and the determining character to the resistance that was so rudely to close it.

It was to Laud that Charles was indebted for the critical turn of his affairs. The rigid uniformity sought to be introduced into the Reformed Church in Scotland, where hitherto the anomaly had existed of a Presbyterian ritual under a nominally Episcopal hierarchy, set that zealous people in a blaze. And with singular unanimity of classes and districts, all the civilised and populous part of the kingdom adopted the well known Solemn League and Covenant, organized by their national Parliament at Edinburgh, and supported by probably the largest body of disciplined troops that had ever yet been enrolled in this island. The suddenness and success of this rebellion, which nothing but religious zeal could have excited, and the military habits of the people achieved, astonished and perplexed the Court. The need of men and money for the prosecution of the war, and even the protection of the northern counties, led to the renewal of Parliament, with all its train of consequences.

A Parliament was assembled in the spring of 1640, whose tone ambiguous and hesitating, while it thwarted the Government, gave little indication of that firmness of purpose and breadth of view which the popular leaders now saw afforded the only

hope of good government for the future. The early and injudicious dissolution of this assembly was followed by an irregular convocation of notables, including peers, officers of state, and certain provincial functionaries, much in the nature of those early Anglo-Norman assemblies we have seen preceding the great representative discovery of the reign of Henry III. This aristocratic body, as representing the old military fiefs of the Crown, and personally less hostile to the Court than the ordinary constituencies, were ready to proffer the ancient feudal quota of men, but felt their constitutional inability to grant the sinews of war. Nor indeed did the reluctant feudal militia offer any very effectual resistance to the veterans of the Scotch Covenant, trained for the most part in the school of the German wars, and engaged in a popular and Protestant cause. The slender success of these attempts at war and council, led to the ominous assembly of Charles's fifth Parliament, so fatal to himself, and so well known to history as the Long Parliament.

It is to be remarked, that from the commencement of this contest, the advantage of a regular army lay on the side of the liberal party. The military habits of the Scots, in a less advanced civilisation than the English, and their connexion with the Protestants of northern Europe, had prepared for their hands the materials of a force, that only required the national enthusiasm to embody and

direct. While the long estrangement of Charles and his Parliament, and the pacification of Ireland had deprived the Government of both the means and motive for maintaining such a regular force as by this time was the ordinary appendage and arm of the executive abroad. Early in the course of the Scotch troubles the Catholic gentry came forwards with contributions and proffers at least of personal service. They may have possibly been influenced by obscure negotiations of the King with Spain and the Pope for assistance in men and money, with a view of repealing the penal laws that pressed so hard on their persuasion. But such loyalty might very properly be attributed to a just apprehension of the fanaticism of the Scotch army, and the more measured injustice of renewed English legislation.

The short Parliament that had assembled in April 1640 had had no lack of grievances to complain of, and the accumulated abuses in Church and State loaded their tables in the form of petitions from every part and almost every class in the kingdom.

The well known illegal impost of ship money, and the decision of the Judges in its favour formed the leading topic of discussion. So impressed were the Commons with its illegality and the necessity of stigmatising it accordingly, that they declined the offer of the Crown to surrender it on a compensation in subsidies. What little precedent there was for it pointed it out as a war tax, levyable only on ports

and coast towns, whereas the latter instance of its imposition that gave occasion to Hampden's famous resistance, was in time of peace and on the inland county of Bucks.

It was in the interval between the fourth and fifth Parliaments, and while the anomalous House of Peers were sitting at York, and the Scots army were in occupation of the northern border, that the liberal leaders opened communications with the ruling party in Scotland. This step of obvious advantage but doubtful legality may, from the ambiguous relation in which the two nations stood to each other at the time, be regarded either as a national party combination of the Lichfield House character, or as bordering very closely on treason. The Scots themselves, less scrupulous as politicians and accustomed to a state of chronic resistance to authority, had not hesitated at soliciting the aid of the wily cardinal who swayed the resources of France. An homage at once to Popery and despotism, which never seems to have been contemplated by the English Parliament.

But between the English liberal leaders, who had not yet even contemplated civil war, and the Scotch Parliament that had successfully waged it, there existed an understanding of a very equivocal character. Men and money were what each contracting party needed, and yet were able to reciprocate with mutual advantage. Old national animosities, their several Parliaments and diverse

laws, seemed to constitute them different nations, while the union of the crowns, and the identity of the struggle in different stages of which they found themselves, seemed to sanction the connection as a merely national combination. The point is a less difficult one to settle in morals than in law. For there can be no doubt that the rebellion of the Scots, however universal and well founded as regarded themselves, afforded no justification to the members of a separate legislature with other wrongs and appropriate remedies, to fraternise with insurgents, and thus demoralise the public mind by the spectacle and recognition of armed resistance. This was perhaps the first step in the downward course, where the temptations of ambition sullied the simple patriotism of the parliamentary party.

CHAPTER II.

LONG PARLIAMENT—CIVIL WAR—COMMONWEALTH.

Proceedings of the Long Parliament—Strafford's Impeachment—Reforms in Church and State—Public opinion on Church matters—Militia question—Balance of parties—Course of war—Points of negociation—King's trial—Administration of Cromwell—Relations of Scotland and Ireland—Attempts at Parliamentary Government and Parliamentary Reform—Law of Property and Local Government unchanged.

MAKING due allowance for the insincerity and obstinacy which the King evinced to the last stage of his public career, and likewise for the ambitious and vindictive spirit that sullied the earliest and most meritorious acts of the Long Parliament, there is yet a definite point up to which we can on the whole give constitutional praise to their proceedings, while all subsequent to that crisis is alike tainted with ambition injustice and cruelty. The general character of the Long Parliament has been and always will be, viewed through the political medium of the writer who discusses its acts. But a detail of these acts themselves, so far as either in the light of precedent or actual enactment they have modified and formed the constitutional polity of England, will be the safest criterion of the gratitude or

censure due from posterity to this important assembly. The arbitrary misgovernment of the last ten years seemed so obviously coincident with the abeyance of Parliament, that the revival and perpetuation of parliamentary action seemed its natural and effective remedy. Thus the Triennial Act was the first measure of the momentous session commencing. It provided, with every security of peremptory and specific enactment, for the election of a new Parliament and its assembly every three years; and also secured at least a fifty days' session by the novel provision that no dissolution or adjournment could take place for fifty days after meeting, except with the consent of the House itself. This security for some amount of discussion and legislation was probably most relied on; but there is no doubt that the provision for a triennial appeal to the constituencies, and for the frequent revival of the personal energies of the House was likewise conducive to the popular cause. This is hardly the place to discuss the relative merits of representative periods. But I am strongly of opinion that a period of three years would be found more to synchronise with the movement of popular feelings, and to at once excite and represent popular agitation, than either our septennial theory, or the supposed more democratic scheme of annual Parliaments. Hallam thinks that circumstances would have so practically modified the working of this measure, that it would not have been really de-

rogatory to the constitutional prerogative of the Crown. This is difficult to determine; at any rate the Royal assent was given and it became law amid the great rejoicings of the nation. Other beneficial measures were carried against the more flagrant and recent usurpations of the Crown. Ship-money was declared illegal, and the decision of the Exchequer Chamber against Hampden on that point reversed; and the right to tax imports without the sanction of Parliament was formally and expressly abrogated, notwithstanding the usage now as we have seen of nearly eighty years duration. With the restoration of parliamentary action and the abatement of illegal imposts fell also the twin pillars that gave a legal support to the temple of tyranny. The Courts of Star Chamber and of High Commission, two judicial committees as we might call them of the Privy Council, had justly incurred the public hatred from their immediate dependence on the Crown, the arbitrary and undefined nature of their practice, and the delicate class of cases of conscience and private manners they affected to review. Neither of these Courts probably originated in any deep-laid scheme of arbitrary government. But as has been remarked above, the High Commission Court was almost a necessary consequence of the Erastian character of the English Reformation, and an indispensable machinery for exercising a novel prerogative unknown to the earlier Constitution. While the Star Chamber was perhaps in its origin honestly

intended as a supplement to our system of jurisprudence so defective as a scheme of moral restraint and control of motives. But its ideal as an equitable criminal court was certainly not realised even if ever intended, and its arbitrary pliability to authority rendered it a more effective instrument of despotism than the arbitrary rigidity of the Common Law, which however irrationally and unsystematically, often resisted the encroachments of power.

With the great central Ecclesiastical Court of High Commission fell the various Diocesan and other Church Courts, at least as far as compulsory jurisdiction was concerned. They however revived on the Restoration, shorn of course of any penal power, but without the consolidation of their limits and assimilation of their practice, which is still a desideratum though not an urgent one of legal reform. With the Star Chamber fell several other Provincial Courts of recent origin and arbitrary practice; such as the Court of the North, and of Wales and Welsh Marches which embraced many English Counties thus deprived of the Common Law. It is a curious and suggestive relic of these Courts that the modern inoffensive but lucrative Chancellorship of the Duchy of Lancaster changes with the Government of the day, and its holder is therefore an essentially party man.

Parliament also proceeded with the practical reforms of limiting the prerogative of purveyance, of compulsory knighthood, and of the arbitrary

extension of the forests. An Act was also passed against compulsory enlistment, except under special circumstances of invasion or of military tenure. This arbitrary prerogative had probably not been carried to any great extent by the pacific tyranny of the Tudors and Stuarts, except for the purpose of service in Ireland, for which special exigency at this moment of sanguinary insurrection in that country the present statute provided. But it was looked upon as so great an interference with the Royal prerogative, that the King adverted to the Bill while passing through the Houses in a speech from the throne. This censure of a Bill before its maturity for the Royal assent was not unprecedented, but it has naturally not been repeated; as the parliamentary action of the Crown must be either through or with the advice of Ministers, who enjoy the support or sufferance of the majority of the Houses. On the occasion just alluded to, the Houses joined in a remonstrance at the alleged breach of parliamentary privilege; and the King assented to the measure.

If theory was identical with practice, or laws guaranteed their own execution, it might seem that the labours of the Long Parliament had thus early in its first session restored the constitutional tone of the Plantagenet monarchy, and had established liberty on a basis as stable if not so broad as that of our own days. But the best and wisest of the patriots of the day suspected the sincerity of

Charles, detested his late Minister and much overrated the resources of them both.

Though Charles was insincere, and influenced by a Bourbon wife and Romanising Prelates, I am disposed to think the cause of liberty was safe without the career of revenge and aggression into which her votaries hurried her. The first English monarch that could be fairly pronounced free from personal cruelty, without revenue or military resource, hampered by a variety of specific statutes, confronted repeatedly by a Parliament rising every third year from the country, embarrassed by the revolt of Scotland and insurrection in Ireland, and odious from the real or suspected relations of the Court with the Catholics, Charles had scarcely an engine of authority left beyond the power of imprisonment and the devotion of a portion of the Church. And even then the occasional commitment of rhetorical patriots and the Romanising vagaries of Laudian churchmen, would have called into exercise the petitions and pulpits, the writings and newspapers of that day, to a degree more favourable to the progress of freedom than the revival of arbitrary power.

But it was the lamentable though not unreasonable proceedings against Strafford, that destroyed all possibility of mutual confidence between a disgraced sovereign and a vindictive assembly. While the consequences of that fatal step, threw the control of the Lower House at least more than ever into the hands of those, whose interest and safety was to widen

the breach. If the Long Parliament could have been dissolved after the attainder of Strafford, and the *personnel* of it so changed that the new majority should have been men of liberal principles, determined to maintain the recovered rights, but neither themselves implicated in the persecution of the great minister nor yet disposed to avenge his fate; it is possible that Charles might have trusted his safety and honour to such an assembly, without finding in it the machinery of despotism. But one of the earliest efforts of ambition on the part of this Parliament was to decree its own permanence and indissolubility. Thus annulling the happy idea of our Constitution, for escaping many an embarrassment by altering the *dramatis personæ* while the drama is continued. The prosecution of Strafford, dictated probably as much by fear as revenge is a part of general history; and if there had been any name for a crime consisting both in abuse of delegated power and of still higher influence, Strafford deserved a punishment that would have been a warning to future ministers and a security against his own return to power. Yet there can be but one opinion among Jurists worthy the name as to the iniquity of the process against him on the charge of High Treason. But his real acquittal at the bar of posterity was in the conduct of his prosecutors themselves, who shifted their process against him from the solemn and specific form of an impeachment or judicial inquiry,

into the party measure of an attainder, where the vote is given without evidence or defence, as a matter of personal opinion or passion. It is no doubt competent to combine in an impeachment articles charging offences of very different degree: and that the malpractices of his Irish Government, which formed the bulk of the articles against him, might have been proved in the regular course of impeachment admits of no doubt. But it was because the popular leaders were determined Strafford should suffer for High Treason, and that their lawyers utterly failed to establish such a charge under the statute of Edw. III. that the inconvenient justice of impeachment was laid aside for the convenient injustice of an attainder; where it is an idle apology to say that the Lords voted judicially, and not legislatively, on articles neither proved nor defended before them. That was indeed a question for their own consciences, but the public must judge from external facts. I am disposed to give less weight to the very suspicious provision of the Bill of Attainder, that the Judges should not determine Treason by virtue of this Bill. Hume pertly remarks on this, as shewing that the framers of the Bill only aimed at a particular object, the destruction of a certain minister, and had no idea of designating his conduct as treasonable in another. This though the obvious is perhaps the too obvious deduction from the words, and possibly it was inserted with the scarcely less criminal intent of

carrying a majority in a House where many must have been conscious of having at a humble distance emulated the conduct to be condemned in Strafford. It is true that the Judges, upon reference for their opinion, whether some of the articles charged amounted to Treason, answered unanimously "that upon all which their Lordships had voted to be proved, it was their opinion that the Earl of Strafford did deserve to undergo the pains and penalties of High Treason." But there is something in the slovenly generality of this dictum, that looks like an attempt to save their character as lawyers, with their seats as placemen. For not to dwell on the latent sneer in "all that was voted to have been proved," the law does not recognize any possible accumulation of offences of a less degree to amount to a different offence of a higher nature. No multiplication of misdemeanours becomes even a felony, far less a treason. While it was a futile hypocrisy to dwell on the 15th article, which charged as a treasonable act the discretional and no doubt arrogant manner in which he had levied paid and quartered troops in Ireland by his own authority. Whether he had or had not in this exceeded the discretion exercised by other Viceroys, it was notoriously for the King's service, fully justified by the state of the country and temper of the people, and probably not widely differing from what might have been charged against Lord Cornwallis in 1798 or Lord Clarendon in 1848. The way in which the

more moderate and respectable portion of the majority justified their conduct in this prosecution was, that Strafford deserved death for his accumulated misdemeanours to the public, and if he could technically be made guilty of Treason to the King, no moral wrong was done by his suffering accordingly. Both these positions are untenable, but sufficient doubt attached to them to palliate the vote of hate and fear.

In the Commons the numbers were 209 to 59. In the slenderer and more dispassionate Upper House, the feeble division was 26 to 19. The minority in the Lower House comprised few remarkable names but Selden's, and did not enrol that numerous and respectable class of politicians, who subsequently rallied to the cause of the falling monarchy from the ranks of its assailants. The hostility or neutrality on such an occasion of men like Hyde and Falkland, certainly bears heavy on Strafford, and indicates the danger of his acquittal. But writers must be rather at a loss for an opportunity of eulogising the Long Parliament who speak of its generosity in passing a subsequent bill to relieve its victim's children of the penalties of forfeiture and corruption of blood, when this generosity was exercised and probably intentionally so at the expense of the revenue of the Crown.

It is happily of no practical moment now for a constitutional writer to discuss the propriety of the proceeding by attainder; though there can be little

doubt of the competence of any community to punish great offences against itself by a retrospective National Act. Such a right would seem to flow from the principle of national independence, but should not be extended to capital punishments. A community may exercise at its pleasure the right of separating from itself any peccant member, but such right does not extend to separate such member from the whole human race, save for such conduct as would be as universally punished. In practice the process of attainder had been extensively used by the Tudors, whose singular taste in despotism led them to abuse parliamentary forms for the purpose of their prompt and capricious tyranny. But to an age like our own, so redundant in technical protection for criminals, and so morbidly sympathetic with their position it might seem that a process discarding alike evidence and defence, and merely confirming a foregone conclusion, would be totally inadmissible. Yet the last few years have furnished instances of such avowed and ostentatious violation of the law as to supersede all further evidence and silence every possible defence, while local circumstances audaciously relied on by the offenders, obviously suggest a national vindication of the nation's law. And if ever from the rusty armoury of the Constitution again appeared the ominous process of attainder, against none could it more appropriately be exercised, none could less complain of its injustice and abuse, than those unworthy subjects of the British Crown,

those self-disfranchised citizens of Great Britain, who glory in violating the law of their country at the bidding of the foreign head of a mischievous and anti-national superstition. In the mild form of a Bill of Pains and Penalties to meet an unforeseen and anomalous offence, the idea has at least survived to our own times. But the last instance of its application to the wife of George IV. was not a happy or appropriate occasion, and but little likely to tempt a Ministry or an Opposition to its revival.

Strafford's fate though beneficial as a moral to Ministers as a warning against despotic and illegal courses, as the subsequent tragedy of his more blameless master is a lesson in sincerity for Princes, can not be considered to have immediately conduced to the public good. The patriot party was now divided, and the best and wisest stood aloof or yielded a reluctant assent. A precedent was given for subsequent judicial murders, such as that of Laud, which had not the political plea or scintilla of legality of Strafford's process. And the confidence of the King was lost for ever in the profound humiliation of having consented to sacrifice a faithful minister and violate a royal promise. The same spirit of fear and suspicion dictated the next measure, which was a direct and portentous innovation on the Constitution. An act was passed against the dissolution of Parliament without its own consent, thus perpetuating in the seat of power the corporation that purported to represent the nation, and had

challenged the hostility of the Crown. So daring an encroachment, which at once deprived the King of his power of dissolution, and the people of their right of re-election, passed with an amount of popular consent, that is not very creditable to the political sagacity of the constituent bodies. But though the evil of thus constituting an irremovable oligarchy of democrats could hardly be overrated, there were circumstances that concealed the real nature of the change from the public eye. The long interruption and disuse of Parliaments, and the abuse of the prerogative that ensued, associated the idea of liberty and law with the existence and permanence of Parliament in a degree very favourable for this usurpation. Parliament too was in its first session, and the boldest critic would not have ventured to anticipate so prolonged and odious a vitality as this measure secured. Overrating as men will always do an immediate and known grievance, the nation sought refuge from the terrors of prerogative in what they fancied an impregnable fortress of liberty, but which soon proved a more severe restraint than England had ever known since the later years of Henry VIII. The ostensible pretext was the difficulty of raising money by loan without some security to those who advanced on the authority of Parliament, that their debtor would have a permanent existence. A caution which might seem well founded in the principle of English law, that the Crown could not be sued for a debt, but which modern

experience has amply superseded, in the superior credit of monarchies to that of republics on either side of the Atlantic. The real motive however was the suspicion of an arrangement between the King and some of the northern nobility to bring up an armed force to dissolve Parliament, or control the election of a new one. Whether well or ill founded this suspicion is but a specimen of the whole contest—insincerity on one side met by aggression, the child of fear soaring into ambition on the other. While the important feature of Charles's position in the want of military resource is indicated by the feebleness of the project imputed to him. The Lords, recognizing the reality of the danger, but justly viewing it as temporary, proposed the duration should be confined to two years. The Commons however insisted, and the Lords yielded.

The Church discussions, which next occupied the now self-constituted Legislature, led at once to the division of the patriot party, and the final collision between its more violent and prevailing section and the Crown. The Romanising tendency and arbitrary tone of the higher clergy we have already seen had excited and consolidated a wider hostility to the Church than was due to either of these errors separately. The folly and extravagance of the Convocation of 1640 brought this antagonism to a crisis. The King even suspended the execution of the Canons, and the Commons not only rescinded them, but denied the known and habitual right of Convo-

cation to bind the clergy, and actually impeached the bishops who had been most active in the matter. Of these Wren, whose delinquency was looked upon as merely theological, lay forgotten in the Tower for nearly twenty years. Laud, who as minister and almost confessor to Charles had shared the influence of Strafford, with probably more of the King's personal esteem, was executed at a later period of the contest, when apprehension could no longer justify a technical attainder, and vengeance should have been satiated or exhausted.

A majority of the Houses and of the nation would have been satisfied with this victory over the pretensions of the Church; and would have for a permanent arrangement preferred a moderate Episcopacy, in which Bishops should have retained their names revenues and spiritual functions, but shorn of all temporal power, and of the vague superhuman pretensions of a distinct apostolic order, superior not in rank only but in species to Presbyters.

This view of Episcopacy which is now tacitly at least that of the best and wisest members of our Church, would doubtless have harmonised best with our parliamentary Constitution,—would have accorded nearest to the practice of the other Reformed Churches, and been the best safeguard against the revival of superstitious ideas. But it offended the feelings and convictions of many friends of the Establishment; and fell far short of satisfying the ardent reformers, who whatever their own opinions

might be, relied on the external support of the sectarian preachers, and the obstinate bigotry of the Scotch presbyterians. The extreme measure of abolition of Episcopacy naturally divided the popular party; and though carried by a majority of thirty-one, was probably rather intended to alarm and punish the Bishops personally than as a permanent enactment; for a more moderate scheme appears to have been sanctioned in Committee. The country expressed itself, as far as petitions may be relied on as an indication, in favour both of the Episcopate and Liturgy alike threatened. Many counties sent up petitions numerously signed, which, though in most instances expressing gratitude for the reforms in the Church and State already effected, strongly deprecated the abolition of the existing hierarchy and formularies of worship. This feeling seemed most prevalent in the northern and western counties; where, as might be expected, lay the strength of the Royalist cause in the subsequent conflict.

The movement however carried though with great difficulty the expulsion of the Bishops from the House of Lords. This Bill, rejected at first by the Lords in June 1641, as a gross violation of the constitution of their House and a palpable innovation on the Constitution, was afterwards carried by mob intimidation in the course of the following winter, and became law by the Royal assent in February, 1642, being the last concession yielded by the King before his resort to arms. In reference

to the new and ominous influence now brought to bear on the deliberations of the Legislature we may remark, that though considerable disturbance and consequent intimidation took place in London on the occasion of Strafford's impeachment and attainder; yet so general was the feeling against him, and so definite and serious were many of the charges exhibited, that we cannot condemn as the acts of an ignorant and criminal rabble the excitement that enlisted the passions of all classes. But now, in the gloomy and foreboding winter of 1641-2, appeared in the streets of London that many-headed monster, so well known as an instrument and opprobrium of party warfare. The old ruin of Greece and scourge of Rome, swept from the soil of its birth by the phalanx of Philip, and overawed by the pretorians of the first Cesars, it once more revived as a political element in modern Europe—the child and assassin of liberty, at once the victim and penalty of civilisation.

To those whose passions permitted them to reason on rights, and to scruple about means, it would indeed seem monstrous that the mob of a capital—the worst portion of a portion of the nation—should assume to itself the controlling power of the whole, and enact the part of the *prerogativa tribus* at Roman elections. But the convenience of this ready and irresponsible instrument, which may be used as a power or invoked as a principle and again discarded when become troublesome, has always suggested its

use to the lower class of political adventurers; while the mode of resisting it is one of the most difficult tasks of real statesmanship. And perhaps the long experience of English liberty, tossed as it has been on the stormy bosom of a dense population, has suggested no better remedy than the licence of the tongue and the coercion of the hand. To allow every freedom of assemblage, of voice and language; but to check every illicit act by the ordinary police regulations applicable to every breach of the law. That this line is altogether agreeable to reason and moral principle is not pretended; nor that it is such as the writer would have suggested; yet it cannot be denied that the system has secured the largest fruits of liberty with the regular maintenance of order. It may perhaps be supposed that a large measure of popular violence finds a vent in noise and clamour,—every idea and principle is caricatured by the absurdity of unchecked oratory,—while the vulgarity of the ultimate check that confounds riot with ordinary crime, divests political insurrection of its romance of patriotism. A mere movement of the rabble can rarely affect the stability of a government supported by military force or good police regulations; but Charles could command no regular disciplined troops; and the voluntary service of the young cavaliers who now began to appear, even if it protected his person and residence from outrage, was in itself provocative of fresh sedition and added to the tumult and insecurity of the capital. And yet so little was

power and public opinion centralised in the metropolis, that no group even of the adjoining counties were swayed by the sedition of London. Charles was in personal safety at Hampton or Theobalds; and in Oxford found the steadiest support and most enduring fidelity to his now-failing cause. This appearance of a Royalist party out of doors was indicative of the division that now reigned within the Houses; and might have warned the popular leaders that they no longer represented the nation absolutely, but only a party in it. The Lords interfered with some regulations, to repress the growing spirit of misrule, particularly as regarded the disturbance of public worship and insults to the Church; but little attention was paid by rioters, who enjoyed the connivance if not the encouragement of the majority in the Commons.

This spring of 1641 saw the first rude and unpromising attempt at a parliamentary ministry. The King choosing his advisers and heads of executive departments from the ranks of the majority, whose opposition to his late principles of government had, from its very novelty, something of the character of personal conflict. It is said that the death of the excellent ancestor of the great Whig house of Russell prevented this arrangement from going farther, and embracing a larger number of the more advanced liberals, whose patriotism was thus left unsoothed by the mitigating influence of office. Yet it is hardly conceivable that Charles would

have so soon submitted to the humiliation of receiving Pym into his councils, reeking as he was with the blood of the great minister and too faithful friend. Nor is it likely that Hampden, fastidious from wealth and education, would have cared to assume any office that the Court would have tolerated him in. It is moreover doubtful whether the Royal cause would have gained much even by the extensive conciliation projected; for St. John, though actually in office as Solicitor-General, acted with the patriots out of place to keep alive the animosity against the King and jealousy of his designs, which was subsiding into a negative sort of security. The King went down into Scotland in the summer, and found a people to all appearances united in Presbyterianism and practical republicanism, though exercised in the name of monarchy, and by the means and for the interest of a somewhat narrow oligarchy. Though appearing cordially to acquiesce in these extensive alterations in the Church and State of his northern kingdom, his visit did not pass over without some apprehension and suspicion on the part of the Lords and leaders of the dominant faction. A suspicion which was promptly communicated to the leaders of the English Parliament, and as readily adopted by them.

Whether as a counterpoise to the returning loyalty of the nation evinced on this progress of the King through the northern counties, or to protect themselves from the consequences of former

intrigues, but morally unjustifiable on either supposition, the leaders of the Commons, not without the connivance and sanction of the liberal administration, adopted and presented the famous Remonstrance of 22nd November, 1641. This notorious resolution, if not the first, was the most important instance of the interference of Parliament in the way of resolution declaratory of opinion on any point, and deprecating or suggesting such a line of conduct without the distinct practicality of a legislative measure. This Remonstrance, which called up all the misgovernment of his reign, and blamed him for measures dropped and policy reversed, could have no practical effect but annoying and irritating the King, and alienating the returning affections and trust of his people. In this sense it was a fair criterion of the House, as it was earnestly opposed by the good, and as eagerly pressed by those of hidden and ulterior views; and was carried in a full House for those times, by 159 to 148. It is not easily explained how this slender majority of eleven was subsequently increased, when further demands were pressed upon the King, going to the actual annihilation of his authority, and a radical change of the Constitution. Moderate men may have been discouraged and stayed away, as the ultra-faction, over which the mysterious character and unknown designs of Cromwell already loomed, had urged the carrying of the Remonstrance as the critical stroke of the contest.

This Remonstrance was followed by an uneasy period of mutual, and probably well-founded, jealousy on both sides. Strangely to our altered associations in matters of Church and State, the liberal legislature censured the illiberal executive for the lenity shewn to Roman Catholics, and even distinctly pressed the capital punishment of certain priests amenable to the severe statutes of Elizabeth, which were however generally suspended throughout this reign. The King's tolerance or perhaps sympathy was shewn in a letter to the House on this occasion, wherein he discriminated more agreeably to reason than to facts between the political and religious profession of the unpopular creed. He states what was scarcely borne out by facts—that no priest had been executed merely *for religion*, either by his father or Elizabeth. And in reference to the particular case of Goodman pressed on his notice, with more address than constitutional dignity or consistency he abandoned to the House the odious duty of execution, which they then very naturally shrunk from, though thereby admitting the hypocrisy of their censure.

The Irish rebellion and attendant massacre, which had almost immediately followed the recall of Strafford, was also absurdly imputed to the connivance or instigation of the Court. The native Irish Romanists were at this period the objects of the greatest abhorrence and apprehension to the Parliamentary party. As aliens, as devotees

to an abhorred superstition, and as in their poverty and ignorance the raw material of imaginary Royalist armies, the future clients of modern Whiggism were viewed with very different eyes by the liberalism of 1642. It is well known to the readers of general history, that the destructive outbreak of the native Irish, calamitous alike in the first place to the English colonists, and eventually to themselves, arose from the complicated religious animosities and agrarian grievances that are the chronic malady of Ireland. But the immediate and accelerating cause was the recall of Strafford, and the devolution of his iron proconsulate to nominees of the Parliament as odious to the natives, and far less competent to rule. This anomalous position of the Irish Government—a deputation, as it were, of the English opposition—of course much increased the difficulties of their situation, and suggested to party malice the absurd notion that the sanguinary insurrection of the Romanists was favoured and excited by the Court. At a subsequent crisis of Charles's fortunes, when his own position was deeply depressed, and the Irish rebellion had acquired some degree of order and organization, overtures were made in his name though apparently without his consent, for mutual support against their common foe—the English Parliament. The character of such a negociation between a sovereign and a portion of his subjects, must depend on the nature of the objects proposed,

which are not very clear. But the savage ferocity of the original movement, and the odium attached to their religious profession, rendered any intercourse between the Crown and the Irish revolters particularly suspicious to the English revolutionists.

The whole relation of the King at this time to his nominal advisers, and of that Ministry to Parliament was so rude and anomalous, that it is difficult either to justify or censure his conduct on strict constitutional principles. The liberal administration had not his confidence, and can scarcely have been surprised at it, as they still strangely intrigued with the majority to censure his bygone policy, and calumniate his present motives and intentions. Parliament itself too was now pretty evenly divided, and the extreme measures of the sectarian majority were rapidly alienating the provinces from the popular cause, and had actually urged Ireland into sanguinary insurrection against its Puritan proconsuls at Dublin. Under these circumstances it is not to be wondered at that a Prince, who had succeeded to the autocratic government of the Tudors, and recalled the not unpopular activity of the Plantagenet kings, should have felt he was not grossly exceeding the constitutional limits of the executive in acting without his Ministers, when his Ministers were the accomplices of sedition, in assuming himself an office that could not be deputed, and in seizing within the walls of Parliament those misleaders whose connivance at

London sedition had given a peculiar complexion to their early correspondence with the Scotch Covenanters. In pleading thus the anomalous constitutional position in which he stood in extenuation of the irregular course he pursued, I would not mislead the young reader as to either the propriety or policy of this ill-fated *coup d'etat*. The moral principle of a sacred regard to truth and the obligation of a plighted promise has no exception, but rather an increased stringency for princes, irrespective of the character and conduct of its objects. Scarcely less can a prince despise with impunity that constitutional, or rather common-sense etiquette, which prescribes the orderly deputation of harsh or doubtful functions. Nor is it very clear what ulterior object Charles would have served by the arrest of the five Members. Their seclusion from Parliament could have been but a temporary and questionable advantage. Charles's habitual mercy and conscientiousness, amply shewn even in his days of unconstitutional authority, forbid the supposition of a resort to those mysteries of the prison house that have too often relieved the counsels and charged the memories of tyrants. And had the plot taken its regular legal denouement, it is very doubtful in the excited state of the public mind, whether any bills could have been found, or convictions on them carried bearing the character of treason. We have seen above, that the peculiar relation in which the Scots and English stood to

each other at this time as neither exactly foreigners nor countrymen, gave a very ambiguous complexion to any political combination that might exist between them. And this complication had been additionally perplexed by the subsequent conduct of the King in recognising the Covenanters' revolt, and apparently favouring their leaders. It would be out of place to analyse here the original idea attached to treason, which generally speaking seems to have comprehended the violation both of Norman homage or duty to the territorial lord, and of Saxon fealty or duty to the head of the race. And there was just enough of technical doubt whether the relations with the Scotch insurgents involved these two necessary particulars, as to justify a scrupulous and possibly reluctant tribunal in acquitting the parliamentary leaders of so grave a charge. This would of course leave untouched the moral question of the propriety of thus proceeding against men, who had received an indirect amnesty for relations with another party that had received an express sanction of *its* conduct.

The failure of this very questionable *coup d'etat*, and its fatal results to the cause and even character of the King, are well known to the readers of general history. The daring and insincerity shewn by the King, again for a time united the diverging sections of the popular party in a common cause and a common dread. The animosity of the popular leaders was inflamed, who now scarcely

concealed their intention of carrying matters to extremity, and reducing Charles to the total abnegation of power and even personal restraint, that had been in earlier times imposed on Edward II. and Richard II. This growing feeling was embodied in the militia question, that was now pressed urgently on the King, perhaps full as much to precipitate his measures as for a safeguard to popular rights. The question had been mooted before, under similar circumstances of suspicion. But it was now pressed on the King with the pertinacity of men, who regarded it alike as a means of security and an instrument of power. Though of greater political significance, it weighed less on the King's conscience than the abolition of the Episcopal hierarchy likewise pressed on him at this crisis. He however yielded the latter point, less from any indifference on his own part than in deference to the counsellors, who looked on the militia as a means of eventually regaining this, as well as perhaps other concessions, and also from regard to the comparative moderation in politics of the bigoted Puritans, who seemed to think that Crown and Parliament law and arms only existed for the sake of their beloved Presbytery. The character of the militia or ordinary military force of England at about this time has been described above. And nothing but the want of a regular army, and the disuse of the feudal array, which were due respectively to the prudent parsimony of recent Parlia-

ments, and the pacific policy of late reigns, could have rendered so merely contingent a force and precarious a resource of the importance it undoubtedly was at this crisis. The whole regular paid force of the State at this time consisted of slender garrisons, chiefly trained to the clumsy artillery practice of the day, and disposed in the Tower, the already important arsenals of Portsmouth and Plymouth, Dover, and some forts on the northern borders. The various statutes already alluded to, designed in the decay of the feudal system to call out a national force for national defence, had unsuccessfully struggled with the unwarlike spirit of the people, while they had pretty nearly superseded for all practical purposes the original feudal idea of service by tenure. This idea however remained and it was in virtue of it that the King raised the reluctant force, whose bad success against the Scotch insurgents led to the renewal of parliamentary government two years before. It is hardly possible to popularise to the general reader the variety of conflicting and ill-observed statutes on the subject of national armament that went back to the earliest records of parliamentary proceeding. But for practical purposes, we may consider the most usual forms were commissions to the Lord Lieutenant of each county to raise a force from their respective districts assessed, both as to number and equipment, on the amount of property and even of personalty. This was obviously in imitation, and in some

respects an extension of the feudal service of earlier times, and was the accustomed mode of meeting invasion or internal rebellion from 1324 to 1557. If matters became very critical, it was also possible to call out the more tumultuary force of the sheriff, which was in fact as far as it was raised a levy in mass of the whole male population of the district. Of rarer but more energetic use, were the special commissions issued from time to time by the warlike Plantagenet princes for their continental expeditions, and by the later monarchs for service in Scotland and Ireland. These commissions were usually issued to men of rank, who were also of some military experience and repute. The enlistment was voluntary, at least in theory after 1 Edw. III. c. 5., the pay high for the scale of prices at the time ; and the class who enlisted though probably not proprietors themselves, yet generally came from a very superior grade than what usually supplies the rank and file of modern armies. The force *in posse* which Parliament now sought to grasp, and had in reality to create, was to be a compound of these two forms of service. Like the general commission of array, it was to extend through all the counties of the kingdom, at least as far as their influence prevailed. While still more closely resembling the special commissions for foreign service, the organization was to be voluntary well paid and unlimited in time, though restricted to the limits of England. It was a

daring measure at once to raise and extemporise a large permanent standing army in an unwarlike age, and among a commercial and fanatical people. Less confidence was shewn in the policy that committed, not only the general command, but even the regimental appointments, to members of that parliamentary oligarchy; who now assumed the principle, faithfully carried out by their Whig descendants, that a certain rank in a certain party confers the right of serving or ruling the State. But subjected to the rude test of actual warfare, it was not till command had passed from the orators and aristocrats of the Houses to men whom military genius or a fearless fanaticism had fitted for chiefs in danger, that the parliamentary armies, though from the first superior in number and equipment, triumphed over the spirited volunteers of the Royalist cause. Ultimately, when war itself had given discipline leaders and experience, the parliamentary army became the master of its employers—not only overturning the monarchy, but oppressing the people, and crushing the sister kingdoms into a more intimate and humiliating union with England than they had previously endured.

With this preposterous claim on the part of the Parliament—assuming to itself the most peculiar and recognised function of the Executive—ought properly to terminate the constitutional view of this now disturbed and abnormal period. But a passing sketch of the subsequent usurpations of the Par-

liament and its mighty heir will be instructive in the way of warning, and a necessary introduction to the resuming a regular constitutional survey.

The history of the Long Parliament, or rather of the popular branch of it, may from this moment be viewed as regards its conduct to the King and to the people. And badly as it bears the test of loyalty, we shall see its usurpations at the expense of those it professed to represent were to the full as unjustifiable, and still more incongruous with its original pretensions. The House of Lords, dwindling every month to a scantier attendance of the less respectable members of the Peerage, offered but a temporary and qualifying resistance to the successive encroachments of the Commons on the Crown and the subject. The Bishops were first excluded by popular menace, were impeached for their remonstrance, and ultimately excluded by the last Act that received the regular Royal assent. This was in itself so gross a violation of the Constitution, and being as it were pre-judged by the exclusion of the parties interested—only three Bishops voting—that in the opinion of the King, and of many constitutional lawyers, the Act itself was of doubtful validity. This wavering neutrality and ignominious acquiescence was the natural forerunner of a merited fall. And the resolution of the Lower House of Parliament, which quietly extinguished the Upper as useless and dangerous, was not viewed in so revolutionary a light as might

have been expected. The Royalist majority of the Peerage was really at York or Oxford, and the more respected names of the popular side had retired to their country mansions in disgust and alarm. This is in anticipation of events. But from the commencement of the contest, one must observe that the Commons arrogated to themselves, not without the sufferance of their constituents, the character of an independent corporation, having an interest and will of its own, for the public good of course, but quite collateral and without reference to any expression of public opinion. In an age like ours, so much fonder of altering principles than in perfecting results, it seems strange that the great liberal party of the Commonwealth should have submitted so tamely to the irresponsible and self-perpetuated tyranny of an assembly so imperfectly representing the nation as did the Long Parliament. Every anomaly in our electoral system that won the majorities of Walpole and Pitt, and were swept away by the great measure of 1832, existed in the time of Charles, if not in full maturity at least in genial youth. In every town the franchise was exercised by a small portion of the population, and that portion determined rather by a pedantic adhesion to the letter of charters and local customs than by any sound or general principle of qualification. Rotten boroughs or nominative seats too existed; and Pym the boldest partisan, if not the most advanced theorist of the liberal

party sat on Lord Bedford's interest for Tavistock. It is a remarkable proof of the public confidence and attachment earned by Parliament, that an assembly so constituted should have been allowed to wield at will such vast resources and unprecedented powers, without any movement in the nature of an organic change of its elements.

To those who have been accustomed to compare the manly and definite struggles of this great English Revolution with the frantic excesses of France, or the feeble dramas that the centralised states of the Continent have since got up in imitation of that revolting tragedy, the conduct of the mobs and patriots of 1642 appear orderly to tameness. But I will hasten to point out in a rapid sketch the several executive or judicial acts in which the Parliament or its myrmidons distinctly violated, not only the letter of the Constitution, but those higher principles which are paramount to all immediate and local policy. It may be admitted, that the revolutionary course was oddly and irregularly arrested and diversified by the pedantic rigidity of English law, and the moral respectability necessitated by a high religious profession. While the excesses even of the lower classes were restrained in a great measure by the spirit of religion, and perhaps still more by the pervading influence of the upper classes in the magistracies and corporations of the country that retained their organisation throughout the storm. For it was

still near enough to feudal times for the magistrate to appear, not only the representative of the law and the delegate of central authority, but with the added weight of the great local patron, proprietor, and employer—an idea that has in some degree been perpetuated to our own times.

But to proceed with the thickening delinquencies of the Parliament. The first ordinance passed as law by the Houses without the form of the Royal assent was in August 1641, for disarming all Roman Catholics—a measure naturally suggested by the state of Ireland, but having a significant bearing on the approaching contest with the Crown. This was followed, in November by another, authorising the levy of men for Ireland, without warrant under the Great Seal. This was carried by the emergency of the case, and the King's absence in Scotland; but the general conduct of its authors suggests the idea that it was really intended as a grasp at the Executive, and a separation of real power from its ceremonial connexion with the Crown. In the light of aggressions too may be considered the successive propositions tendered to the King; from the Nineteen propositions at York, to the scarcely more humiliating negotiations of Uxbridge, of Newcastle, or even in the deepest depression of his fortunes at Newport. And as these successive pretences, rather than attempts at accommodation, did not differ materially from each other, the heads of the celebrated

nineteen Propositions of York shall be enumerated. And the record of these unconstitutional innovations will be the more to our point from the fact, that almost every advantage to popular rights sought from them has been since achieved by the practice of parliamentary government. The Ministers of State and Privy Council were to be approved by Parliament, and take such an oath as the two Houses should prescribe. And this was even to be the case during recesses of Parliament. The education and marriages of the Royal family were to be under parliamentary control; Popish peers to be unseated; the Church and Liturgy reformed as both Houses should advise; the Militia and all fortified places put into such hands as Parliament should approve; and even the right to vote of Peers subsequently created to be subject to a parliamentary examination and approval. The independence and permanence of the Judges was also demanded in the same spirit, but with a less exceptionable object. But behind these proposals which would have divested the Crown of all recognised power and dignity, and even of domestic peace, there was a general principle carried by a majority in the Commons though not at this moment pressed on the King's attention, that he was bound to assent to all Bills that the two Houses should offer. This abolition of the veto, the most unquestioned though rarest exercised of prerogatives, was what Charles would never consent to. To his notion of

prerogative and dim apprehension of parliamentary ministerial government, it must have appeared a portentous principle; and indeed in its probable practical application to the Church he revered and the family he loved, it involved consequences of the gravest import.

Strangely enough it does appear to have been the old constitutional law of Scotland, which was certainly that of a high aristocratic republic rather than that of a limited monarchy, and where moreover the Crown had by its initiative and the interposition of the Lords of Articles a counterbalance unknown to our parliamentary theory. But the only fragment of constitutional authority, on which the liberal party relied in this proposition, was a passage in the coronation oath of Henry IV., which even if it bore the grammatical construction contended for, would only naturally imply a participation in legislation for the people. The coronation oath of this time—which Charles had himself taken—was in these words: "Sire, will "you grant to hold and keep the laws and rightful "customs which the commonalty of this your king-"dom *have?*" And this signification of the *status quo* as he received the Constitution from his father and the Tudors, goes a great way to explain if not to justify a large portion of the misgovernment, which certainly contravened the earlier principles of the Constitution.

Such were the propositions that precipitated the

inevitable conflict, and which renewed on gloomier subsequent occasions were as little likely to terminate the bitter struggle, though diversified with penal measures against too zealous friends and place and titles for successful foes. The details of the Civil War and the vicissitudes of party ascendancy in London belong to general history. And it will suffice in reference to our peculiar subject to remind the reader, that the balance and position of the two great contending interests were pretty much as follows. On the side of the Parliament was London, with the solid triangle of south-eastern England of which it formed the centre, and a line from Hull to Southampton the undefined basis; as well as a majority perhaps of the middle and lower class in all the towns of the kingdom. Scotland too threw into the same scale the weight of its obstinate bigotry and disciplined army, though for a time diverted by the brilliant episode of Montrose. On the same side were ranged the advantages of legal and financial organization, a regular revenue, a disciplined force, and the prestige of the capital and Parliament. The King's strength lay in the northern and western counties, then the more warlike and less populous districts, where Romanism still lurked and trembled at the ultra-Protestantism of the patriots of Westminster, and where probably Puritanism had made less way. The same or analogous causes influenced the nobility, gentry, and rural population generally in his favour. The now per-

secuted Church, and a majority too perhaps of men of letters, rallied round the falling side. Popish Ireland though in vehement insurrection against the English Parliament was more a scandal than an ally. Though at a later period of the contest the remains of her lawless bands entered largely into the raw material of the royalist levies. The peculiar miseries inflicted on their common country by the two contending parties, in addition to the ordinary calamities of war, may be referred to the sect and class influences that combined them. The King's forces ill paid and worse disciplined exhibited too much of the licentiousness that disdained restraint and the recklessness that despised hypocrisy. The Parliamentary forces of a sterner bigotry, and from the first assuming the merits of the case at issue, exercised a severer cruelty and more systematic extortion than their opponents. How paltry appeared now the ship-money of Hampden to tax-payers introduced into the mysteries of excise and enormous monthly subsidies. How feeble appeared the tyranny of James and Elizabeth to those who trembled before the scaffolds of the Long Parliament, and witnessed the military executions of Fairfax and Cromwell.

So completely had the Parliament been allowed to identify itself with the nation, that it seems to have been irritated and astonished at the reality of the contest in which it was involved. Time was when beyond the precincts of the Court and certain

cloisters of the Church, no such thing as a Royalist party existed as distinguished from that predominant in Parliament. But two years of daring encroachment on one side and concession on the other had so divided public opinion, that had not the suspected insincerity of the King survived his compliance, and the energy of the movement carried out their pretensions, and maintained their hold on the public mind, the nation would have been almost equally divided. So far, as Burnet justly remarks, from Charles's concessions having ruined him, without those concessions he would have had no party at all.

The carrying off of the Great Seal from London to the King's quarters in the north, raised a difficulty that might seem puerile, but which the adherence of English lawyers to ceremony and usage rendered of some importance. To this mystical badge of power so much weight attached as the necessary instrument and certificate of all acts of Government, that its loss excited great uneasiness, and a substitution for it was not effected without much misgiving. On the other side the attempt of the King to assemble a counter Parliament at Oxford, which might have caused the House at Westminster great embarrassment appears to have failed from its not being carried out to its logical conclusion. Two Parliaments could not co-exist. And as that at Westminster had been legally summoned, and had even legally obtained the perpetuity of its function, the only Constitutional

resort was to the now loyal or moderate majority of that House, assembled in some other place, and proceeding to review and repeal the unconstitutional acts of its minority. But to do this with any sort of effect it would have been necessary to secure in the first place a known numerical majority, which in a time of so much exasperation and danger might have been doubtful; and then to have fully recognised it as a complete Parliament, given it all weight and share in public matters, and kept no further terms with the assembly at Westminster, but have proceeded all lengths even to attainder against their secession from the co-ordinate elements of the legislature. Neither of these courses was pursued by Charles. He summoned a new Parliament, a step in itself doubtful as the Long Parliament had an existence legally conferred on it. And this assembly, which even so constituted, might have been of essential service to himself and the country, was not either trusted or even honoured by the King. Its position seemed a nullity and its existence a mockery, while power and trust were confined to the mere favourites of the Queen, and creatures of the Court, violent cavaliers or frivolous idlers. This neglect and misuse of his own royalist Parliament of Oxford is perhaps the most satisfactory proof of Charles's unfitness for a constitutional sovereignty, and a considerable justification of the distrust and opposition he met with at Westminster.

While through the civil war the public acts of the King were confined to the use of the Great Seal which was very partially recognised, and the holding a Parliament he scarcely seemed to acknowledge himself, the residuary minority at Westminster carried things with a very high hand; and in wanton violation of the laws and liberties they had been returned to protect, they showed there was no object too lofty for their ambition nor too obscure for their jealousy. They expelled and impeached Bishops and Judges, though absurdly they permitted the latter to preside on the Bench while themselves under accusation. They impeached Peers for language used in the freedom of debate in their own House. While ample measures were taken to secure a majority of their own by the constant expulsion and commitment of members of the minority, which almost kept pace with the gradual secession from the ranks of the majority. And by a monstrous extension of the doctrine of privilege, it was made to embrace all religious questions as wounding the consciences of members. And the late dominant party in the national Church was now subjected to a severe persecution from the Presbyterian sect, that prevailed in London and Parliament, though certainly not throughout the kingdom.

This persecution did not extend to the death and torture that Rome dispenses to those who differ from her, but involved sweeping ejectments and their various consequences to those clergymen,

not only who had been prominent in the Royalist and High Church cause, but to those who as moderate but yet steady Episcopalians declined to take the covenant adopted by Parliament. The number of sufferers on this occasion is variously computed from 1600 to 8000 by authors of different views. I am inclined to believe with Mr. Hallam the smaller number to be nearest the truth though not equal to it. Readers who wish for a masterly and fair view of the respective faults and claims of the two great parties at the commencement of hostilities, are referred to the concluding pages of vol. ii. c. ix. of Mr. Hallam's great work. Little as he is disposed to favour the King, and entertaining I think too severe a feeling to the ill defined though established Church of that day, I am not disposed to differ from his summing up, that certainly convicts the Parliament of the guilt of rebellion and the miseries of civil war, suggested and extenuated it is true but not justified, by the King's early tyranny and actual insincerity.

We must proceed more rapidly with the whole unconstitutional and lawless period of the struggle. And here let us note first what had already been wrested from the Prerogative and what was still sought to be acquired. The power of taxation was definitively vested in Parliament. And the self-constituted permanence of Parliament was a continual guarantee of that and all its other privileges. The responsibility of Ministers was written

in Strafford's blood and was visible in the subsequent impeachment of inferior agents. The control over the Church was exercised in the spirit of the High Commission Court by the popular branch of the legislature. While that obnoxious tribunal had shared the fate of the Star Chamber and the other arbitrary Courts unknown to the Common Law and early Constitution. Such and no less were the actual acquisitions of Parliament. But in the command of the Militia, organised as we have seen pretty much as a standing army, they sought to wield the whole national force of the executive. While in the innovations they aimed at in the Church they urged points most revolting to the conscience of Charles,as well as of the large majority of his subjects; and opened questions of great delicacy and admitting of no definite determination by a multitudinous political assembly. While the propositions that in a rude and offensive way aimed at the parliamentary appointment of all officers of state, coupled with the still more unnatural interference in his domestic relations, would have reduced the King to a condition little better than that of a respectable State prisoner, deprived of the rights that had been secured for his nominal subjects.

Nor had the liberal leaders any personal ground of complaint, that as directing the majority or assumed majority of the House, they had been excluded from the sweets of office. We have seen the King distributed the offices if not the confidence of government, among either the actual or ex-patriots of

the two Houses. And if the administration had been on a still more comprehensive basis, it would have scarcely carried the appearance of greater sincerity on the part of the King, or realised loyalty on the part of the minister.

The success of the King in the early part of the war appears to have surprised as much as it alarmed the Parliament, who had talked and voted themselves into the belief that they were the actual nation. It is not wonderful when we view it as a contest between the still warlike gentry and yeomanry of the northern and western counties, and the as yet imperfectly disciplined corps raised by the Parliament from the population of London and the more civilised districts. Some advantage too was on the King's side in unity of command and object; while on that of the Parliament the aristocratic commanders were suspected of not wishing to push matters to an extremity. But the very object of the contest shifted in its progress. The war was begun by the Parliament nominally in the King's name, and with special orders for his personal safety, and with the avowed intention of bringing him back to his Parliament from the evil counsellors who had led him astray. But in the progress of hostilities these advantages were reversed and these objects simplified. The parliamentary levies gained discipline and their leaders experience; and from the middle class of homely English society arose men, whose daring and consistency of purpose superseded the lukewarmness of Essex and the vacil-

lation of Waller. The increased vigour of their military operations was supported by the growing ascendancy of a republican party, in the now divided minority that ruled as Parliament at Westminster. The breaking off of the negotiations at Oxford, the absurd and irrational impeachment of the Queen, the assumption of the covenant and consequent persecution of the Episcopalian clergy, were all indications of the revolutionary character of the movement. In 1644 in the decline of the King's affairs the Oxford Parliament above alluded to was summoned: the King having previously been joined by what constituted a numerical majority of the Lords. It is curious that at the opening of the contest a majority of the lay Peers appear to have remained at Westminster, 36 it is said while 26 followed the King to York. The secession of ten subsequently gave a majority to the royalist cause but at the same time left the upper chamber at St. Stephens' at the mercy of an extreme faction. In the negotiations at Oxford perhaps insincerity and obstinacy were pretty equally shared by the contracting parties. But later on at Uxbridge the Parliamentary Commissioners insisted on such personally offensive and unjust conditions that it was evident there was no real wish to escape the risk of extremities. The celebrated self-denying ordinance of the Parliament, by the persons it brought to the head of civil and military departments, was fatal to the royal cause, both by the fresh impulse of able

and desperate men, and the general republican character of the new school in office. The relations of the two parties into which the now victorious Parliament was divided, is the key to the tangled web of intrigue in which the captive King was involved, and also explains the tragic close of the contest which was certainly not contemplated at the commencement. At the time of the King's surrender to the Scots and betrayal by them, for certain arrears of pay due to them, to the Parliamentary Commissioners, two sections struggled for mastery in the triumphant party. The Presbyterians, bigots in religion but moderate in politics, still prevailed in Parliament. The Independents swayed the army strongly inflamed against the King and royalists they had vanquished, of republican sentiments, but in theology having arrived at the great doctrine of toleration, from viewing religion as a matter of personal or at the most of congregational importance, and not as requiring a national union or permanent formularies. Thus the King in addition to the manifold difficulties arising from the former misconduct of himself and his foes, was now involved in embarrassment from his own conscientious convictions, and the as we may hope equally conscientious differences of his enemies. Charles' devotion to the episcopal constitution of the Church of England prevented any agreement with the moderate party in politics, who would have been content with less onerous conditions in their present mutual danger,

than they had insisted on in an earlier period of the contest, but who viewed prelacy as a thing to be conscientiously extirpated odious to God and fatal to man. The Independents true to their principle of toleration, would have indulged a qualified episcopacy in certain dioceses or groups of counties, where it was favoured by the majority. But they would have surrounded the dishonoured and nominal throne, with the low and violent spirits of the ultra movement unknown alike to court and parliamentary life, and who from their entire command of the army would have wielded unlimited means of oppressing the people, and of subjugating and confiscating the entire kingdom. The Queen's influence always great with Charles was exerted, naturally in one indifferent to variations of Protestant heresy, to induce Charles to close with the politicians who would have conceded the largest amount of power and dignity. But to this his conscience objected, and his most confident hopes and deepest intrigues were with the army. The spectacle of a man sincere in his religious principles but insincere in his engagements with his fellow men is very painful, but what in Charles's case can easily be understood though by no means justified. Starting with high notions of prerogative, he had been crossed and conquered by the most obstinate and suspicious politicians, he knew well the deep hypocrisy of the men he was now intriguing with, and of the Queen's dislike to such relations. He may have therefore

thought duplicity no unfair weapon in a conflict so conducted, or may have expressed to satisfy the Queen a change of purpose he did not really intend. But however that may have been, the closing scene of Charles's life was due to the suspicions of the army, who felt the difficulty of a captive they could not trust, and a prince who might still have the power to punish. The ascendancy, the republican army or rather its leaders had obtained over the Parliament, was they were aware unconstitutional. The nation began to murmur at their exactions; the Scotch army again entered England to support the falling fortunes of their Presbyterian friends, and to wipe off the stain of their late surrender of the King. These circumstances which made the sanction of the King and possession of his person of the greatest importance, rendered it a still simpler and more tempting course to deprive rival factions of a possible advantage and relieve themselves from a dangerous captive. It was hate much more than justice, and fear more than either, that induced the commanders and agitators of the army to the monstrous and inexpiable crime, that has given a regicidal character it did not deserve to this great contest, and has by a retrospective action sullied the purity of the earlier movement, and thus in no small degree damaged the cause of constitutional freedom. The intrigues of the captive King with the two sections of his conquerors, the jealousy of those parties, the hard terms, the suspected in-

sincerity confirmed by his injudicious escape and some natural but ill-timed royalist movements, are all matters of general history and logically conducting to the tragic conclusion of the drama.

A provincial liberal critic of the first volume of this work, after complaining that this regicidal scene had not been introduced at least by reference in an earlier stage of the piece, the merit of the subject justifying a slight anachronism, proceeded to remark, that Charles owed his fate to taxing his subjects without consent of Parliament, a remark which fully justified the prosecution of a popular work on constitutional history, which seemed so much needed even by the self-constituted instructors of the people. The right of arbitrary taxation assumed by both Charles and his predecessors was definitively given up at the first dawn of the Long Parliament, and the agents summarily punished. The civil war that ensued two years later originated in the far more exciting questions of the command of the army and the organisation of the Church, the patronage of the Crown, and even the superintendence of the King's family and person. Nor did even this ambitious and unconstitutional movement necessarily induce a termination, which Essex and Fairfax as little desired as expected, but which was really due to the insincerity of the King, and the difficulty of his relations to the two divisions of his gaolers. The whole affair of the well-known trial is scarcely worthy discussion in this place, as it was in every point a violation of the clearest principles of the constitu-

tion and the first axioms of law and right. The charges were as impertinent as the Court was illegal, and the idea itself preposterous. It would be a waste of time to discuss the charges themselves which related to imputed misgovernment and the levying of civil war. The misgovernment had been met, corrected, and it was to be supposed pardoned by the Parliament at the time it really represented the nation. The civil war was a truism in which the guilt was either equally shared between the parties, or lay chiefly at the door of those, who desired precipitated and benefited by the contest. And it is only a piece of gross hypocrisy or quibbling sophistry in one of two even equally willing belligerents, to impute the guilt of hostilities to the party, on whom priority may attach from accident or the necessity of the case. Entertaining as strong an opinion as any writer has done of the radical and peculiar unfitness of Charles to fill the throne of a constitutional monarch, we would still maintain his trial to have been contrary to English law, and his execution a violation of the principles of humanity. Although his deposition after so embittered a contest might have been necessary for the safety of the agents in it; and had liberty not power been their object would have afforded an opportunity for consolidating it under the shelter of a protected minority. The Court too that entertained this preposterous prosecution was open to every objection, that could attach to a tribunal unknown to the laws

and constituted for an object that prejudged the result. Charles had incurred constitutional restraint by his misgovernment, and deserved no inconsiderable misfortunes for his personal insincerity. But we may fearlessly deny with the great liberal constitutional historian, either that his tyranny had been so extreme, or his personal character so odious, as to justify one of those exceptional acts always of dangerous precedent and personal guilt, but by which the principle of eternal justice sometimes supersedes the letter of the law, as a practical and imperfect delegation of itself.

As a point of national satisfaction it may be observed, that it was not even the residuum of Parliament, after the secession of Royalists and the gradual expulsion of the friends of peace and accommodation, that appointed the extraordinary tribunal for the King's trial. But the whole moderate or Presbyterian party were by one fell swoop secluded, or in other words, expelled the House, and the wretched minority known in contemporary history as the Rump, was now the representative of the Long Parliament, and the heir of its victories and embarrassments. It was this mere committee at once violent and despicable, that appointed the notorious High Court of Justice, and which immediately afterwards found itself face to face with the army, that had been at once the abettor and instigator of its crimes, and whose unscrupulous chief was soon to avenge them.

The whole period of the Commonwealth and Protectorate interesting and important as it is, must be considered a blank as regards the progress of our Constitution. Every institution, with one notable and significant exception lay in ruins, or was reconstructed for some particular and temporary object. The Church and House of Lords had shared the fate of the monarchy. The parishes were in the hands either of the clergy who had prudently or sincerely taken the Presbyterian Covenant and sided with the Parliament in its late struggle, or in the towns and more excited districts the churches were the prey of a succession of sectarians, the conflicting and self-constituted teachers of the people. The sole depository of legal power was as we have seen the residuum of a minority of the House returned in 1640, but the real power was in the army. This, the first standing army England had ever seen, which equalled the forces formerly extemporised by the military genius of the Plantagenets, or subsequently maintained by the resources of Anne and the first Georges, must have been a most oppressive burden to a commercial and tax hating people. What a humiliating and ironical termination of the struggle that arose with Hampden's paltry ship-money, to close with the monthly exactions of Cromwell. Yet in the total subjection of barbarous and Popish Ireland, and the scarcely less prostrate condition of traitorous Presbyterian Scotland, perhaps Englishmen of all parties may have mingled

the triumph of the national arms, with some sense of the merited punishment that had overtaken the first as also the fiercest combatant in this lamentable Civil War. Though perhaps there was no man of sufficiently enlarged views to speculate on the centralising tendency of this armed supremacy throughout the British Isles.

What then it may be asked was the important exception to the general catastrophe, what was the one institution which by singular indulgence or good fortune survived the Monarchy, the Church, and Parliament itself? The Common Law as we have seen above, less from theoretic design than from the sturdy independence of some of its first principles, and the pedantic rigour of its authorized interpreters, had been found a very valuable bulwark against despotism, and had accordingly enjoyed a popularity with the movement party that was not conceded to other ancient institutions. It was also a learned and subtle code, owing principally to the peculiar character of its history, as the gradual accumulation of precedents drawn from very different stages of civilisation, and the artificial moulding together of principles derived from very different sources. Such a system, so conservative of tradition and form, so liberal and tolerant of addition, necessarily required minds of the highest order to appreciate its niceties and interpret its mysteries; and thus the law became in an innovating but grave and learned age at once an object of popularity and

reverence. And beyond the change of names of the two superior Courts in Westminster, and an alteration in the terms of the Circuit Commissioners, scarcely any changes were admitted or even demanded in the forms or principles of the law. Still the ancient principles old as Saxon times, modified by Norman policy, corrected by Plantagenet statutes, and interpreted by Tudor and still later precedents and applications, were administered by the same officials, and in the same Courts and forms as before the Revolution. The law of property was still as elaborately complicated, the law of crime as anomalously cruel, the commercial law as crude and undefined as before the meeting of the Long Parliament. Cromwell is reported on high authority to have intended otherwise. But the lawyers or public opinion were too strong for the attempt, though the Ecclesiastical law appears to have lain dormant or suspended until the Restoration, and the Court of Chancery was throughout the usurpation subjected to a variety of commissions military or demagogic, that must have lowered its dignity even if they could not enhance its corruption and oppression. The real business of the Court must on these occasions have been transacted in the Masters' Offices, or fallen by reference to the Court of Common Bench, as the Common Pleas was now styled.

Whatever may have been the cause of this exceptional conservation of the Law, there can be no doubt the fact operated very strongly in favour of

the Restoration. Laws are the diet of the national mind, while political institutions are but the occasional stimulant or sedative whose effect is only partial and precarious. And a generation, that had grown up, inherited property and enjoyed rights under an unbroken system of law, were very likely to carry out that jurisprudence to its full complement and logical conclusion, by restoring the Monarchy, the Church, the Peerage, and the Parliament whose existence had been violently suspended, but was still recognized and assumed by the law of the country.

To do impartial justice to the anomalous regime of Cromwell, it was necessary briefly to review the damage already sustained by the fabric of the Constitution. The very principle, on which the Civil War had been commenced and carried on, was however masked by the want of numerical accuracy. So that a majority of the Commons acting with the minority of the Lords usurped the name and power of the national Parliament, in derogation of the rights of the minority of the Commons and majority of the Peers, acting more or less in unison with the Crown. The numbers of the Lords at York and Westminster was at first 26 and 36 respectively, a proportion which by an early secession to the King was soon reversed. While as the struggle advanced and good and moderate men became disgusted and dispirited; the Peers who retired to their own estates must be considered less as neutrals, than as opposed to the pretensions of Par-

liament. The proportion of the numbers in the Commons is less clearly ascertained. Before the struggle actually commenced the liberal majority in the Commons, though clear had not been overwhelming. But in the breaking out of hostilities many prominent Royalists were expelled the House, and through fear or indifference appear to have acquiesced in this *ex parte* measure. For but 118 Commoners attended the Royalist sitting at Oxford, while 228 took the Covenant at Westminster, a pledge which, though affording no exact gage of devotion to Presbyterianism, must still be admitted as a test of hostility to the Church, and of an intention to supersede the existing establishment. In the course of the struggle, though any attempt at Royalist reaction or Constitutional moderation was checked by the arbitrary expulsion of members, whose seats either remained vacant or were filled by a process scarcely exemplifying freedom of election, yet the war or ultra party were rarely in a higher proportion to the moderates than 12 to 10. Thus even after the re-elections of Sept. 1645 had largely recruited the republican members, the war was protracted and concluded, and the King imprisoned and monarchy abolished by a decided minority of regularly elected members. At one moment just previous to the negotiations of Newport, when the movement of the Scotch army, the reaction in the capital, and the attempted union of the Royalists and moderates throughout the counties inspired the constitutional

party with some confidence, a vote in favour of peace on the basis of the Constitution was carried by 165 to 99. But when the stern valour of Hamilton's force had yielded to the disciplined fanaticism of the Cromwellian army, and the premature coalition of two lately hostile parties produced no satisfactory result, Parliament once more succumbed to the now acknowledged influence of the army and its republican instigators: and the rescinding of votes and expulsion of members at its request, was a humiliating though unnecessary admission, that the House had ceased to be an independent constitutional assembly. The vote of 4 Jan. 1648 by 141 to 91, against any further addresses to the King was virtually a renunciation of allegiance, and was strangely acquiesced in by the odious clique, who yet assumed the name and prostituted the authority of the House of Lords. The difficulty of negotiation and the jealousy of parties, which gradually evolved the trial and execution of the King from what was at first an honourable captivity, was in some degree to be attributed to faults in his own character and in that of his supposed advisers. But the real moving power in his progress to the scaffold, was the hate of the republican army to a captive sovereign, to whom they stood in the precarious position of at once conquerors and traitors. And this hate was much more against the monarch they had been opposed to, than against monarchy in general either in their own or other countries.

Thus the abolition of the monarchy followed as a specific consequence indispensable under the existing circumstances, rather than as the exposition of a principle of general application. The abolition of the Lords followed rather as the natural than the violent death of an assembly, that had started with a minority and had long outlived its reputation, and was now scarcely represented by a necessary number of Peers base enough to attend as the registering clerks of the other House.

Such was the chaotic state of affairs when the army and its unscrupulous leader interfered to close rather than further to embroil the disgraceful scene.

The early factions, the obstinate civil war with its train of blood and taxation, the criminality or weakness involved in the late regicide, all contributed to make the faction still occupying the House of Commons generally and justly unpopular. And their fall and expulsion by Cromwell is only worth noticing in this place as introductory to the Usurper's attempts at re-constituting or reforming Parliament. As his whole policy like that of all unsettled usurpers was directed to the maintenance of his power, one must look on the three parliaments assembled under the Protectorate, more as instruments of government than as permanent institutions, and the powers assigned them as calculated rather with a view to the interests of the government than of the governed.

But it is worthy of remark that the changes he

temporarily introduced into the representative system, both as regarded constituencies and franchises, were peculiarly directed with a view to order; and in no degree to an extension of popular rights. He made the middle class, or rather the upper part of the middle class, the basis of his government; thus excluding the inconvenient traditions of ancient families, and the turbulent inconstancy of the multitude, while he secured the preponderance of that part of the community peculiarly attached to order and quiet. After the Royalist movements of 1655, the alienation of the always small republican party, and the perceptible reaction in favour of the youthful exile, Cromwell's government became more arbitrary. His Parliaments which appear to have been neither supplied with orators nor supported by the press, were assembled, voted taxes, and were dissolved without exciting much popular sympathy.

His title of Protector had been known to the Constitution, in the sense of a Regent during a minority or other exceptional and temporary state of affairs, and in that sense would certainly not confer greater powers than those conceded to royalty. But Cromwell's unconstitutional position on the wreck of other powers and institutions, and his command of the first regular army England had yet seen made his protectorate in reality an absolute despotism, only moderated by his own good sense and the dormant feelings of the nation. This army not only enabled him to keep in check any

royalist outbreak in England, but it was also a puissant engine in his hand for the humbling of Presbyterian Scotland, and the total prostration of Popish Ireland. But this efficient regular force demanded an amount of taxation, that secured a just retribution for the sordid origin of the late contest.

As the present constitutional sketch is not intended to embrace any detailed account of finance, it will be sufficient to mention that under the usurpation was laid the basis of that system of indirect taxation on articles of import and consumption generally, which by taxing millions has produced millions, but has by this means for many ages thrown an undue burden on the industrious and humble classes. In our own day we have seen the reaction set in pretty strongly, and a return to the wholesome and earlier principle of direct taxation moderately but firmly pursued by the great Liberal Conservative statesman of the age.

But to return to Cromwell's organic changes; it was a doubtful and certainly gratuitous measure to create a new House of Lords, to act in concert with his middle-class House of Commons. To this strange and incongruous assembly he summoned sundry Peers of the abolished House, together with many new creations—some of moderate opponents, but most of devoted adherents. The difficulties attending these creations, in which the other House was to have some control, led to fresh troubles between

Cromwell and his lower House, and to a speedy dissolution. But as though he would neither reign with or without Parliaments, he again shortly before his death intrigued for the support or sanction of the national representatives, for his favourite scheme of converting his irregular presidency into an actual monarchy. This was rejected in name, but the licence to the Protector to nominate his successor, saddled upon the nation the principle of hereditary right in a more invidious and despotic form, than when the successor is pointed out by the course and operation of nature.

The analogy between the careers of Napoleon and of Cromwell is so obvious, that it is difficult to avoid an undue estimate of the glory of the French Emperor, and of the moderation of the English Protector by mutual comparison. And it is thus that Cromwell has gradually obtained more than his due share of merit for constitutional delicacy and moderate ambition. Whereas, viewing his career in reference, not to the meteoric course of him, who succeeded a revolution whose cruelty and tyranny could not be outdone, and organized a warlike continental people to be the scourge of Europe, but rather in reference to the moderation of his antecedents and the limited resources he wielded, I think it must be owned that Cromwell exercised as ample a despotism as the nation could bear, and prosecuted as extensive schemes as the national resources could justify. It is the mere idle declamation of a weak and passionate

writer to praise the Protector, for not cutting up Germany and the Netherlands in principalities for his kinsmen and favourite generals, or for not adorning Whitehall with the spoils of the Stadthouse or the Louvre, when his army barely sufficed to repress insurrection in the British islands.

While therefore the ambition of the one, displayed in cruelty and injustice on the broad field of European aggrandizement, admits of no comparison with the almost insular objects of Cromwell's limited resources, we must I fear assign a severer censure to the domestic tyranny of the latter. Napoleon succeeding as heir to a revolution that had levelled every right and inflicted every wrong, on the one hand reorganized society though on a superficial basis, and enacted a code which, could law be created without growth, was the noblest work of power and an inestimable boon to the country. Nor, on the other hand, did his actual despotism either in personal wrong or general taxation press harder on his subjects, than had the successive governments of the old monarchy or the late republic, except as regarded the conscription.—A penalty most righteously paid by the French for their national vice of love of war, and inflicted by their ruler for objects either personal or dynastic. Whereas under the Protectorate of Cromwell and particularly towards its close, arbitrary taxation and imprisonment reached a point far beyond the exaction of the Tudors or the vigilant malevolence of James. And

military execution chiefly though not solely exercised in Scotland and Ireland, was on a scale worthy of the wars of the Roses, and exceeding any severities of Essex or Fairfax in the heat of the war.

Nor should it be forgotten in balancing the merits and demerits of these remarkable men, that Cromwell had sympathised far more with the Revolution that raised him, and which he concluded or betrayed, than had Napoleon. The young Corsican officer of 1792, merely felt for the Revolution the professed allegiance of a soldier to the central authority of the country, and the ambitious preference of a provincial without court favour, for a movement that opened an indefinite prospect of promotion. His tastes and opinions, social religious and political were much those of other French officers fifty years before and fifty years since. On the contrary, it cannot be doubted that Cromwell had profoundly participated in the religious and political excitement of the party he eventually led. It was a real distaste for arbitrary power as opposed to the customary or written law of the land, and the principles of religion and morality, that had induced him to prefer exile in the western wilderness to the respectable competency of a middle class station at home; and induced him to abandon such a position for the labours of the senate and dangers of the field, for neither of which he was prepared by education or early association. The grasp therefore of arbitrary power was no ordinary avarice, no venial incon-

sistency in the republican member for Cambridge and remonstrant of 1642. While as for the religious advantages that might be expected to have shed their light and influence on their respective careers, one cannot deny that the hearer of Baxter and Owen enjoyed and neglected greater advantages, than ever fell to the lot of the pupil of Bapaume and nephew of Fesch. Mr. Hallam, in the only sentence of his matchless work that one could wish omitted altogether, speaks of Napoleon as having drank of the pure stream of philosophy, and Cromwell as having sucked the dregs of a besotted fanaticism; a coarse and unmeaning expression for so elegant and pregnant a writer, and moreover glaringly unjust, when we glance at the associates and ministers of the two usurpers. If St. John and Whitelocke did not equal Fouche and Talleyrand in negotiation and council, few would deny that Selden was as superior to Sieyes in legal and political philosophy, as Milton surpassed Chateaubriand in the magic of words and the inculcation of great principles.

CHAPTER III.

THE RESTORATION.

Fall of the Second Protector—Intrigues of Army—Monk—Fleetwood—Restoration—Reaction in public opinion and the elections—Popularity of the King and the Church—Clarendon's administration—Intolerance of the reaction—Cabal—King's personal policy—French connection—Toleration and constitutional liberty opposed—Policy of the Duke of York—Designs of the Roman Catholics—Test and Corporation Acts—Habeas Corpus—Struggle of extreme factions, Romanist and Republican.

The tolerated protectorate of Richard Cromwell was but the first scene in the great drama of the Restoration. It was no doubt due in a great measure to his own indolent and unambitious character, that having actually succeeded to his father's usurpation, it dropped from his hands with scarcely an effort to retain it. It is only remarkable that the Republican army, the only class interested in the usurpation, and the only one that had much to fear from a restoration, should not have supported Cromwell's heir with greater union and decision. It would appear that the young Protector was as much estranged from his armed supporters, in the civil habits of his life as in his peaceful disposition. And the real authority over those formidable legions, that had destroyed the Monarchy and expelled the

Parliament, was divided between Monk a concealed royalist, and Fleetwood a zealous republican, both though from divers motives hostile to the establishment of the usurper's family. One must hastily traverse the tangled web of intrigue and counter-revolution which, considering the magnitude of the stake and the unscrupulous character of the players, was worked out with singular want of violence or even earnestness. Richard's first act was the constitutional one of summoning a Parliament apparently on the basis organised by his father for that assembly. The army or rather the corps under Fleetwood that occupied London, summarily expelled the assembled members and deposed the young Protector himself. The re-assembling of the skeleton of the Long Parliament was the necessary consequence as well as pretext for this *coup d'etat*. But this collection of dry bones, the residuum of whatever was most violent and least respectable after the ravages of death and exile, the field and the scaffold, had as little of prestige to recommend it as it really offered of national representation.

It was again expelled and again restored, according as it suited the temporary exigencies of the rapacious staff of officers, who directed and represented the army at Fleetwood's head-quarters. It was not till the next year after the death of the great Protector, that in 1659 the disarmed and impoverished Royalists began to take measures for

the restoration. Their union with the Presbyterians, involving as it did much of compromise and forgiveness on both sides, was in itself an emphatic national protest against the continuance of the military despotism, or of the military oligarchy that had succeeded it. This union began to be felt even upon the decimated benches of Parliament, but still more overpoweringly throughout the country. It was now Monk opened his artful but most triumphant career. In command of the army of Scotland his corps was imbued with less of party than national feeling, employed against a semi-foreign foe, and at a distance from the great centre of agitation. In design a Royalist, in connexion a Moderate, and in place a Republican, intriguing with all parties and committing himself to none, he yet threw the weight of a considerable division of the Republican army into the scale of the Restoration. Under his protection if not at his suggestion, the secluded members as they were called, the Presbyterians expelled by the army resumed their seats, and thus added to the growing strength of the constitutional party. The Restoration was now openly mooted. But the maimed and decrepit legislature naturally felt their unfitness and incapacity for so extensive a reaction, and after a chequered and eventful career of twenty years, in which they had exhibited qualities great and base, had obtained the most triumphant successes and suffered the most humiliating degradation, the celebrated Long Parliament

at length submitted to a voluntary dissolution; in order that a new Parliament might address itself to the important work of re-construction before it.

This convention, as a Parliament is technically termed legally constituted but irregularly convoked, was fairly and freely elected; and composed in no very unequal proportions of Royalists or moderate men of the Presbyterian persuasion, proceeded openly and spontaneously to the work of Restoration. So far indeed from acting under the control of Monk's army now disposed around the capital, it would seem the most natural explanation of Monk's extreme tardiness and reserve, which indeed robbed his labours of much outward splendour, that he distrusted the fanatical and republican spirit of his forces as still hostile to the cause of Charles Stuart.

But the popular tide now set in too strong to be resisted by the divided swords of the Cromwellians, or to need much encouragement from the intrigue of their general. The dying Long Parliament in its last and penitential session had expunged from the journals of the House all the violent votes recorded there against Royal government and the House of Lords; though not I believe those directed against the Episcopal Church. But the new elections went much farther, and indicated a reaction in public sentiment most auspicious to the Restoration or constitution. A zealous and powerful Royalist minority, with a divided majority of mode-

rate constitutionalists, was just the happiest combination that could be desired: containing at once the element of loyalty to urge and support a restoration, and a still more powerful element of vigilance and love of constitutional liberty, to modify and correct the probable vehemence of the counter-revolution. It would have been well for the character of contemporary statesmen, and for the permanence of the Stuart dynasty, had the balance of majority been permanent in favour of the moderate Liberals. But as was very natural, the next and too early dissolution gave an overwhelming force to the reaction, and a great majority of Cavaliers, or as we may now begin to use the modern term Tories, was returned. It was natural that a proscribed party yet possessed of great territorial and institutional influence should thus revive under the beams of the restored monarchy. And the severity of Cromwell's government, and the hypocrisy of the Puritans in their day of power, had extended the reaction to places and classes the natural strongholds of liberty. The young and high-spirited, the mob of towns, the talented and ambitious rose up from the sordid and austere pressure of the last twelve years, and favoured monarchy and episcopacy from hatred of the republic and contempt of the conventicle. This feeling passed off long before the close of Charles II.'s reign, but to this excess of indiscreet loyalty may be attributed much of the misgovernment that followed the Restoration, and the very slender advantage

that appeared to have resulted from the earnest and vehement struggle that had preceded it. Indeed the only moral that King and Parliament appear to have drawn in the first place from the Civil War was an abhorrence of actual rupture.

Courtiers and patriots alike felt that any compromise or concession was better than Tower Hill or Chalgrove. And this principle or rather feeling was expressed with his usual shrewd selfishness by the King himself, that whatever he did he was determined not again to set out on his travels. He had learned in short good temper though not good principles in exile. Some important constitutional safeguards were obtained towards the close of this reign. But they were more the result of later party arrangements than the direct fruits of the late Revolution, and the determined appendages or restraints of the Restoration.

The general character of this reign, commencing as it did in unbounded joy and misplaced confidence, was the rise and struggle of two small but extreme parties in a Parliament, of which the great majority was at once Royalist and Liberal. The points at issue between these parties turned mainly on the character and presumed policy and persuasion of the Heir Apparent. These two parties, which more correctly represented the Roman Catholic interest, and the residuum of the old Republican faction respectively, to extend their influence and enlarge the basis of their operations, adopted the more popular charac-

teristics of a zeal for Monarchy and a zeal for Protestantism. And the alternate use of these powerful levers of opinion, which triumphed at successive elections, caused the strange party vicissitudes of this reign. The King, though naturally leaning ever to the Roman Catholic extreme of the Royalist party, was too shrewd and selfish to allow any party tie or personal gratitude to implicate him to a dangerous extent. And thus, though from the basest motives, he discharged the duties of a constitutional sovereign better than the three other princes of his house. His foreign policy, though beneath contempt, appears to have differed rather in scale than in principle, from the corruption that tainted the connection of the patriots with the French exchequer. But in his parliamentary policy he rocked lazily on the waves of faction, and so as his own bark rode secure, he heeded not how wildly the billows broke on each other, as the tempest prevailed from one side or other of the compass.

These remarks are rather in anticipation of the subsequent detailed view of this reign, but necessary for the due comprehension of so difficult and factious an epoch. Here also before entering seriatim on the parliamentary struggles and constitutional progress of the reign, it is desirable to advert to what had been the position of certain elements, that had been for a time in abeyance rather than extinct. The House of Lords we have seen died out as a public body, rather

than was forcibly extinguished in the winter of 1648-9. In the progress of the Civil War that assembly had dwindled from a respectable minority of the Peerage, to a mere factious and rapacious committee of that minority, and later still a mere fraction of this committee attended business and made a house. Not more than five or six usually attended, though as many as twelve rejected on the 2nd January 1649, the regicide votes of its being treason to levy war against Parliament, and the ordinance for the High Court of Justice to try the King. They however shortly qualified their resistance by a vote in reference to future occasions.

They continued to linger on through the month, and even appear to have nominally sat on the very day of the King's execution. They sat in the same scanty numbers till the 6th February when they adjourned till *to-morrow*, which to-morrow did not come for eleven years. For the Commons had that very day voted by the slender numbers of 44 to 29, that they would not take the advice of the House of Lords on matters of legislation, and resolved that the House of Peers was useless and dangerous and ought to be abolished.

Such was the termination of the senatorial functions of the Lords. But it must be observed there was no intention of taking away the dignity of the individuals. The Lords throughout the Commonwealth and Protectorate retained their titles, not only in common usage but in all legal and parlia-

mentary documents. Their territorial influence must have been rather increased than otherwise, as a residence on their estates and economical habits naturally followed from the unattractive state of the capital, and the necessity of conforming to the austere and simple habits of the dominant party. Some of the most zealous Royalists had lost their estates. But in most cases sequestration rather than confiscation had been resorted to by the Commonwealth party, to punish their opponents and fill their own coffers. This, though of course it might be carried so far in magnitude and duration as to amount to a forfeiture, yet did not in the generality of cases interfere with the relations of landlord and tenant, any more than a modern mortgage does before foreclosure. A curious instance of the indelible regard of the English to the principle of Aristocracy was exhibited, in the absurd deference paid in the Commons to three as unworthy and undistinguished Peers as ever existed, and who on the suppression of their own House got returned for counties to the other. They were voted on all committees, and were heard with a respect, which was not due to their personal characters or qualities.

With the Church the dominant party had had a much fiercer and well founded quarrel than with the Aristocracy. And accordingly not only was the Hierarchy suppressed, but a large portion of incumbents were dispossessed, and a general conformity

with the ritual of the Presbyterians enforced on the remainder. The actual discipline and organisation of Presbyterianism does not seem to have been extended beyond London and two or three important counties. The fall of this party moderate in politics but bigots in religion followed closely on their triumph. And the Independents of the Commonwealth, true to their negative principles, did not attempt to enforce any general national system of worship or discipline. But where the incumbent was not obnoxious from his antecedents or prominent political connexions, both the Church and the minister were left pretty much to the discretion of the parishioners, or the indulgence of the neighbouring authorities. Thus no doubt in many counties a majority of the clergy by prudence and obscurity retained the emoluments and ministry of their churches, with only the occasional exactions of parliamentary sequestrators, and the temporary intrusion of some military fanatic it might not have been safe to have excluded from their pulpit. In other places Presbyterians had been avowedly introduced with their ritual and discipline on the model of the Scotch Kirk. While in many large towns and other important places the livings were under permanent sequestration, and the churches in the hands of a succession of fanatical sectaries, whose violence, vulgarity and occasional hypocrisy were very successfully preparing the restoration of the solemn and sober-minded establishment, they had overthrown. Such was the posi-

tion of two great elements of power in abeyance rather than extinction, which were prepared from interest no less than tradition to suggest and support the restoration of the Monarchy.

A more important body still, and whose movement for the Restoration was at once open and national, was the Convention Parliament before alluded to. The first Parliament at Richard Cromwell's succession had been elected on the old constitutional basis, whether from a desire to conciliate the small boroughs, or from a wish gradually to return to traditional usages. This Parliament summarily dissolved by the army was succeeded by the dregs, that remained of the notorious Long Parliament as it existed in 1653. This after a disturbed and penitential career at length dissolved itself, and gave place to the Convention Parliament that effected the Restoration. It would have been very difficult, in a moment of joyful reaction and eager compensation, to have talked about constitutional restraints and legal safeguards; and the real danger to liberty in this reign consisted not so much in the omission of these, as in what no statute could have averted, the reckless faction of Parliament and the personal popularity of an unprincipled King. Charles II. ascended the throne of his father, with neither more nor less restraint from ancient law and custom than any of his predecessors, whose power though ill defined was neither in theory nor practice despotic. Nor had the first and best sessions of the Long Parliament

been without their fruit; and the statutes regularly passed in 1641 had placed the questions of taxation and legislation generally on a sound constitutional footing; ministerial responsibility had received an awful example; the principle of toleration, though not enounced or even appreciated, had received the practical lesson of the mutual tyranny of rival sects in their changeful triumph. It is true that neither liberty of the press existed, nor was the security of the subject from arbitrary imprisonment so clear and satisfactory as could be wished. But it was not in vain that Milton had cast like bread upon the waters the greatest prose work of our language, which was destined to kindle the lucid arguments of Locke, and develop in the practical statutes of the Revolution. With reference to the practice of imprisonment the principles of the common law were so clear, as to need the enactment of Habeas Corpus, rather for the direction than the instruction of the Judges; and the most effective engines of despotism in this respect had been summarily swept away by the abolition of the arbitrary Courts of Star Chamber and High Commission. The Church too, which rose again like an exhalation from the public opinion and free will of the nation, had learned two important lessons in the school of adversity. The insidious drift towards Romanism was arrested for many ages; and though the spirit and conviction of the Church naturally and always leant to the side of order and authority, yet this leaning took hencefor-

ward rather the mild conservative turn of maintaining the revised Constitution as recognised at the time, than a theoretical exaltation of the Royal authority at the expense of co-ordinate powers and interests. It must not be understood that in a religious point of view the tone and practice of the national Clergy was all that could be wished; for in relinquishing fanatical notions of priestly influence and the Royal dignity, they lost a great measure of the energy and self-devotion that should characterise their profession; and to their indolence and worldliness in the time of their popularity and prosperity, may be traced not a few of the social evils we have to lament in the present day. But, viewing the question as politicians, we see that a free and intelligent people would rather tolerate in their clergy a considerable degree of indolence and secularity, than any tendency to superstition and arbitrary power.

The Treaty of Newport, which was timidly referred to by the moderate or Presbyterian party, as the possible basis of accommodation with the returning sovereign, was clearly as inapplicable in its provisions, as invidious from the associations connected with it. Proposed as it had been in the deepest depression of the late King's affairs, it stipulated a systematic interference with the Court, and a total absorption of patronage and employment, that no King could accept or his friends endure. Nor should it be forgotten that this oppressive arrangement involved the rigid and national establishment

of the Presbytery—a system now as odious to the active sectaries, as it had always been to the Church party, now stronger than ever in the aristocracy and masses. The Council of State, on whom all the responsibility of the interregnum devolved together with the odium of prolonging the suspense, seemed only anxious to close its precarious and unwelcome functions, which the impatient loyalty of the people, and the suspected disloyalty of the army combined to render in the highest degree perilous. It was the sullen and yet aimless attitude of this unpopular and expensive power, which made the actual presence of the King, as personifying the executive and giving the sanction of the Crown to the cause of law and order, so desirable. The consequence of these difficulties, dangers and general impatience for a restoration at any price, was that Charles II. in the spring of 1660 ascended the throne, as if his father had died in the course of nature in 1641, and the whole interval had been a blank, except so far as men's minds had been influenced by the course of events.

The Commons can not indeed be blamed for the neglect of duty on the eve of the Restoration. For amidst the general intoxication of the people they brought in several bills, and even made some way with them, having for their object the security of purchasers under the late Government, a general indemnity for persons compromised by late events, the abolition of feudal tenures, and the establishment of clergymen actually beneficed. And even on the

very day of Restoration 29th May, 1660, they read twice and committed a bill for the confirmation of Privilege, Magna Charta, the Petition of Rights and other constitutional statutes. The proceedings in the Lords were less satisfactory though not from their own fault. Much time was lost in the actual reconstitution of itself. Dwindled as it had into an insignificant junta of an extreme party, it was not now refreshed and reconstituted in every member by a general election. A difficulty was first felt at admitting young Royalist Peers, who had come to their titles since the Civil War, and a stronger effort was made to exclude those who had actually joined the King against the Parliament, and had been expressly excluded by a vote of the Long Parliament. These too were admitted in deference to the popular voice, which was carrying half the elections to the other House in favour of Cavalier candidates. But a stand was made though subsequently over-ruled against the Peerages, conferred by the late and present King since the definitive rupture of 1642. The one great omission of the Convention as regarded the command of the militia and army, which has been the ground of censure from many writers, may be explained from the fact of the standing army being so notoriously ill-affected to the King, that its early reduction or disbandment would be his obvious policy. While some counter-organisation even might be desirable for the protection of civil interests.

A general Act of Indemnity and oblivion was naturally the first labour of the now regularly constituted Parliament. It had been the earliest stipulation of the Convention, and had been urged by the authority and prudence of Monk with as few exclusions as the imperative claims of justice would admit. Such indemnities are always desirable on politic as well as humane grounds, at the termination of a crisis involving and extenuating much crime; and where the enforcement of strict justice would have arrayed one half of the nation, as the not dispassionate executioners of the other. There was however one class of public delinquents, whose crime had been so peculiar and so enormous as to distinguish them from all other offenders, and to exempt them from the general indemnity. That it was just and necessary to inflict capital punishment on the Regicides, can hardly be questioned by any who are willing to admit its exercise in any case. We have already discussed as far as it admits a doubt the injustice of the King's sentence, and those who would punish an unjust homicide as murder, could scarcely consider the rank of the victim as any extenuation. This is of course considering the question merely on general or republican principles, without reference to the peculiar stringency with which the English law regards the crime of treason, and secures the personal safety of the Sovereign. And in respect of the scaffold atrocities inflicted, we know too well that down to a

comparatively recent date the English law, pedantically scrupulous in ascertaining the fact of crime, knew no moderation and very little proportion in the iniquitous penalties enforced on it when ascertained. It cannot therefore be specially imputed to the Restoration, that it visited with any vindictive severity the offences of men, whose lives would have been forfeited in any country, and which were viewed with particular sternness by their own. Our feelings are naturally alive to the sufferings of men advanced in life of grave and reputable characters, and who had many of them filled not altogether unworthily sundry offices and commands. But we should not forget the magnitude of the crime in the station of the wrong-doer, nor confine our censure of a barbaric code to instances of historic interest. In our view of the subject we must regret that, what should have been a solemn act of justice in a very limited number of cases, contrasted with a wise and general lenity, should have contracted in its passage through the Houses much of the party vengeance and uncertain limits of an act of attainder. Monk humanely had in the first instance suggested that four only of the Regicides should suffer, the smallest number perhaps that could have been named with any appearance of justice. The Commons insisted on seven names being excluded from the Indemnity, and added twenty others as guilty in a less degree, who were to suffer some undefined punishment short of death. The Lords with greater

severity, though appearance of reason and consistency, struck out the indefinite clause. Thus saving even a man so obnoxious as Lenthall the Speaker of the Long Parliament, but exempting from mercy all who had signed the King's Death Warrant or sat when judgment was pronounced, as well as five others by name as deeply implicated in that transaction. Another strange and vindictive clause was inserted, that has happily I believe had no subsequent example, in pandering to the resentful feeling of four noble families, whose heads had suffered under the Commonwealth or Protectorate. The Commons again interfered on the side of mercy but with partial success, and that more in reference to certain persons than on any broad principle of justice or policy.

After this anxious and ill-timed delay the Act of Indemnity passed, and only thirteen persons suffered as regicides in consequence of their exception from its provisions. One only of them I conceive unjustly as having surrendered on the faith of the original proclamation, which however was subject to the future decision of Parliament, and three whose subsequent surrender by the Dutch was as little creditable to their independence, as to the activity of the diplomatist who negotiated the transaction.

Far more complete was the failure to indemnify the purchasers of Estates confiscated by the Parliament and Protector. A bill with this object was

brought in which would have had the effect of confirming the rights of all purchasers of crown or church lands, and of those estates of active royalists that had been utterly confiscated.

But though they appear to have been sold at a *bonâ fide* and rather high price, so strong was the Government and the reaction that supported it, that not only the estates of the Crown and of individuals, but even of the Church reverted to the original owners, or their hereditary or corporate representatives. A suit had only to be brought to test the total invalidity of the parliamentary title, and to evict those who held under it. The quiet and natural way in which this great re-confiscation passed, so unjust to *bonâ fide* purchasers, is a remarkable proof of the strong current of public opinion, and the overwhelming weight of legal authority against the late usurpation. Far less fortunate were those generally less eminent Royalists, whose estates had not been confiscated, but who had compounded for their party offences and incurred sequestrations. For these compositions having been their own act and deed, they could not now question them, nor recover money they had actually paid on lands they had surrendered, as the Act of Indemnity prohibited all suits to open such subjects.

The discontent in consequence of this numerous and spirited party, though little regarded by the King, proved the ruin of his great minister, whose

conscientious adherence to the principle of the Indemnity Act necessitated a course, which in many instances seemed to bear hardly on the King's friends, while it established the King's government, and gave peace and security to the nation at large.

The settlement of the Revenue was a still more important question, and was to a certain degree affected by the perceptible depreciation of money, consequent on the working of the American mines, which made a fixed revenue every year fall shorter of the necessary wants of government. To avoid therefore what had been the earliest, though not the most fatal cause of the troubles of the last reign, the Commons wisely and liberally voted an annual income of £1,200,000 to their new Sovereign. A sum which though exceeding by a third the average income of his father before the Civil War, was probably scarcely adequate for the ordinary expenses of government, and fell very far short of Cromwell's exactions, who kept up a large and expensive standing army. The funds however assigned to produce this revenue did not realise the income intended. It has been hinted already, that the ancient and most inconvenient right of purveyance first suggested the notion of excise, as a small payment in proportion to certain articles prepared for consumption, in lieu of the occasional right to consume the articles themselves. But now the Excise was introduced for the first time as a permanent and legitimate source of revenue, and was destined in its

continued extension, and the unceasing progress of the nation, enhancing still more its almost fabulous increase, to attain a magnitude that not only affected the financial policy, but justified an alteration of the basis of the Constitution itself. So little were the principles of finance understood in the 17th century, and so little vigilance was exercised by different classes in the adjustment of their respective shares of national burdens, that I am disposed to acquit the aristocracy and landed interest of what appears to have been a very interested arrangement in this matter. The military tenures long obsolete, and the feudal burdens incident to them of wardship, relief, and marriage, extremely burdensome to the great landowners, and totally unsuited to the spirit of the age were abolished, and in compensation for them was assigned to the Crown an excise on beer. This great financial change which commuted a burden on the proprietary class by a charge on consumers generally, was only carried by a majority of two. The preferable alternative of a land-tax on all estates in chivalry, which was afterwards in some measure realised by the land-tax of William and Mary, being lost by so slender a majority. By this measure all freeholds were converted into common socage, on that yeoman tenure as ancient as Saxon times, which did not entail on the proprietor the honours or burdens of the Norman feudality. As however purveyance and pre-emption were also finally abolished by this statute, the

benefits of the measure were not confined to the great proprietors, who were relieved in their estates and domestic ties from the most burdensome and annoying of feudal relations. In practice no doubt the annoyance had been always tempered by the power or policy of the Sovereign and his advisers. And since the sweeping reforms of the Long Parliament in 1641, which destroyed the Court of Wardships, and suspended the exercise of the Prerogative, the right had been in abeyance and could not easily have been restored.

The respectable though limited revenue of £1,200,000 settled by Parliament on the Crown, was obviously not intended to maintain the standing forces of the late Protector, which still cost about £850,000 a year. They were accordingly paid off and disbanded with surprising tranquillity on their part, and to the great joy alike of the Royalists, who regarded them as their late foes, and of the Liberals, who had found them equally burdensome to the exchequer and liberty.

Thirty-two regiments were disbanded in England, and five in Scotland, of which the cavalry corps fifteen in number must have been mere squadrons. The force in Ireland was also reduced though not so completely. Three regiments were retained in the neighbourhood of the Court and capital, the predecessors of our modern Horse and Foot Guards. Slender garrisons were also retained at the great arsenals and some important fortresses. But alto-

gether throughout this reign the standing army does not appear to have exceeded 9000 men, of whom 4000 were still on duty in Ireland.

The restoration of the Episcopal establishment was attended with more difficulty than the disbanding of the army. I attempted just now to give a sketch of the anomalous and chaotic position of the Church, or rather Churches in England under the Commonwealth. Imperfect as such a sketch may seem, there is reason to believe the actual relations of the ministers to each other, to their flocks and the Government were even more irregular than I have described. The tolerant spirit of the Protector in matters of religion, the total want of centralisation always characteristic of English institutions, and the wide latitude thus afforded for local variation precluded any uniformity even in revolution itself. Thus though the Episcopal Church and Popery were alike proscribed by the Commonwealth, it does not appear that any member of the Church of England suffered, as such only, if not obnoxious on secular grounds. Few Popish priests had suffered under the Elizabethan statutes still in force. The King previous to his restoration promised generally toleration to all religious opinions, and his consent to any statutes conferring such indulgence, but was silent as to Church establishments.

On the Restoration therefore, the Church with its hierarchy, its rites, and ceremonies revived, as having never been legally abrogated. Presby-

terianism again shrank into a sect. And all sects alike repudiated by the taste of the upper class and passions of the masses, became for many ages an innocuous and scarcely perceptible element in political combinations. But at the moment of the Restoration the case of individual ministers, competitors for the same cure, was very awkward. Perhaps the best compromise was that adopted by the Convention Parliament, that confirmed the *status quo* in favour of the Presbyterian or sectarian incumbent, where there was no prior claimant still living, but replacing the Episcopal clergy, who were alive to urge their claims, but without any right to the intermediate profits of their benefices. This would have dispossessed a large proportion of the sectarian intruders, and that without reference to the bias of their flocks. Though this bias as we have seen appeared to set now so strongly and generally towards the Church, that far less popular sympathy than might have been expected, attended the expulsion throughout England of the late popular preachers and leaders of the nation. And even in the far less justifiable measure of uniformity that followed, the Presbyterian ministers and their scanty adherents figured rather as suppliants for indulgence and the rather neglected clients of the great popular party, than as the leaders and arbiters of public opinion. But while a large amount of distress must have been already felt by the ejected ministers and their families, the restoration throughout the land

of the whole Liturgy and ceremonies of the Church must have pressed heavier on the consciences of many who still held preferment. Until the Act of Uniformity that enforced a system, they had long entertained a vague and indefinite hope of modifying, left them no choice but to conform or secede. But as long as the Convention Parliament sat, in which the waning fortunes of Presbyterianism were still numerously though coolly represented, Divines of the two persuasions held conferences more frequent than profitable, on the points of difference and suggestions of compromise.

The Anglicans were supported in their convictions, not only by the vast momentum of the reaction fully set in and favoured, though not obtrusively, by the Court, but also by the advantage always afforded by a definite and united object, as opposed to conflicting prejudices and multitudinous innovations.

The Convention Parliament was at length dissolved. And though the Liberal party had little advantage to expect from a general election, yet as a sophistical argument had been raised against the enactments of the Convention, as not having been summoned in due form before the King's return, unless confirmed by a more regular Parliament, some anxiety was felt for the indorsement even of a less favourable successor.

The new Parliament was overwhelmingly and exuberantly loyal. No intimidation or influence is charged against the Government, but scarcely

fifty members represented the principles that had predominated in the Long Parliament, and tempered the reaction of the Convention. The leading characteristics of the new Parliament was enthusiastic attachment to the Church, and abhorrence of the regicide faction, in both of which feelings they far out-ran the inclination or prudence of the Court. They voted that all their members should receive the sacrament on a given day according to the rites of the Church of England, and that the Covenant should be burned by the common hangman. They were even reluctant to confirm the necessary Act of Indemnity; which the Cavaliers naturally thought, however politic as a healing measure of compromise, fell very short of their own deserts or any compensation for their losses in the royal cause. Though to their credit it must be observed, that holding as they did the purse of the nation, they only voted the very moderate sum of £60,000 in relief of those cavaliers, whose ruin was not remedied by the general Acts of the Restoration.

It was naturally to be expected that a Parliament of this temper would send up some attainders against the remaining Regicides, or other offensive men of that faction. Yet the general attainder sent up against the King's judges still confined in the Tower was rejected by the Lords; and Vane and Lambert, the two most conspicuous survivors of the Commonwealth in civil and military activity, were tried on

an ordinary indictment for high treason. As the treason charged in Vane's case was the exercise of functions of command under the usurping government, it is doubtful whether it amounted to a greater treason than might have been charged with equal justice against many others, and the whole proceeding must be looked on rather as an attainder of a dangerous and hateful politician. To this impression he probably owed his fate, as the King's promise to spare him appears to have been broken in consequence of his manners and language on his trial. The Judges no doubt strained the law to convict a very dangerous man, and the King broke a promise under the same impression of Vane's incorrigible disloyalty. But I hardly think his conduct was within the protection of the act of Henry VII, which was designed for the security of parties acting under a King *de facto* against a King *de jure* in a case of doubtful succession, and not of an original rebellion, and abolition of monarchy. Lambert, whose conduct had been at least as obnoxious, escaped capital punishment by his humble demeanor on his trial, and in his captivity in Guernsey lived to see the final downfall of the Stuarts, and the permanent establishment of freedom in England. Several acts followed for the complete restoration of the Royal Prerogative, many of them merely declaratory of the undoubted common law, but framed as counter resolutions to the votes of the Long Parliament, such as that

there was no legislative power in either or both Houses without the King; that the League and Covenant was unlawfully imposed; that the command of the forces by sea and land, including the fatal militia, with the right of peace and war, were the exclusive rights of the Crown.

Another enactment followed to restore the Bishops to their seats in the House of Lords, which was opposed solely and significantly by the Romish Peers. And in imitation of the zeal of Elizabeth's Parliament for the security of her valuable life, additional stringency was given to the Law of Treason limited to the present reign. While a well-known statute limited the right of petitioning, both as to attendance and signatures, to a degree, that seemed less the dictate of a popular and triumphant party, than the recollection of the turbulent scenes of 1641, and the intimidation of the Houses by the mob of the capital.

The Corporation and Test Act was obviously directed to break down the liberal and dissenting influence in the towns, and thus indirectly to influence their parliamentary representatives. But the impropriety and indeed the efficiency of the measure have I think been much over-rated. It merely enforced on magistrates and officers of Corporations a test, in the spirit and declaratory of the same principles, as the Legislature had already declared and made binding on the nation generally.

The oaths were of non-resistance and in renun-

ciation of the Covenant; and conformity with the Church was prescribed for future officials by taking the sacrament according to her ritual. This last provision certainly savoured of persecution, or in many cases of the prostitution to official purposes of a most sacred rite. Yet the measure was far more objectionable, as an interference of the national legislature with the consciences of independent officials, than as any great encroachment on the liberties of the subject. Dissent was in itself at the time in a rapid course of conformity or indifferentism, so that few dissenting officials were harassed or disqualified by the Act. Nor was the electoral influence of these municipal officers and magistrates so great as is generally supposed. Most boroughs at the period having lapsed under the ascendancy of some neighbouring magnate, or possessing a large and independent constituency; there were few though certainly some in which the franchise or admission to it was vested in a close corporation. A far more important measure was the repeal of the Triennial Act in 1664. This was recommended from the throne, in language certainly very disparaging of that great acquisition of 1641, but not conveying the unconstitutional menace that has been imputed to it. As it might and from the gracious tone of the context probably referred to the notion, that Parliaments must be in the modern sense triennial, or be renewed by general election every three years. Whereas we have seen above

the Triennial Act only provided, that a new Parliament should be summoned within three years of the dissolution of its predecessor, without any limitation as to their respective duration. This provision was necessary and moderate, though some of the clauses, by which constituencies were to act spontaneously in default of the Summons of the Crown, would have been inconvenient in practice, savouring rather too strongly of the principle of self-government. Accordingly the compromise now carried though not as it would appear in the spirit of the Government measure, was that Parliaments should not in future be intermitted for above three years at the most, but the tumultuary and spontaneous actions of constituencies were prohibited, and the general spirit of the Act of 1641 was distinctly repudiated. Yet the principle of the Triennial Act was retained, though without the provisions to secure its observance that had before been deemed necessary. And generally in this and other measures of the Restoration that seemed to savour of reaction, we can trace in the votes of the Royalist Parliament, much more of a vindictive and antagonistic spirit to the faction that had oppressed them, than any disposition to compromise the great principles of liberty established in 1641. Thus though a zealous and almost unreasonable attachment to the Established Church characterised the Royalists of this epoch, and has tinged the feeling of their Tory successors down to our own time, yet no attempt was made to restore

the High Commission Court, that great engine of Church government, by which it had been rendered at once an instrument of State and a scourge of the People. Nor did any courtly lawyer suggest the restoration of the Star Chamber or other Courts of local jurisdiction, that had incurred public odium, and been swept away in the first reforming zeal of the Long Parliament.

The relation in which the powerful body of non-conformists stood to the Government and nation has been already alluded to, and much that would be here stated in reference to their treatment has been anticipated. Both Charles and his graver minister have been condemned for their conduct to the Presbyterians in passing the Act of Uniformity, and the consequent ejection from their cures and livings of many hundred conscientious ministers; not only on general principles of tolerance, but as a violation of a distinct promise of the King before his return. The question of toleration, however clear as a moral principle, of course depended on the assent of Parliament for its statutory sanction. Nor on constitutional grounds do I see how the promise of a King still in exile, and divested of his legislative coordinates, should overrule the subsequent decisions of the entire legislature, though the personal influence of the Crown would of course be directed in unison with the Royal pledge, and in grateful recollection of the advantages derived from it. The King no doubt disliked the Presbyterians, both as the origi-

nators of the late troubles, and as the austere task-masters of his own youth in Scotland, and cannot therefore be acquitted of a violation at least of the spirit of his declaration at Breda. But the free Parliament of the period must share with both King and minister the odium of the Act of Uniformity, or rather of the stringency with which it was enforced. Nor should it be forgotten in extenuation of the intolerance of both, that the Declaration of Breda was prudently silent on the difficult topic of religious establishments. And that the Savoy conference though not conducted in a good spirit by the Church Divines, had yet principally failed at a compromise, from the stubborn and yet diverse scrupulosity of the representatives of Presbyterianism. The difficulty of obtaining an arrangement or compromise which would satisfy all or indeed most; and which would not fling back into the arms of Popery, as many at least as were weaned from the Conventicle; seemed to leave no course open to a Court and Parliament, determined to uphold the Church, and themselves satisfied with her ritual and formularies, but an Act of Uniformity, which to the restored Church would likewise restore an unity of discipline and ministry also. The principle itself was not objectionable or indeed scarcely avoidable, but it was tainted with the worst spirit of intolerance, in not respecting the scruples of existing incumbents, and still more in repudiating the validity of Presbyterian orders without any certain warrant of

Scripture, and in open and impolitic disparagement of the Protestant Churches of the Continent, as well as of a large body in the nation itself. Many writers have attributed to a profound policy in favour of Romanism and its restoration in this country, the severe discouragement of ultra-Protestantism, and the strict conformity with the Church involved in this and similar measures. But not to mention that so elaborate and profound a policy was out of all keeping with the character of Charles; and that the sincere bigotry of Clarendon, and zeal of the Cavalier majority are obvious and quite sufficient reasons for this legislation. We may likewise observe that the experience of our own times, and the sagacity of both Dissenters and Romanists in the following reign have pointed out, that a lax and indiscriminate toleration and equality of all sects is the very field for the advances of Popery; which sheathed in its own perpetual intolerance and indestructible organisation, operates then as a disciplined army in the midst of a disarmed nation. Opinions should be met by arguments, but organisation must be controlled by law. And a sect must not be surprised, that the immunity granted to its opinions however unscriptural, cannot be extended to an organisation at once corporate and anti-national.

If, as is stated on the high authority of Baxter, only 300 ministers would have resigned as non-con-

formists, had the original declaration of the King been observed, it would indeed be a matter of regret, that his own laxity of principle and the intolerance of his Parliament should have caused the ejection of full 2000. As their non-conformity was purely religious, we are bound in justice to yield them the palm of conscientious and disinterested conduct even above the Churchmen, who in the heat of the Civil War vacated their benefices, rather than take the Covenant of Presbyterianism, enjoined by the then factious majority of Parliament. But however much the inconstant and loose inclination of the King may have leant to the form of Christianity patronised by fashion and Courts abroad, he found little encouragement in such a course from either his ministry or his majority. Both Clarendon and the Cavaliers, with all their implacable resentment against the sectaries, had not abated in the least of their abhorrence and terror of Popery.

They had thus a double motive for resisting the Proclamation suspending the Act, and also the subsequent Declaration of Indulgences, with which the King's easy disposition, alike indifferent to constitutional and religious forms, was willing enough to gratify the most adverse sects. Whether this community of indulgence from general persecution was intended or not, to unite Romanists and Dissenters in a common object resulting in Romish ascendancy, it is really difficult to judge. But the actual

result was what might have been expected, to throw on all sectarians alike the odium, due to the superstition and disloyalty imputed to their several bodies.

The position of the Papists according to the letter of the law, was already so bad, that it could only be made worse in practice by enforcing provisions, that the Stuarts and the Protector had alike connived at falling into disuse, and where even the Puritan zeal of the Long Parliament had practised a clemency they censured in the Crown. But the Protestant Dissenters so late paramount, were now to feel an actual persecution. And the Conventicle Act of 1664, and another still more searching and unjust in the following year, attested both the intolerance of Parliament, that could enact such laws, and the extraordinary reaction in the nation at large, that rendered their execution not only possible but popular.

Yet while we condemn the Court and the Church for so ungenerous and unchristian a return for the restoration of the one, and the persecution of the other; we should bear in mind that these measures were fully sanctioned by the National Legislature; and encountered less opposition and even discussion in the People's elective House than in the assembly of Peers and Prelates.

These two infamous measures were in the most correct sense persecution, the one interfering with the liberty of worship, and the other prescribing a test for unbeneficed clergymen derogatory to natural

liberty, and grossly interfering with independence of locomotion and employment. One wonders at the audacity that after Laud's warning, should have imitated his tyranny without the excuse of his bigotry, and the wonderful prostration of dissent, which twenty years before had commanded Parliament through the regular constituencies, and agitated the masses through the medium of the pulpit. The vague and avowedly unimportant religious differences, whose punishment and extirpation was the aim of those enactments, deprive the Legislature of 1664-5 of even the extenuating plea of conscientious bigotry. They were mere political weapons directed against a political foe, and that a fallen one, by a party that detested non-conformity as the disguise of principles, that had resulted in the Commonwealth.

Yet prosperous as had hitherto been the course of the restored Government, floating as it did on the full tide of national reaction; it is from about this year 1665 that we may date the revival of an organized opposition, which, though with many alternations of party triumph, effected at last a considerable modification of the policy of the Restoration.

It is scarcely necessary to remark, that this opposition was not confined to men of Long Parliament ideas, nor even attached to Commonwealth or Puritan principles. Various elements of discontent drifting from different quarters, formed an aggregate of dangerous though capricious opposition, which one only

wonders had not been provoked earlier by the manifold corruptions of the Court, and the slender means of repression at hand.

The impoverished and disappointed Cavalier railed at the profusion of the Court, as warmly as the austere Puritan, and both alike detested Clarendon though on very different grounds. The suspected bias of the King himself to Popery, and the avowed principles of the heir apparent, added a large amount of strength to opposition from quarters, where arbitrary acts and abuse of prerogative would not have been very warmly censured. Thus to the slender band that still retained the political principles of Pym and Hampden, though without their Puritan profession, was added an increasing number of disgusted royalists and alarmed churchmen.

Corruption is generally the sin of parties in the decay of their enthusiasm, as selfishness is the vice of old age after a youth of wild dissipation. And it is impossible to defend the patriots any more than the courtiers of this corrupt age from the charge of shameless venality. Yet while individuals were corrupt, they took care not to damage the market where they exposed themselves for sale, and all parties in turn exalted the privilege of the Commons, and extended and defined its powers of control and inquiry. Thus by the Divine blessing on the bygone labours of purer though not blameless patriots, while the profusion of the Court, and mismanage- of the Naval War created a constant demand for

money, the licentious royalists and venal patriots, then never forgot to couple with their supplies a boldness of censure and vigilance of inquiry, which if it did not check at least exposed misgovernment. This active scrutiny originated or kept alive that great principle of a parliamentary share in the administration by discussion and resolution, which in later times enlightened by a wise public opinion, and exercised by purer representatives, has almost realized the ideal of a nation governing itself, though under the calm exterior and convenient symbols of constituted and even hereditary authority. In this spirit and under the pressure and unpopularity of the Dutch war two important principles were established. The one the appropriation of supplies to specific purposes voted with the supplies. The other a general control over the public accounts. The first was not without precedent in the Plantagenet times, when the warlike spirit of the nation had grudged supplies for meaner objects than bloodshed and conquest, and derived a better sanction from the vote in favour of the Palatinate at the close of James's reign. But it was now introduced as a provision in the Subsidy Bill by Sir George Downing, a man of equivocal character, whose life was pretty much a history of party vicissitude during this epoch. As a diplomatist he had served the Commonwealth and the Restoration with an equal freedom from scruple or prejudice, to a degree more useful than respectable; afterwards a courtier

and financier, he was even at once a patriot and placeman, and carried his proviso against the strenuous efforts of the Clarendon ministry. By this specification of objects and supplies, which henceforwards became the regular and constant practice, was laid the foundation of those long estimates and longer discussions, that prolong the session, and weary ministers, while they form the reputation of an useful though not very interesting class of public men.*

The other and more extensive claim, of a control over the general application of the revenue, had no very defined precedent from antiquity, and the recent example of Cromwell's packed Parliamentary Committees, auditing his enormous war expenditure, was not a precedent very acceptable to any party in the House. Clarendon opposed this encroachment with a violence imprudent for his power and useless for the protection of his past administration. After his downfall which soon followed, a very sweeping and severe measure passed into a law, having for its object the information of Parliament or Commissioners appointed by it on all points of public expenditure past and present. It is needless to say, that much waste and fraud was brought to light by this financial inquisition, and as unnecessary to add that for

* These rules did not apply to the votes of the Irish Parliament. A job therefore was practicable, and often resorted to, on the Irish Establishment for a century and a half after this date.

several generations, till a purer spirit and a wiser public opinion animated and observed our statesmen, this great power of the Commons was used rather to expose a fallen, than to control a ruling party: as a majority competent to confer ascendancy could likewise avert or mystify inquiry.

The first portion of Charles II's reign derived something like system and policy from the ascendancy of Clarendon. But on the fall of that able and honest but arbitrary and unpopular minister, the reign becomes a political chaos, in which amidst the venality and tergiversation of statesmen, and the fanatic contests of hostile sects and factions, nothing seems definite or permanent, but the undeserved popularity of the King, and the practical freedom afforded by the activity of Parliament, and the mutual proscription of factions. Clarendon's fall was that of a man whose moral character was as ill suited to the party he led, as his semi-arbitrary principles were distateful to the opposition he checked. Hence the natural coalition of those who hated the man and feared the minister. Unpopular alike with the Court and opposition, his inflexible devotion to the Church, and resistance to what in his opinion were arbitrary measures, had lost him the confidence of the King and his brother, who now entertained designs of a most unconstitutional character.

Unpopular as Clarendon was, it can scarcely be doubted that he would have been triumphantly ac-

quitted, had he had the firmness to await his trial. But his pusillanimous flight seemed an admission of even the most serious charges against him. He was a far better man, and in most respects a wiser stateman than his immediate successors, though they perhaps fell more pliably into the novel trammels of Parliamentary government than he could do. And this in a constitutional point of view was their whole merit. The country had now outgrown a policy, which merely combined the wise administration of Elizabeth's ministers, and a good deal of their jealousy of the control of Parliament, with a bare admission of its legislative functions.

The articles of impeachment, though implying a good deal of arbitrary and irregular use of power, did not amount to treason, nor exceed the ordinary scope of ministerial authority before the Habeas Corpus Act passed. They consisted principally of illegal imprisonments, which appear, as a measure of necessary precaution, and perhaps of safety for the prisoners themselves, to have been extensively practised by the Government of the Restoration. The irregular levies in anticipation and on account of the taxes to be voted, though shewing bad management and liable to abuse; ought not to have been a personal charge against him, as he always resisted the profusion of the Court, that led to those financial embarrassments. He had certainly advised, and properly enough, the dissolution of the present Parliament, but there was no shadow of proof or probability of his having

tendered counsels inimical to Parliaments generally. His sale of Dunkirk, though sounding ill, and deeply resented by the warlike spirit of that and the following age, would scarcely be considered an error of policy in the present day, and would have certainly been congenial to the sentiments of one class of liberal politicians.

The degree to which he promoted the *entente cordiale* with France, as modern writers would call it, is more difficult to justify, except on the general ground of a pacific and monarchical policy. And though an uncongenial connexion for a Protestant people, France was at this time less decidedly Popish in its policy, than the two other great brother monarchies of Spain and Austria, that were avowedly under the influence of the Jesuit or ultra-montane party. But whatever were the original motives, the result of the alliance was disastrous and humiliating in the extreme.

Clarendon's ignominious flight from these and other charges, and the consequent exile incurred, have left many points unexplained that would have been interesting to the historian and jurist.

The Cabal administration that followed, though composed entirely of creatures of the Court, and of some of the worst specimens from that ungenial soil, was in its policy a compromise between the Court and the Liberal party. For though the scandalous profusion, and oppressive interference of the Government still wasted the finances and harassed the non-conformists, yet an attempt was made at a

comprehensive measure of toleration, which failed through the High Church violence still reigning in the Commons. And what was of more importance England retired from the French alliance, and threw her weight into that of the smaller Protestant powers, leagued against the encroaching ambition of France. This important change of policy appears to have been acceptable to the High Church majority in Parliament, which, with all its bigotry, was still strongly Protestant and national. But small credit in the matter is due to Charles or his more intimate advisers, who always leant from a variety of motives alike dishonourable to the Court of Versailles, and even at the very moment of negotiating this Triple Alliance were making secret overtures to Louis, through his minister, for a sort of counter or personal relation between the two monarchs.

Charles II, from his natural inclination, which was licentious rather than tyrannical, aimed rather at a freedom from censure and abundant income, than at absolute power for the pleasure of exercising it.

This insight into his character will explain the apparent inconsistency of glaring outrages on public opinion, and resentment of its expression, with no steady or persevering policy of repression. An increase of the regular army in 1667, though small in amount, and justified by the progress of the Dutch war, gave umbrage more from its connection with the rising influence of the Duke of York, and his active interference in military and naval affairs.

Several respected names of the older and better days of the Parliamentary party appear as remonstrating on the occasion, in their double and most useful relation of Courtiers and Senators.

But the infamous relations of Charles with Louis, which in 1670 assumed the form of an actual though secret treaty, however important as a matter of general history, can only be adverted to here as explaining, and in some degree justifying, the subsequent violence of faction, which however was as usual directed against the least criminal parties. The treaty, by which Popery and arbitrary power were to be restored in England, was not the object nearest Charles's heart, but rather insisted upon by his accomplice and paymaster, as the stipulated price of the pecuniary and military assistance Charles was base enough to solicit.

It would appear also that the more criminal and unpopular objects of the treaty were not known to most, if any of the responsible ministers of the Crown. This in itself a great constitutional offence, tended to throw great odium and suspicion on the Duke of York, who of a firmer and more earnest character than the King, was willing as he afterwards shewed to risk much for his object; and who began now to exercise a power behind the throne unrecognized by the Constitution, and uniformly directed against the religion and liberty of the country. It is not the place here to criticise the foreign policy that was embodied in this ill-omened alliance. But having for its immediate object the subjugation of Holland,

and the extension of French conquest in Germany; it suggested in the distant future a preposterous partition of the crumbling Spanish monarchy; and while the lion's share of European acquisition and direct conquest was to fall to France, our national taste was to be gratified by sundry fortified ports and other commercial outlets in Europe, and rather undefined prospects in Spanish America. But while these relations and eventualities, even if divulged at the time, excited as slight an interest, as foreign and military topics usually do in England, the growing jealousy of the heir apparent and suspicion of his domestic policy gave the closing character of violence and faction to this reign, and may indeed be considered the precursor of the great event of the next. A refined policy has been attributed to the Court at this period similar to that suggested above, that the religious persecution to which the Dissenters were subject, was intended to throw them in common with the Roman Catholics on the dispensing power of the Prerogative, as their only refuge from the zeal of Parliament and the severity of its statutes, and thus to enlist new and unwonted partisans for arbitrary power. But not to mention that to those conversant with practical politics, a refined motive is a most unusual one, it seems much more natural in this particular case to refer the severe statutes, and their lax or temporary execution to conflicting motives, which yet converged to this result. The strong church principles pre-

vailing in both Houses but most so in the Commons, urged some measures against the non-conformists. The King's tolerant spirit or natural indifference led to their suspension or partial execution. While the Duke's party and the Romanists generally might have been willing enough, that Popery should benefit eventually and prerogative claims be advanced, by such just and popular relaxations of parliamentary enactments. But that any cordiality arose, or even approximation was intended between the diverse bodies of Papists and non-conformists, is belied both by the facts and the opinions of that period. The Duke in his government of Scotland was an avowed and severe persecutor of the Presbyterian brethren of the English non-conformists. And that party both in Holland and England repaid his malevolence, with increasing animosity against both him and his persuasion. Had the refined policy of mutual support from mutual suffering, and a joint invocation of the Prerogative as their only hope, been really conceived at this date, its machinators were either very clumsy in over-acting their part, or the sectarians were very stupid in not recognizing a liberator in their persecutor.

The Dutch war, which was perhaps the only real and direct step in the complicated maze of intrigue, in which the ambition of his ally, and his own want of principle had involved Charles II., was prosecuted with more spirit than so objectless and unworthy a contest ought to have been. The regular army

crept up to 12,000 men, half of whom were serving under the French banner or at least under French auspices on the Continent; and Shaftesbury had the art of masking a contest, he must have disapproved, under the popular excitement of commercial rivalry and maritime power. But the patriots of that day required but little art in their management, when we know it as a fact that the two leaders of the opposition, Lee and Garraway, after having consolidated a party of eighty members on the principle of limiting supplies with a view to terminating the war, to the astonishment of their party actually moved and seconded the larger vote proposed by the Court. Tainted as was this period of our history with every vice, the shameless venality of Parliament, and more particularly of the patriot part of it, is almost incredible and not easy to account for even on the trite ground of national degeneracy. For however corrupt may be a *cestui que* trust, to use a legal phrase, he is not the more likely to approve or tolerate corruption in his trustee. And therefore the corruption of Parliament argues a still higher degree of contamination in the public, implying either an indifference to vice in others, or a despair of finding men as the depositaries of the national confidence, who were any better than their predecessors. The reaction from the simulated virtues of the commonwealth produced an open and flagrant immorality, which the national vice of love of money turned principally into the channel of

pecuniary corruption. Half a century later, when the patriot or Whig party came in for their long ascendancy under the first Hanoverian princes, the corruption of Parliament was perhaps as great; but we must admit that a juster and higher view was taken of the judicial office. For neither Pelham nor Walpole would have elevated to the judicial bench, a man convicted of bribery in the conspicuous and honourable post of Speaker of the House of Commons.

The whole nation at this epoch shewed the lassitude and absence of motive due to a series of convulsions, that had successively called out, exhausted, and disappointed, the whole circle of high and virtuous impulses and principles of action. Men who had seen the love of liberty and zeal for scriptural truth of 1641, result in the despotism of Cromwell and the hypocrisy of the sectaries, might yet chuckle over the Cavaliers, whose devoted loyalty and Church principles had prepared the orgies of Whitehall, and the dark cloud of Romanism looming in the coming reign. Contemporaries have seldom the wisdom and justice to see that it is the degree and not the principle, the abuse and not the essence of a motive, that is to blame for the excesses of faction under which they suffer. But to those capable of drawing a lesson from the past, it is a serious warning against plunging a nation into struggles, of which the reaction is as unfavourable to public virtue, as the direct efforts were to public peace. The great constitutional question that agitated the

stormy close of the profligate Cabal administration, was the prerogative of indulgence or dispensation from penalties, as exercised in suspending the Ecclesiastical statutes, that pressed though with unequal severity on Romanists and Dissenters. This prerogative seemed in analogy with the undoubted right inherent in the Crown, of entering a *nolle prosequi* on its own suit, and in the pardon even of convicted criminals. Nor was it unusual as a matter of convenience or necessity to apply this dispensing privilege in other cases of more general interest and political character. But such dispensations would not be against the spirit, even if suspending the letter of the statute. And the analogy drawn from the criminal law turned on the peculiar principle of the Executive being the public prosecutor, with few exceptions certainly entrusted with the coercion of offences, and therefore competent to act or refrain, to exact or remit at pleasure. But to suspend a body of statutes, the creed and trophy of a party, if not the actual palladium of the state, seemed an assumption of absolute power, to which no love of toleration should reconcile a lover of constitutional liberty. Yet it was owing to the odd antagonism on this occasion of practical toleration with the principle of liberty, that the majority and minority both shewed novel combinations. The whole Roman Catholic interest and many friends of the non-conformists voting with the Court, and the successful opposition being composed of the inde-

pendent Cavaliers and the most zealous and far-sighted Protestant Dissenters. This important resolution, which definitively negatived the King's suspensive power in matters ecclesiastical as well as temporal, shewed that his supremacy was as much bounded by the legislature in the one case as in the other, and was the natural parliamentary development of the Erastianism of the English Church. The King seemed disposed to resist this definition of his powers, but on a stronger and more general vote denying his right to suspend any law he withdrew his declaration of indulgence: and thus shewed how much better fitted for a constitutional throne his unprincipled ease and watchful shrewdness were, than the graver and more arbitrary character of his father.

The Cabal administration was now drawing to a close. Shaftesbury was disappointed at the King's want of firmness in the matter of the indulgence. The Test Act that followed shortly after was aimed at the exclusion from Parliament and office of Roman Catholics, by enjoining in the worst spirit of profane bigotry the sacramental test as a qualification indispensable for offices of trust and authority. This had the effect of dismissing both Clifford the Lord Treasurer or Prime Minister, and the Duke of York, who as Lord High Admiral and heir-apparent shared largely in the influence of the executive and the hopes of the Romanist faction. This strange test succeeded in its object of excluding the zealots of the Romish ritual from power, far

more completely, than did the scheme of oaths enforced with more or less stringency from the time of Elizabeth. It encountered little opposition but from the Court and the Catholics, and received a wide measure of support, though on very different grounds from Nonconformists, who were willing to suffer so as the Romanists suffered too, and from Cavaliers, who liked the measure none the worse for extending Catholic disabilities to the Protestant sectarians. This was the most efficient in practice of the various statutes framed for the exclusion of Romanists from political power; and lasting down to our own times, had long survived the penal acts, that became obsolete from their own atrocity and the milder spirit of the age; as well as the enactments prescribing oaths of qualification, which rarely excluded an ambitious casuist.

It would be an appropriate historical epoch on which to enter on the whole subject of toleration, but the reckless spirit of faction and retaliation, that suggested this as well as many other measures of the reign, scarcely deserves to be analysed in a philosophical disquisition; and one feels disposed to defer this important consideration to the calmer if not wiser period of 1828 and 1829.

Whether in the same Protestant spirit that framed the Test Act, or in compensation to the Dissenters for their assistance in passing it, another Bill was brought in to relieve them from some of their statutory liabilities, which were of late however scarcely

enforced. This measure miscarried in consequence of a sudden prorogation. But yet by the close of the year 1673 the Protestant, Liberal, and Indepent Cavalier Coalition distinctly triumphed in Parliament, and finally broke up the Cabal Administration by the dismissal of Buckingham and Shaftesbury, and the modified policy of Arlington and Lauderdale. Though so strong still was the spirit of 1660 in personal loyalty to the King, that his abandoned misapplication of public revenue and violation of public credit were not met with the censure they deserved. The Dutch war still lingered on, and patriots were perhaps better satisfied that the revenue was wasted in the luxuries of the Court, than more mischievously employed for French objects, against the liberty and existence of a Protestant Commonwealth. And Charles himself having stopped payment of his Exchequer, and dismissed his Popish counsellors, seems to have found that the one was in public opinion a very satisfactory compensation for the other. Abandoning if he had ever entertained them, his views of religious reaction and absolute power; he grew colder in the French alliance, and increasing in luxury and extravagance, gave almost unlimited scope for the contest and mutual violence of the factions, that distracted Parliament and the nation.

The administration of Lord Danby, that succeeded the cabal and maintained a stormy existence from 1673 to 1678, was not marked by any great Con-

stitutional change. The policy of Danby, as far as it could be carried out, was to wean his unworthy master from at least the more stringent ties of the French Alliance, to restore peace with Holland, and at home to maintain as nearly as possible the *status quo* of Clarendon in exclusion of both the Romanists and sectarians. One must regret the admitted corruption that was the main instrument of Parliamentary management, and that in the same spirit to humour the King, his minister connived at the base pecuniary assistance, doled out for dangerous objects from the French to the English monarch. On the other hand the marriage of the Princess Mary with the Prince of Orange, which took place under the auspices of this ministry, was a step no less important than fortunate; as leading the way to the glorious and bloodless revolution of 1688; and more distantly to the Act of Settlement and the accession of the House of Hanover.

The great struggle of the day next to the resistance to Popery, associated as it was in public opinion with the arbitrary tastes and sterner character of the heir-apparent, was the attempt to carry the Habeas Corpus Act. Passing the Commons in 1674 it was rejected in the Lords that session, and on several subsequent occasions; the Court having throughout this reign a steadier majority in the Upper House, than in the more numerous and fluctuating Commons. The refractory spirit of the Commons on the two important

questions of Popery and the French alliance, were so far shared by the minister, that though he screened his master at the expense of his own honour from the imputations he was justly open to on both points; he yet was not sorry to deter him from ulterior courses, by letting him see what the national spirit really was, and what he must expect to encounter.

The same distinction suggested above between the Court and the Clarendon administration, must be again applied here as explanatory of what must otherwise appear inconsistent and vacillating in the purpose of both. The Court inclining both to Popery and France, was indifferent and latitudinarian on points at issue between the Church and the Protestant sectarians, and valued power itself more as a means and licence of indulgence than for its own sake. The Government on the other hand loving power, as every government must for aggrandisement and security, had all the national feeling of antipathy to France and Rome, and the full party violence of the Cavaliers against Puritanism in its latent form; so that the objects of Charles and his ministers were rarely identical, and sometimes even conflicting.

Danby's administration was therefore a sort of compromise between the Court and the Parliament, opposed to Romish reaction and French ascendancy; he yet connived at much and concealed more, of what he knew of the sympathies of the King and heir-apparent; and at the same time governing

Parliament by the gentler methods of patronage and corruption, he was tolerated for a time by the patriots, as the best minister that the King would probably endure.

Though the *status quo* at any price was the conservative object of Danby's government, yet now towards the close of this long Royalist Parliament of 1661 was observed a decided growth and revival of liberal opinions. Not to mention that the one remaining bulwark of despotism, which still frowned like an ancient ruin over the fair field of Constitutional rights, the power of arbitrary imprisonment, was repeatedly assailed by Habeas Corpus bills, rejected by the united efforts of the Court and administration. The treatment of the religious bodies, an unhappy test of party ascendancy at this time, indicated the revival of liberal sentiments by the increased severity urged against the Romanists, and disinclination to molest the non-conformists.

The last half of this reign, from 1673 to 1685, composing both Danby's Tory administration, and the subsequent abortive attempts at more liberal combinations, is a period of the greatest importance, and replete with incidents and illustrations of the highest interest. The Habeas Corpus Act of 1679 declaring and enforcing the earliest principles of common law, rather than introducing any new idea, may perhaps be deemed the only actual step in progress made. But Danby's impeachment is a study in itself, and brought out several points of

difficulty, which it must be my duty to lay before the reader. There were also the misdirected suspicions, that resulted in the rancorous fanaticism of the Popish Plot: the growing power of the liberal party, its factious abuse by Monmouth and Shaftesbury; and the important measure for the exclusion of the heir-apparent, involving as it did the great principle of 1688. The violence of the Commons in the new Parliament 1679-1680 indeed overshot the mark, and was artfully used by the Court to bring about a reaction, and on a second dissolution a strong Cavalier house in the spirit of 1661 was returned in 1681. Then came the daring attempt of remarkable though transient success on the municipal liberties of the capital and other Corporations. And finally the three last years of this reign were from the abeyance of parliamentary and the extinction of municipal privileges a despotism, in practice mitigated only by the shrewdness and good temper of the unworthy but not unpopular sovereign.

Danby's fall and impeachment was closely connected with a fact, for ages boldly denied or prudently evaded by the apologists for the liberal party, which was the relation of that party itself with France. That factions in all ages should seek relations with such foreign governments, as were both able to advance their views, and whose principles were analogous to their own, is a natural and common temptation, which the Romans and the English alone, the first entirely and the latter

pretty generally have resisted. But the finishing touch of political depravity would have been wanting to this age, had not the patriots who very properly denounced the French alliance as a link of absolutism and Popery, themselves been found in secret relations with the French monarch; and liberals who indignantly censured the suspected pension of their own Court, themselves thronged the levees of Barillon for the wages of their sedition. In the darkest day of 1646 exasperated by defeat and alienated by proscription or confiscation, the Royalists in the Channel Islands did not hesitate a moment to surrender them and themselves to the Admiral of the Parliament, rather than provide for their own safety by the transfer of those possessions to the French Crown. And the relations of the Scotch covenanters of 1640 with the Cardinal minister of despotic France, appear to have excited some surprise in their Puritan accomplices south of the Tweed, and was certainly never imitated by the liberal party of England during their precarious struggle. It is needless to say how completely the great author of our Constitutional history has failed to extenuate, to justify he did not attempt, these pecuniary relations of English patriots and French payments. An exception may be made in favour of two, whose wealth or pride raised them above the venality of their party associates. And every advantage may be taken of the possibility of fraud in the patriot instrument employed

by the French ambassador for tampering with the opposition members generally. But after every possible deduction of this kind, there remains the stubborn disagreeable fact, that the leaders of the liberal opposition were in personal communication, and pecuniary subservience to the French minister in this country. Nor would any one at the present day admit, as palliative of such conduct, that they sought to countermine the machinations of the Court, and to create some support and favour for their own principles with the French monarch. The first of these pleas is frivolous, and the other hypocritical. Yet, in condemning these patriots, and condemning them as we must in porportion to the wealth and elevated sentiment, that should have raised men as rich as Littleton, and as philosophic as Sydney, above such temptations, we should make allowance for the general and extraordinary corruption of the age; and the peculiar defect of a shackled or lifeless press, that did not subject public character to even the low public opinion of the day. That Lewis should have thought fit to tamper with these refractory subjects of his ally is more remarkable still, and leads somewhat to the notion, that his whole policy towards this country was to distract and weaken it. And he may have wished to keep alive a liberal party as a nest-egg of danger and disquiet to James, whose prouder and bolder character would probably be found less servilely compliant than his brother's had been. This con-

nection however of the liberal opposition with the French government led to the fall and impeachment of the English minister. Danby fell in consequence of the middle course he pursued. Privy to the pecuniary relations of his master with France, and conscious too of the ulterior objects of that connection, he yet mitigated what he possibly could not prevent, and thwarted many schemes of the allied monarchs, most injurious to the liberties of his country. He made peace with Holland, thus frustrating Lewis's designs on the independence of that country and Germany; and by the Orange marriage of the Princess Mary, he anticipated future dangers by the prospect of a Protestant succession. Irritated at this independent opposition to his views, Lewis in breaking off his intimate relation with the English Court, betrayed to the leaders of opposition the culpable degree of Danby's complicity in the policy of the two allies. This reign was proverbial for the misfortunes of ministers, for while urged by ambition or mistaken loyalty, to pander to the vices of the Court, the ungrateful Court always abandoned them to the vengeance of the patriots. While the patriots themselves, sharing in some degree the national passion towards the sovereign, wreaked all their vengeance on the comparatively innocent minister. It had not been very reasonable of the patriots, though quite consistent with modern instances, to press for a reduction of the army, and simultaneously to urge such interference with

France, as would have necessitated a much larger force. Nor can we see how the intrigues of the liberals with Lewis were calculated to effect peace establishments, and bar the succession of a Popish despot. But such are the shifts that unscrupulous men make for their delinquency, or which more respectable writers suggest for their heroes.

But the impeachment of Danby, which immediately resulted from the reciprocal understanding of Lewis's disappointment and the hate of the liberal opposition, was so important an event, and involved so many points of constitutional study and momentous decision, that it deserves a more minute consideration. The first point was how far the king's express command is an indemnity to a minister for the particular act enjoined. Danby urged in his defence, what was the high Tory doctrine of the day, that the king's order was a sufficient warrant to command obedience in anything not literally unlawful. This dogma, which cannot now be considered constitutional, he qualified or rather strengthened by the suggestion that the matter related to Peace or War, of which his Majesty is alone sole judge, and ought to be obeyed by not only his ministers of state, but by all his other subjects.

The great Whig doctrinal triumph was on this point. The Houses deciding against this plea, that a minister is responsible not only for the mere legality, but for the honesty, justice, and utility of

all measures emanating from the Crown; and thus the executive administration is subjected in all great matters of policy, to the control or superintendence of the two co-ordinate powers of Parliament. The impeaching parties, though successful at the time, failed to establish another principle, that of charging high treason for an offence clearly amounting only to misdemeanour. The violence and cruelty of faction at this epoch suggesting the worst motives for so illegal an enhancement of criminality. The strange accumulation too of articles, many of them false on the face, and others scarcely imputing an offence, give a low idea of the moral principle and legal knowledge of his accusers. Danby had merited a fall by his eagerness to hold place, in compliance or half complicity with a corrupt policy he abhorred. But measured by his contemporaries and rivals, he was more a minister to be unseated than punished. The impeachment was carried by 179 to 116, and the virulent word "traitorously" affirmed by a majority of 38. On the impeachment being carried, the Lords however refused to commit the accused or even order him to withdraw, ruling very justly that the insertion of the word *treasonably* by the Commons without any article pleading treason, did not create a treason or entail its consequences. The Commons suggested rather than urged a singular clause in the great Treason Act of Edward III., directing that in case of doubt of any offence charged as treason, the judges should refer it to the

sentence of the Houses. This, they maintained, invested the Houses with a declaratory power to vote such and such offences to be treasons, whether recognised as such before or not. A plea, which however was not admitted, though in the greater heat of the next Parliament reviving the impeachment, the Lords voted Danby into custody on another ground. Bail should be in general at the discretion of the tribunal ultimately to decide the merits, and should not be prejudged by the vehemence of accusation apart from overt acts articulately alleged.

Another more momentous question, though one less likely to occur again, arose at a subsequent stage of the proceeding. When the next Parliament unexpectedly revived the impeachment, and Danby, who had gone into voluntary exile, saw an attainder impending on him for his evasion from justice; he surrendered himself to the officer of the House, but pleaded in bar of the impeachment a pardon obtained in the interim from the King. The Commons resolved the pardon was illegal and void, and demanded judgment at the Lords' bar against the accused as having put in a void plea. And with the lamentable disregard of liberty that generally characterises its eager advocacy, they sought to deprive their enemy of counsel by a vague, though very formidable menace of vengeance on any commoner, who by pleading against their charges should betray the liberties of the Commons of England.

The Lords showed some alarm and vacillation on the occasion, and the counsel for the prisoner in the unenviable position of antagonism to the Commons if they defended, and of contempt of the Lords if they abandoned their client, chose the prudent if not honourable course of avoiding the hostility of the more powerful and irritable branch of the legislature.

On another point the Lords were firmer, and resolved that the spiritual Lords had a right to sit and vote on capital cases till judgment of death was pronounced. From the nature of the case the vote could only be on a preliminary point in capital cases. Though, as on this question of the legality of a pardon, it might anticipate the question itself. But it is certain that in practice it was not usual for them to vote on bills of attainder, as was stated above in Cromwell's case in the reign of Henry VIII. The great question of the validity of a pardon in bar of an impeachment, can scarcely recur in modern times as a point of practical importance. A modern minister can scarcely offend deeper, than to be sufficiently punished by loss of office and character. Nor would a modern sovereign, acting always on the advice of responsible ministers themselves the leaders, or confidantes of the majority, be expected to disappoint that majority by frustrating or invalidating their just accusation. But in principle I think as has been stated above, the question can not be left in the neutral state, in which De Lolme sup-

poses it to stand. For the very special distinction of an impeachment is the exclusion of the Royal Prerogative, and that for the obvious reason that it was the weapon of defence of the nation against its instruments. In ordinary proceedings by indictment the Crown prosecutes, and may relinquish prosecution or forego the consequences of conviction. But no such interference existed in the ancient form of appeal for murder, where the relation alone prosecuted the slayer of his kinsman. I conceive therefore from analogy and on first principles that the Crown could not pardon as a bar to conviction on an impeachment; though as grasping the whole executive of the country, it might be difficult to deny its power of mitigating or suspending the sentence awarded. Thus in 1716, the Lords having convicted six of their own members on impeachment, resolved that the King had a right to reprieve, and recommended him to exercise that prerogative in certain cases, which was accordingly done. By the Act of Settlement no pardon under the great seal is pleadable to an impeachment, which seems to imply the right of pardon after trial, a humane and constitutional distinction.

The last and most doubtful point, that was raised but not resolved by this impeachment, was the right of a new Parliament to proceed with an impeachment commenced in the last. In other words, whether a dissolution closed an impeachment so entirely as to necessitate an entire renewal

of all proceedings in the next. In the case of Danby we have seen a prorogation and dissolution of the long Restoration Parliament arrested the proceedings against him and averted the sentence, and the revived procedure in the next was met by a pardon procured in the interval. It was thus evidently in the power of the Crown, by proroguing or dissolving Parliament repeatedly, to defeat every attempt at impeachment, and thus deprive the Commons of a great safeguard against misgovernment in the punishment of its instruments. In early usage the judicial duties of Parliament had so closely followed its legislative functions, that the close of a session by prorogation even had interrupted all trials in progress, as completely as the bills arrested in their respective stages. And with the next Session Bills and Trials had alike to begin anew. To remedy this great and growing inconvenience an order of 29th March, 1673, directed on report of a Committee of Privileges that Writs of error should not abate with the Session. So when what may not unaptly be called the Long Parliament of the Restoration was at last dissolved in 1678, and a new Parliament, far more liberal than the last, assembled in the following year, the question of raising the impeachment of the great minister turned upon this point of practice of the House. On principle there can be no doubt that where the tribunal is permanent, and the prosecutor changed, it is competent for the new prosecuting corps, repre-

senting still the originally injured party or nation, to urge on the original accusation, and take it up in short where their predecessors dropped it, just as if a new counsel had been substituted for a former in an ordinary criminal prosecution. But it was rather in reference to the order of 1673, that the Committee of the Lords reported on 18th March, 1679, that no dissolution should abate an impeachment sent up from the Commons prior to it. This report was affirmed by the House after a long debate. This resolution too seemed recognised by the still more liberal Parliament of the following year 1680, that met at Oxford. Stafford's plea on the same ground was not even noticed. So neither Danby nor Scraggs, who were both under impeachment, rested their case at all on the second dissolution that had intervened. Indeed in 1682, when a third dissolution had taken place, the Judges declined to bail these State prisoners on the evasive pretext of its meddling with a Parliamentary impeachment, thus recognising the legal continuity of the process, notwithstanding these successive changes of the prosecuting party. But lastly in the ultra-Royalist Parliament of 1685, that opened the next reign, the order of March 1679 was reversed as far as related to impeachments on the ground that criminal process should be conducted strictly in point of order, and be construed favourably to the accused.

The instances, usually adduced since the Revolution in favour of the stricter practice, are not very

satisfactory, for the grant of pardons, or the evident neglect of the Commons to proceed, may have influenced the Lords in many cases to discharge prisoners after a dissolution. Later on in the Earl of Oxford's case in 1717, it was formally resolved that an impeachment does not determine by a prorogation. This however differs so far from a dissolution, that it still left the question open for a final decision in Warren Hastings' celebrated trial in 1791. On this memorable occasion the lawyers were as a body disposed to support the rule of 1685, restricting the scope of impeachments. But it was decided in the opposite way with the assent of most of the statesmen, and by large majorities in both Houses, free at least in the upper from any special feeling against the then object of attack.

CHAPTER IV.

PRELUDE OF THE REVOLUTION.

Stormy close of Charles II.'s reign—Popish Plot—Russell and Sydney's trials—Forfeiture of Corporations—Monmouth and Shaftesbury—Law of Impeachments—Judicial functions of Lords and Privy Council—Liberty of the press and person—Habeas Corpus—State of the two Houses—Growth of the Peerage—Rise of the Borough system—Composition of the House of Commons and franchise in Constituencies.

The long Royalist Parliament of 1661 closed its last session in 1678 amid the terrors, absurdities, and infamy of the Popish Plot. The details of this very discreditable party move or fanatic delusion, violating as it did every principle of law and reason, scarcely belong to the present treatise. It may suffice to remark, that there was a real Popish plot of deeper though less determinate object, and involving far higher agencies than the miserable victims of Oates' perjury and popular prejudice. But to gratify sectarian vengeance and to influence the new elections, it was necessary to materialise and personify to the vulgar level, the refined policy of France and the profound machinations of Rome. And thus a plot vulgar, horrible, and improbable was invented, which though it caused many inno-

cent deaths, rather favoured by its absurdity and the reaction from its violence, the real designs of the Court or at least of the Heir Apparent.

The delusion or imposture, though originating in the Liberal party and pressed into their service, was by no means confined to them. And it is singular that in the very stronghold of the Aristocracy, and where the Court throughout this reign commanded a majority, the venerable and eminent Lord Stafford was condemned by 55 Peers to 31: indicating that the Court must have basely yielded to a delusion they did not share, to cover designs at least as sinister as those imputed to its victims.

But when the violence of this dying Parliament extended to censures on the Queen and the exclusion of the Duke of York, the King who with all his faults and weakness, had the instinct of a gentleman to protect a wife he neglected, and a brother he ridiculed, dissolved this long, royalist, corrupt, and finally liberal Parliament; though the result of the general election might be too clearly anticipated from the excitement that prevailed.

The new Parliament extended the test principle, so as to exclude Catholic Peers from the Upper House, where by law or sufferance they had retained their seats with little interruption since the Reformation.

The Exclusion Bill was the next great move aimed at the Duke of York, and involving the great principle and momentous object of the Revolution.

Its course was interrupted by a dissolution, and on being again renewed in the next Parliament, it was rejected by 63 to 30 in the Lords. The principle of exclusion however dangerous and anarchical in its frequent and wanton recurrence, yet seems essential to a constitutional monarchy in extreme cases; had been in practice frequently acted upon in varying the line of succession; and had received a statutory recognition by the Acts of Henry VIII. and of the 13th of Elizabeth. The policy of the Liberal party was however throughout damaged, and their motives tainted by the absurd ambition of Monmouth, and the versatile and mischievous genius of Shaftesbury, which prostituted a great and necessary measure to the advancement of a weak and profligate youth, and the personal annoyance and degradation of the King.

This brought about a reaction, and the loyalty of the old Cavalier party and the sympathy of neutrals were enlisted in favour of a King personally popular, and who seemed assailed in his own family connexions less for the public good than the advancement of a faction. It is scarcely necessary to enter into the details of either the Exclusion Bill, or the subsequent *limitations* proposed with the same object: as they neither became law, and the latter were scarcely compatible with the principle and forms of a constitutional monarchy. These limitations, to which the King was more disposed than the actual exclusion, were justly deemed more entirely destruc-

tive of the prerogatives of the Crown, than a temporary change in the direct succession. They embraced the most stringent of the provisions of Uxbridge and Newport, with some additional arrangements still more offensive in reference to the religious education of the Royal Family; and secured a sort of perpetuity of Parliamentary control, by the constant session of a council limited enough for personal responsibility, and sufficiently numerous to embrace some sort of representation of varied public opinion.

A Privy Council on this new footing was actually established the following spring by the advice of Sir William Temple. In the spirit of Parliament it comprised the great opposition leaders as well as those on the Court side. But though calculated to a certain degree to satisfy public opinion and promote discussion, it was of course founded on the principle of nomination and not of election, and therefore did not directly represent public opinion, but rather reflected the ulterior and interested, though perhaps better digested views of the leaders of contending factions. These also if outvoted were constrained to act the part of spies if present, or to secede from an assembly, where the minority had no opportunity of public protest.

During these two sessions of 1678 and 1679, when the Court was in a minority in the Commons, that powerful assembly awoke from its dream of loyalty or corruption, to waste its popular energies

in factious violence or sectarian cruelty. The King with admirable tact brought about a reaction in public opinion in his favour, by at once yielding to the national passion against Popery, and presenting himself as opposed to the Exclusion scheme, from brotherly affection and regard to the principles of the Constitution.

It was during the long Prorogation that preceded the Parliament of 1680, that the terms Whig and Tory were first applied to the two great parties that then divided public opinion. Petitions were poured in for an early meeting of Parliament, pressing thus with rather questionable urgency on the Prerogative of the Crown. While counter addresses were got up from the upper classes, from certain localities, or from the natural sympathy for the King's domestic feelings, strongly resenting and opposing this encroachment on the royal authority.

Both these celebrated party appellations were in the first instance discreditable nicknames, associating opponents with despised sects and anti-national views; but not so unmeaning in either their origin or application, as party names have often been. Whig or sour milk was the name given to the ultra-Presbyterians, or Cameronian sectaries of the western lowlands of Scotland, and seemed appropriate to an envious and discontented party. While the name of Tory or robber, usually given to the outlawed Catholic insurgents in Ireland, described or calumniated the Popish and violent tendencies

of the Court faction, and hinted at the appetite for public plunder supposed inherent in that party. It is however a curious instance of the altered combination of religious and political opinions, that the equivalent modern terms would be Methodist and Ribbon-man, as designating the great Liberal and Conservative connections of public opinion. While the Court by artful moderation, and the appearance of only natural repugnance to the principle of Exclusion was preparing for the great reaction of the general election of 1681; the dominant liberal majority in the Commons seemed labouring for the same object by their violence in faction, their monstrous abuse of privilege, and the degree in which they lent themselves to the foolish vanity of Monmouth, and the perverse ambition of Shaftesbury.

In the short Parliament held at Oxford in 1681, which was the closing scene of triumph, of what must be called by comparison the Liberal party, was raised the curious point whether a Commoner can be impeached for Treason before the Lords. This question led to an angry altercation between the Houses. The Lords declining to entertain the case as one fit for common law process. And the Commons voting their own right to impeach at the bar of the Lords any Commoner as well as Peer, and that the refusal of the Lords to proceed in Parliament upon such impeachment is a denial of justice, and violation of the constitution of Parliament.

There was certainly a resolution of the Lords on

record early in Edward III.'s reign, in which they had denied their obligation or even right to judge others than their Peers. It has been doubted whether this was technically a statute; though the words *in full Parliament* seem to imply the presence of a part of the Commons. But the precedent, if such it was, was scarcely applicable to an impeachment or accusation of the Commons, as it had reference to a proceeding on the part of the Crown in the nature of a modern indictment.

The right of trial by Jury is expressly limited by the 29th section of Magna Charta to pleas of the Crown. But at a later period after the Revolution on the impeachment of Sir Adam Blair, the Lords having searched precedents and fully deliberated the point, resolved they would proceed with the impeachment.

But to return to our immediate subject, the violence of this last Parliament of 1681 so far outran the spirit of the nation at large; that the dissolution of it was hailed with joy as averting the calamities of 1642, that seemed again looming in the distance. And the declaration, that at once justified the dissolution and censured the conduct of the majority of the late Parliament, was both an able and effective state paper.

Nor was the Court tardy in improving its triumph in public opinion, not shewn indeed by favourable returns from the constituencies, but by the eagerness expressed for a temporary abeyance

of their own electoral privileges. The Grand Jury of London at the same time saved Shaftesbury the great intriguer of the day, and able though inconsistent and unprincipled leader of the opposition.

The tact and cold-blooded policy of Charles has been recorded on this occasion, in sacrificing Plunket the eminent Romish Archbishop of Dublin to the No-Popery feeling of the English nation, while he was extirpating or exiling the Liberal leaders of that movement. Imperfectly acquainted with the merits of this prelate, and the nature of his accusation, we must defer to the better information and research of others, who have censured his conviction ; and will assume him to be as unlike his titular successors as his apologists can wish.

But the great effort of the Government was not to crush a wily intriguer or hunt out some obscure sectaries; but to remodel those municipal corporations, which composed of the middle class of the towns, and less gravitating towards some local aristocratic influence than at a later period, were the stronghold of the Whig party, if not of the Dissenting interest in the constituencies. No Parliamentary proceeding was employed: advantage was taken of the reaction in public opinion, and the lassitude and exhaustion of rival factions, to proceed in ordinary course of law by the form known as *Quo Warranto,* to enforce the forfeiture of Charters, on the ground of some possible or pretended violation of condition.

It has never been sufficiently explained, how even the powerful and wealthy corporation of London bowed at once and with little resistance to the judgment of the King's Bench, that deemed its ancient and almost republican constitution forfeited. This triumph was followed by the forfeiture, or more frequently the voluntary surrender of many other municipal Charters. The Judges on their circuits exerted themselves for this object, and returned laden with documentary spoils, many of them as ancient as the origin of Parliament itself. It is probable that these Corporations, whose privileges were so rudely invaded and summarily disposed of, though strongholds of independence and ardent exponents of the popular feeling, had yet, as generally self-elected, little direct relation to the communities they governed; and were probably more or less unpopular with the mob for police regulations, and with reluctant ratepayers for real or suspected peculation.

There can be no doubt that a Corporation in a State as an *imperium in imperio*, is subject to the will of the larger community that embraces it, and is therefore liable to forfeit its privileges and independent existence at the will of the State, represented either directly by its express legislation, or more indirectly by the official exponents of the law. But the criminality of this most daring, though least noticed encroachment of the Stuarts, was in the extent to which it was carried, and the motive that

suggested it. This wide spread forfeiture of chartered rights was extended far beyond any proof or pretext even of violation of condition. And the object was but too evident to influence Parliament by the remodelling of a numerous class of constituencies, and to enforce on all independent bodies a sense of the paramount authority of the Crown.

In the case of London sentence though pronounced was left only recorded, and the Charter not avowedly revoked; though the City submitted to certain regulations, that completely subjected to the Crown the magistracy and corporate officers, and through them the electoral body from this time to the Revolution.

From 1682 to 1684 the tide ran high in favour of loyalty, and in indulgence of the most daring encroachments of the Prerogative. Parliament had been dissolved, and the strongly expressed opinion of the country not only justified the dissolution, but almost suggested that abeyance of Parliament, that suited Charles's love of ease, and the more aggressive designs of his counsellors. It was at this dark and hopeless crisis of the Liberal party that some, and those not of the least mark and merit among them, formed designs which had they been more definite and accompanied with any overt act, would undoubtedly have been treasonable, and which were scarcely distinguishable from treason, even in the extent to which they avowedly had gone. The heads of the princely houses of Bedford and Essex

perished for this conspiracy, the one on the scaffold, the other by his own hand in prison.

Lord Russell's trial is interesting as a study of evidence, and as illustrating the change in its admissibility in criminal cases, and that of treason in particular since that time. But I think more stress has been laid on this irregularity in favour of the innocence of the accused, than the practice of a lawyer would verify. As a severe examination of witnesses would have probably elicited more that was unfavourable to the prisoner, who, whatever his technical guilt, had dealt deeply in the dangerous politics of Shaftesbury, and was urged by passion and party spirit into organizing an armed resistance, where both power and popularity were arrayed against him. Algernon Sydney's trial is open to the same remark as that of Lord Russell. But neither was his character so blameless, nor his designs so moderate as those of his fellow sufferer. His views were those, that have from time to time by spasmodic impulses influenced the educated or rather half-educated classes of the Continent, but which have happily never had any general reception in England. His ideal was a pure republic, where the wise and virtuous of the upper classes should be the governing body, and all others enjoy equal freedom ; a voluntary aristocracy and a self-controlling democracy. It was of course beneath the notice of a theorist, how so plausible a scheme should be introduced; with what destruction of life and property,

and inevitable antagonism with existing institutions. While were we to take Sydney himself as a standard for the wise and virtuous rulers of the designed commonwealth, we should have a very slender guarantee for the permanence of their administration. The wild theorist, who could plan a self-controlling republic, which ignored the two most important influences of habit and religion, was not above taking the bribes of the most selfish and absolute despot of the Continent. Sydney's trial involved one characteristic point—the admission as evidence against him of a manuscript work written by him. This book which was a mere theoretic treatise on government, should certainly not have been allowed to go to the Jury in relation to any particular charge of treason, though it of course carried considerable moral evidence of his probable political relations; and like other writings of the class is a self-drawn indictment for that treason of the heart, that wars against institutions and traditions, the organs of national life.

The violence of the last Parliament, the fanciful theories of Sydney, and the suspected designs of other Liberal leaders, had much damaged the Whig party. And this odium was much increased by the discovery of a plot of actual assassination, which, with the usual disingenuousness of party, was coupled with the dangerous though less sinister designs of the more respectable Liberals.

This reaction was so well improved by the Court,

supported by the whole influence of the Church, and the unscrupulous exertions of certain notorious Judges, that the three last years of Charles II. were practically a despotism only qualified by his own good sense and natural indolence. For the criminal subserviency of the Judges must have in a great degree defeated the benefits of the Habeas Corpus Act, the only legislative gain to the Constitution in this reign. Parliament was in abeyance from the spring of 1681, and it is doubtful whether Charles would have ever willingly called another. It was his obvious policy to allow time for the remodelled Corporations to operate on the electoral bodies, they either composed or organized. In an earlier portion of this work it was shewn in a rough classification of our urban constituencies, that in two of them, and those the most frequent, the Corporation either constituted itself the electoral body, where the franchise was confined to the municipal council and officers; or exercised an organic influence on the wider constituency by the admission or exclusion of freemen. And in this latter case, which ruled in most of the populous and ancient towns, time was required for the new municipal body to remould the electoral masses, by the admission of new freemen and the death or expulsion of old electors. The three years fixed by law as the necessary period for resuming the session of Parliament had expired twelve months before Charles's death. And those twelve months he was clearly reigning illegally accord-

ing to the letter of the law, even if his policy and administration had been actuated by the spirit of it. It is probable however, that had his life been prolonged, his want of fixed principle even in evil, and confidence in his own popularity, would have induced him to shift his policy. The French alliance had terminated in mutual disgust. As soon as the neutrality or co-operation of England was no longer needed by Louis, he discontinued the pension and published the discreditable clauses of the treaty of 1670. Not to mention that Charles had also by this time discovered the relations of his own opposition with the Court of Versailles, which could not have appeased his feelings, while it enhanced his ideas of the deformity of human nature even in its patriot and fanatic form.

James too had been recalled from Flanders first, and last from Scotland, as a necessary step to avert anarchy itself in the event of the King's demise; when the Court and Capital would have been at once exposed to the risks of Monmouth's rash ambition and the wily machinations of Shaftesbury. In this step not only James's friends, but the wiser members of the Liberal party and pioneers of Orange accession agreed. As there was no immediate calamity probable from James's experience and legal title comparable, to what might have been expected from the desperate counsels and mob-popularity of his rival.

It is certain that James's appearance in office and the Privy Council, in defiance as it was of the

Test act, was not more offensive to public opinion than it became shortly annoying to the King himself; who in the decay of his own health and spirits, felt the superiority in business and attention of the heir apparent. It was owing to this growing consciousness of rivalry, that shortly before his death Charles was reconciled to his natural son through the medium of Lord Halifax, who wished to play him against James under his own guidance, rather than of his former counsellor Shaftesbury.

As we have now concluded the serial developments of this inglorious though important reign, it may be as well to take a general view of the state of the Constitution at its close, as induced by these successive influences or modifications. Loose as were Charles's principles, reckless as were many of his ministers, and weak from its own faction and corruption as was the opposition in his reign, yet in no preceding reign were fewer direct violations of the letter of the Constitution. There was abundant oppression and misgovernment, but it was oppression and misgovernment sanctioned, and in some cases suggested by Parliament and public opinion. Not a single instance can be shewn of money raised without assent of Parliament. A solitary instance of the anticipation of a tax to be levied by statute swelled the clamour against Clarendon at his fall. But few instances can be adduced of proclamations assuming a statutory power, and those were either directed to pressing emergencies, such as the removal

from the capital of the relics of the republican army; or in mere anticipation of a statutory provision in a matter of general interest, such as the rebuilding of London after the fire. The Press was not free at least in theory, but far more so in practice, than either before the Civil War, or under the Commonwealth. The Government control over the Press first enforced in the reign of Henry VIII. appears to have emanated partly from the general Prerogative of the Crown, which appropriated every new acquisition and general influence; and partly from the Ecclesiastical supremacy, which invested the Crown with the regulation of opinion and motive in their most subtle and effective form. The Press was coerced both by the licensing, and limitation as to number, place, and time of publishers; and still more by the arbitrary construction of the Star Chamber, which down to the time of its abolition vigilantly inspected, regulated or prohibited the free expression of opinion. The Long Parliament and Protectorate assumed the same powers with only a different application. It was not to be expected that the government of the Restoration, presided over as it was by Clarendon, would have relinquished so valuable and as it was thought wholesome control over public opinion. Accordingly in 1662 an Act was passed subjecting under severe penalties all publications to a censorship appropriate to the subjects treated of. This Act was in itself only temporary, and though renewed from time to time was

suffered to expire in 1679, without any successful attempt to prolong its powers. From this year therefore may date the theoretic liberty of the Press in England, less due unhappily to the influence of Milton's noble argument, than to the libellous animosity of jarring factions, whose pamphleteering activity had nullified the existing law, and been displayed with perhaps the greatest pungency on the ruling side. Yet though a great point was gained in the removal of the previous license as a sort of preventive censorship, for many years the Judges deemed themselves competent to seize books reflecting on Government or individuals, and punish their authors. This idea sprang naturally enough from the conservation of the public peace and the protection of private persons. But the animadversion was extended to *false news*, though not scandalous or seditious. Even this enlarged jurisdiction was extended by Chief Justice Scraggs to all news whatever, a wholesale invasion of natural right and freedom of communication, we can hardly conceive in this journalistic age. Political coercion was of course the real object, but it is doubtful on what Prerogative or principle of law Scraggs would have justified his decision, unless he considered news as a foreign or negotiable article, and liable as such to the sovereign will in its admissibility, or subject as postal communication to the medium of the sovereign authority. This dictum however was not considered law at that time, as it was made an article of impeachment

against Scraggs at his downfall from power. General warrants however, from the Secretary of State's office to seize seditious libels and their authors were never distinctly condemned, but continued in use down to the celebrated judgment of the Common Pleas in 1764. But still a considerable degree of control was exercised over the press through the form of jury trial itself. For as long as the mere bare fact of publication was only left to the Jury, a circumstance rarely admitting of doubt or negative, the question of libel remained with the Judges, whose views might differ from public opinion, even when the latter was enlisted on the side of truth and right.

The practice of fining and enforcing fines for verdicts, in opposition to the direction of the Judge, is first noticed, when actually on the decline in the reign of Elizabeth. And though not so frequent in later times, the practice was still sufficiently in use to operate as a considerable intimidation to juries, particularly in remote counties and on questions, where no strong public opinion was raised in support of their personal convictions. But the last instance of the kind occurs in this reign, when Chief Justice Keeling, who appears to have carried the practice to an oppressive degree, was threatened with an impeachment and apologised for his conduct at the Bar of the House.

This was a sufficient warning to correct the practice. And later in time the Barons of the Exchequer

stayed process in estreating the fines of jurors, and the Judges almost unanimously decided it was against law to fine a jury, for a verdict contrary to the Judge's direction. And later still a juror, imprisoned for non-payment of a fine for finding against the direction of the Recorder of London, was discharged on his Habeas Corpus.

The important Act that bears this name was passed finally in 1679 after repeated attempts in the same direction from 1668. As has been before observed it was mainly declaratory of the Common Law, and rather facilitated and pointed out the path of liberty, as it already existed in the maxims and practice of the Courts, than created any new principle or even remedy. The question of arbitrary arrest and summary deportation exercised from time to time by successive Rulers, and by none more extensively than by Cromwell, was for ever settled. The doubt what Judges, at what times and under what circumstances, could interfere, was cleared up in the widest and simplest sense. The importance of this enactment has been perhaps more impressed on foreigners, from the fact of its enlarged interpretation being applicable to them when resident within this realm, though such was not probably the intention of its framers.* Nor at the time alluded to did it protect the natives of Scotland or Ireland.

* A curious instance of this application occurred this year, 1853, in the case of the deserters from the Russian ship at Portsmouth, but clearly over-ruled by the practice of all navies and the terms of amity still existing between the nations.

This remarkable statute declaratory of the common law, and enforcing the subject's rights to short imprisonment, speedy trial, or full discharge, has received some enlargement in recent times. By 56 Geo. III. c. 100, the Judge, before whom the writ is returned, is empowered to inquire into the facts alleged, in order to judge of the merits of such return. And the scope of the writ is extended to any harbour or coast of England though out of the body of any county, to meet a very probable mode of illegal detention.

It is hardly within the scope of a popular treatise, to enter here at any great length on the origin and progress of the judicial authority of the Lords. It probably arose from the petitions to the King, seated or supposed to be so in his great hereditary Council, complaining of the wrongs of inferior tribunals, or the malpractices of subordinate officials. These petitions gave rise to a twofold course of procedure, according as the grievance appeared within, or without the remedy of the law. In the one case the Council reviewed and reversed or affirmed the act complained of; in the other, it was necessary to meet the evil with a regular bill passed through the Commons House as well as their own. So again, if the grievance was pressed on the royal ear when Parliament was not sitting; it came before his Council, the real government of the country as known to the Constitution, which, though composed in part of Peers by descent or creation, did not

embrace the whole Peerage, but did include certain officers of state and courtiers of a lower rank. This appears to have been the natural history of both the original and appellate jurisdiction of the Lords and Privy Council. Statutes were from time to time directed against the original jurisdiction of both—from the instinctive aversion of sound political thinkers, scarcely perhaps known to themselves, to combining the judicial with either the legislative or executive authority. These statutes were less directed to check the Lords than the Council, but yet only one instance could be adduced of the entry of an original suit in the Lords from 4 Hen. IV. 1403 to 43 Eliz. 1602. As it was generally held that this parliamentary jurisdiction was only supplemental, and to assist the ends of justice, where no remedy was obvious in the ordinary Law Courts. And during a portion of this long interval the Star Chamber committee of the Privy Council was in full activity, and naturally intercepted much business that would otherwise have accrued to the Lords.

It is to be observed however, that not in its palmiest days did the Star Chamber ever assume any appellate jurisdiction in error; nor on that ground remove any record from an inferior Court.

The few instances that occur of misunderstanding between the two Houses at this epoch chiefly turned on questions of their respective privileges, and were most scandalous immediately upon the Re-

storation, when the Commons had the inauspicious precedent of the Long Parliament to follow, and the Lords the long humiliation of the Commonwealth to retrieve. Yet throughout this reign on occasions more frequent and trivial than can be here enumerated, the Lords evinced a disposition to claim privileges in exemption of equal law, and the Commons to urge pretensions superseding the law itself. In Skinner's case however, which is an interesting one in itself, as relating to the dawn of our Anglo-Indian empire, and in which the Lords had decided rather summarily against the Company; the Commons with some heat, but proper pertinacity succeeded in compelling the Upper House tacitly to relinquish all pretension to original jurisdiction in Civil suits.

In this reign also the Commons secured their important but perhaps over-rated privilege of exclusively passing money bills, without the alteration of the Lords. In the earliest times both Houses voted several grants of supply without any mutual communication. After this time the Houses appear to have voted jointly on deliberation together, and in one instance the Commons alone made a grant, which probably was not held to tax the nobility. But later still from the language of the Rolls, after the accession of the house of Lancaster in particular, the Commons would seem to be generally the granting body, and the Lords' assent recited as only a formal though necessary part of the proceeding. This continued to be the practice, though something

of the legislative form of a regular bill in Parliament was introduced under the Tudors, the Commons taking the same precedence and active assumption with the assent of the Colleague House; as in other enactments, the Lords led and the Commons were presumed to follow. Early in Charles I.'s reign the Commons began to omit the name of the Lords in the preamble of bills of supply, but in the enacting part they continued the customary words. Thus the originating power of taxation was clearly placed in the House of Commons. But it was not till the Restoration, that they maintained that the Lords could not make any amendment whatever in bills sent up to them, for imposing directly or indirectly a charge upon the people.

The question was mooted in 1661; but from that time to 1671 both Houses yielded in turn to prevent the delay in passing measures. In this latter year the point was discussed, and decided against reason and precedent alike in favour of the Commons. It is now an undoubted part of their privileges, and from the good sense and aristocratic elements of their House it has not worked ill; though it obviously places the taxation of a wealthy minority in a very perilous relation to the representatives of the majority. But the principle, if principle it can be called, has been extended even to bills for local assessments and municipal charges, with which the Crown had nothing to do in either expenditure or collection, and even to bills imposing pecuniary fines on offenders

and disposing of their application. The number of lay Peers, cut down by the wars of the Roses and the alternate proscriptions that followed, was small in Henry VII.'s first Parliament, and not raised to its Plantagenet level by the successors of his family. The two first Stuart Princes largely increased the number by the promotion of favourites and the baser mode of selling the highest honours of the State. Accordingly the Peerage numbered 119 on the eve of the Civil War: and in the first regular Parliament after the Restoration we find 139 Lords summoned, including of course many new creations natural under the circumstances. The Spiritual Peers were naturally less subjected to the influence of extinction or proscription. But the great Religious war of the Reformation lopped off thirty-six mitred Abbots from their benches, while only five new bishoprics were added to supply so great a loss.

The writ of summons of the lay Peers originally only entitled them to sit in that Parliament, for which they were summoned. The Peerage being deemed not the whole Aristocracy, but a select council of it. But in Elizabeth's reign these writs were construed to convey an inheritable Peerage, which later still was adjudged to descend upon heirs general, female as well as male, like the more ancient baronies in fee.

The House of Commons, from the earliest records of its regular existence in the twenty-third year of

Edward I. consisted of seventy-four knights, or representatives from all the counties of England except Chester, Durham, and Monmouth; and of a varying number of deputies from the cities and boroughs; sometimes in the earliest period of representation amounting to as many as 260; sometimes by the negligence or partiality of the sheriffs in omitting places that had formerly returned members, to not more than two-thirds of that number. New boroughs however, as being grown into importance, or from some private motive, acquired the franchise of election; and at the accession of Henry VIII. we find 224 citizens and burgesses from 111 towns (London sending four), none of which have since intermitted their privileges. Chester and Durham were anciently deemed exempt, or palatine jurisdictions, and Monmouth was considered a Welsh county. But in Henry VIII.'s reign, or even earlier, the parliamentary franchise was extended to the Welsh counties and boroughs and to the other peculiar territories. It is perhaps to the jealousy of the House of Commons, that began to be felt by the Crown towards the end of the Tudor period, and more strongly afterwards; that we must attribute the cessation of those charter grants to rising municipalities or important districts, which had been freely, though perhaps irregularly, granted by earlier sovereigns.

The idea of representation necessarily followed the idea of taxation, and every freeholder liable to the

fiscal incidents of real property, and every owner of moveables, or personalty subject to tenths and fifteenths, had a dormant if not active right to the franchise. Thus we saw in an earlier chapter of this work that every rudely defined district of freeholders, and every considerable group of little capitalists, as counties and boroughs, had a share in the national representation. And any considerable place unrepresented before the Reform Act of 1831, must have been of recent origin, and of insufficient consequence in the enfranchising period, that preceded the first jealousies of the Crown and Parliament. Some exceptional cases chiefly in the North, as Sheffield and Manchester, may have deprecated the honours of parliamentary representation on account of the distance and expense. The marked preponderance of the South Western districts of the Island in borough representation, must indicate the earlier civilisation and wealth of those counties, perhaps the influence of the Crown and Courtly Peers estated there, and possibly even the ancient pre-eminence of Wessex over its sister principalities.

For the various franchises that prevailed in these cities and boroughs, the reader is again referred to the Chapter on the Origin of Parliamentary Institutions. They will there be seen to comprise the representation of the property in the houses or soil of the borough, of its magistracy or governing body, or of the skilled labour of its industrious classes. The tendency from the first rather gravi-

tated towards the aristocratic basis of property or corporate functions. And though this tendency increased, it was neither general nor unchecked. And where no other special franchise could be proved, the electoral right was to be presumed in the inhabitants paying scot and lot, or in modern terms, the householders paying rates and taxes. The latter Tudors had added to the numbers rather than the popular element of the House of Commons by creating sundry small boroughs. Of these Edward VI. created or restored 24, Mary added 21, Elizabeth 60, and James 27 members. It was laid down as a general principle in James I.'s reign that every place that had once returned was entitled to a writ as a matter of course. The restorations of boroughs on this principle down to the Civil War, were fifteen in number. Charles I. with his usual infatuated pride and ignorance of management created no new boroughs, to balance the existing popular elements of the House. Durham, both county and city, were not enfranchised till 1673. Authorities are not wanting in favour of the common law right of burgage tenants,* as supported by the great case of Ashby *v.* White, and Lord Holt's famous judgment therein. This view, as favouring the oligarchic tendency of borough influence, received for many years the steady support of Committees of the House. Though the popular bias of the freeman franchise received the support

* Or holders of the freehold or copyhold of the soil within the area of the Borough.

of some decisions in important constituencies, and was rather growing in favour down to the Reform Act. The strict oligarchic theory of corporate or magisterial franchise, though common enough in many boroughs, and resting on no small basis of historic authority, obtained but little countenance, and no extension in the decision of any Committee whose proceedings are extant.

Since the Restoration no borough has been enfranchised by the sole Royal authority. Such an act, however wise and popular, would have been an encroachment on the undoubted privilege of the House, and perhaps since the Union with Scotland and Ireland, might be deemed a breach *pro tanto* of the representative compromise, recognized with those sister kingdoms.

CHAPTER V.

THE REVOLUTION.

Accession of James II.—Unpopularity—Attempts of Argyle and Monmouth—Atrocities of the Government—Degree of James' cognizance—Religious differences—Proclamation—Trial of the Bishops—Invasion of Prince of Orange—General desertion of James—Abdication—Debates thereon—Act of Settlement—State of parties.

Considering the bitter unpopularity and grave suspicions that had dictated the Exclusion bill, and had made the name and succession of James a party cry and test of faction in the last reign; his quiet and orderly succession was more to be wondered at than the two abortive attempts at rebellion, that just ruffled the opening of his reign. Yet though Monmouth and Argyle were both weak men and feebly supported, the very attempt indicated a large floating mass of disaffection ready to the hand of some abler operator, and only waiting more favourable circumstances for its development. The common sense of both England and Scotland repudiated these attempts of a restless and unprincipled adventurer, and of a sincere though weak bigot. The bloody and disproportionate reprisals, that were

inflicted on the partisans of Monmouth, are a well known and disgraceful page of our general or legal history. They need only be adverted to here as indicative of the spirit of the King, and as amply justifying those who eventually acted on the assumption, that he was totally unworthy of trust. One of the greatest practical tests of Constitutional sovereignty is the choice of instruments; and though this choice is narrowed in purely political functions in reference to the existing majority in Parliament, and sometimes in consideration of the opposition also; yet in the legal and military departments of the executive a wide scope must always exist for selection, and a wider one far in James's reign than in our own times. And one could hardly suggest a worse spirit and intent on the part of the monarch, than is indicated by the selection of such instruments as Jeffreys and Kirk from his Law and Army lists. Such ample justice has been inflicted on the character of the former very infamous person by two admirable modern writers, who cannot in this respect at least be accused of having over-charged their colouring; that it is only necessary to remark here on his notorious Western Assize of 1685, that its atrocity consisted in exacting the letter of the law on wide masses of victims, rather than in an habitual violation of it; and received its diabolical character from the bearing and language of the Judge. Though cases were not wanting of a violation of the criminal law, as then understood,

in the intimidation of juries, the admission of bad evidence, and the general application to masses of points of evidence bearing only on individuals. A still greater shock to public confidence and the principles of morality was given by the wholesale executions or deportations of many, who at once pleaded guilty under the implied promise of pardons, or of a more lenient sentence, as suited to the crowds who had erred in ignorance and excitement. This latter punishment, destined to work so great a change in our penal system, and even to affect our ultimate relations with our colonies, was first, I believe, practised by Cromwell; and in the same illegal and wholesale manner on those taken in arms against his authority, rather with the view of expediting trial than of lightening punishment.

The degree in which James was cognisant of the atrocities of his ministers cannot be clearly shewn, and he is entitled to the benefit of the doubt. But not to mention the evidence directly implicating him, it agrees too well with his business habits, and severe and vindictive character, to believe he both knew and approved of the bloody campaign going on within an hundred miles of Windsor.

Monmouth's own fate is scarcely matter of regret, and he justly incurred the penalty of an adventure, dictated only by preposterous personal ambition and identified with no great public principle, that disturbed a peaceful country and destroyed the happiness of many hundred innocent families. Monmouth

was executed under the Act of Attainder which the Parliament justly passed upon him on his landing in arms. His death, despite his rank, youth, and glittering accomplishments, would merit as little remark as that of the lowliest of his followers, had it not been signalized by the unparalleled coldness and cruelty of the tyrant, who gratuitously admitted to a personal interview a relative and former boon-companion, whom he had determined to execute as a rebel.

The suppression of this rebellion, though apparently confirming the new reign, yet laid the foundation for future change, in the odium attaching to the conduct of the government; and in the substitution of the powerful and politic William of Orange, for the weak and paltry Monmouth, as the leader and heir of opposition.

The Parliament of 1685, which sat for only eleven days, the short and solitary experiment endured by James of parliamentary combination, was loyal in tone and liberal in supply; but demurred at sanctioning a standing army, or at endangering the Protestant establishment under the specious pretext of liberty of conscience and the repeal of the Test Act. The opposition which James so soon experienced, and which gradually stiffened into the general resistance that compelled his abdication, is one of the strongest proofs of the value of individual and national character, in the abeyance or corruption of good institutions. James opened his reign

with a Parliament packed by the loyalty of the gentry and thraldom of the corporations, with a standing army for the first time largely composed of Irish Romanists, and in part officered by Roman Catholics, with an infamous Bench, a servile Church, and a people whose sectarian animosities might have prepared one party to exult in the depression and subjection of the other. Yet with all these advantages his packed Parliament refused to sanction two of his most important demands. The honest and sagacious sectaries repudiated a contemptuous toleration, that they saw was intended and calculated to advance the Romish interest alone. A little longer and the loyal Church was aroused from her dream of Divine right, and mildly but firmly opposed the late object of her misplaced veneration. And the regular army too caught the popular contagion and cheered the acquittal of the Bishops. To compare what England did in the way of resistance with the exhausted and almost dormant constitution of 1685-1688, with what France has submitted to with her monster franchise, her perfect equality and absence of all traditional or actual check; it would seem that there was something in the English soil and character as incompatible with servitude, as there was in France with freedom.

The short Parliament of 1685 however committed the error of settling for life on the King a revenue so ample, as with his frugal habits, and the

absence of war, might have enabled him to dispense with Parliaments for a much longer period, than was agreeable to precedent, or safe under the circumstances of his character and designs.

To us, who have lived in times when the normal combination of sects presented the Romanist and Nonconformist allied against the existence of a State Church, without the smallest reference to their own vital distinctions, and its peculiar claims alike on scriptural and historical grounds, the great crisis of James's reign seems scarcely intelligible. We see the great body of the Nonconformists rejecting the offered boon from a clear perception of the motive and design of it, and clinging to the chains wound round them by the High Church bigotry of the late reign, as a check on a far deadlier foe than the existing Establishment. That this conduct was of the highest order of moral excellence, will be readily admitted by those, who knowing too well how rare is a generous disinterestedness in individuals, must regret the still rarer exhibition of it by political parties. And that it was also wise will be apparent from the consideration, that a plausible equality of emancipation extended alike to Papists and Dissenters, would operate in a very different degree in their respective favours.

Not to mention that there could be no doubt, on which region of the Ecclesiastical sphere the rays of Royal favour would be directed, the social position of the Roman Catholic body fitted them for the

recipients of place and power far more than the Dissenters, who shrunk from their former proportions, were now comprised in the middle class of the towns, and had little other avenue to power than by the gradual and tardy operation on Parliament of the reopened corporations. While the old Catholic residuum of the Aristocracy was a Court ready made, and the barbarous and superstitious peasantry of Ireland formed the raw material of an army, which James was the first British sovereign, that had embodied on a large scale. Considerations like these weighing on the minds of the nonconformists, would prove their holding back from the specious boon, to have been no less politic than conscientious. But as has been observed before the Dissenters were not now the influential body that prevailed in the Long Parliament, but proscribed by both the Aristocracy and the populace, they had shrunk into the narrow limits of the middle class of towns, and by the Test and Corporation Acts were almost excluded even from an indirect influence in Parliament.

Yet though this Parliament of 1685, the most partial in its composition, and the most obsequiously loyal in its natural sentiment of any, that had been summoned by a Stuart Prince, was prorogued and ultimately dissolved for declining to repeal the Test Act; the dispensing power of the Crown was confirmed by the Judges. The case selected was one so favourable for the exercise of the Prerogative, that it is doubtful whether the decision of the eleven

Judges can be deemed illegal. Lawyers had agreed that the King could not dispense with the common law, nor with any statute prohibiting that which was *malum in re,* nor with any right or interest of a private person or corporation. It would therefore seem that in Hale's case,* if any where, the Royal dispensation might operate in favour of the interest of an individual, in reference to a statute guarding against dangerous masses, and on grounds of artificial distinction. And the peculiar idea that attached in that age to the small regular army, as rather the King's guards than a national force, made it a still more appropriate occasion for dispensation, where the confidence of the Prince and the loyalty of the officer were beyond doubt. But still it was only a question of degree, and the same dispensing power exercised liberally and wisely in the case of a single officer of the household troops, might gradually and on similar pretexts be extended to the whole army, and all the great officers of state. While on general principles a prerogative of setting aside parliamentary enactments involved every evil of absolutism, and contradicted the idea of parliamentary government, when exercised in avowed opposition to the very principle for which the statutes had been enacted.

The Ecclesiastical Commission of 1686 was a bolder or at least more open step to remodel the religious institutions of the country. For the old

* The case was the legality of a commission in the army to a Roman Catholic gentleman.

High Commission Court of Elizabeth had been altogether taken away by an Act of the Long Parliament, which provided that no Court should be invested with the like power, jurisdiction, and authority. Yet the Commission issued by James II. followed very nearly the words of that which had created the original Court, so odious at the commencement of the century. This infatuated step marked the King's breach with the Tory or Church party, whose loyalty had tolerated him in the last reign, and secured his throne at his accession. In the same spirit was the dismissal of his brother-in-law Rochester from the virtual premiership. The son of the great Clarendon had gone great lengths, and would probably have gone still greater in the cause of the Prerogative, but he was a steady Protestant of the High Church school, and therefore made way for a more compliant conscience though less faithful minister. Several other cases of dispensation followed in favour of Romanists preferred to Collegiate or Ecclesiastical offices, which bearing on the religion and education of the country, were open to the gravest suspicions. Other cases have lately come to light of dispensations from using the Church service to certain obscure parochial ministers, that display the real intent of James in instances where there was no question of power and patronage.

It is to this period that must be referred the notable project of altering the succession, by the substitution of the Princess Anne for her elder sister,

the Princess of Orange, in the event supposed probable of the former becoming a Roman Catholic. The event never occurred, nor does it seem that the King ever much inclined to the arrangement. But the bare suspicion was calculated to alarm the Prince of Orange for his wife's interest, and to excite and concentrate the partisanship already organized in his favour among the malcontents. It would appear that this intrigue, though quite in the spirit of the Romish sectaries, originated in French diplomacy, whose instinctive object was to detach England from Holland, and the Protestant alliance of the Continent opposed to the ambitious designs of Louis XIV.

There is no doubt that early in 1687, not only the mass of the Whig or avowedly opposition party looked with longing eyes to the Hague; but that the chiefs of the Tory or old Cavalier party, loath and late, turned their eyes in the same direction, and disgusted and disheartened at the daily proof of the King's incorrigible bigotry and absolutism, had begun to regard a Regency or Protectorate of the Prince of Orange, as the only security for the laws and religion of the country. Though their high loyalty would have revolted at the idea, as it did subsequently demur to the actual transfer of the Crown and name of royalty. But it is more singular, and almost exceeds one's conception of the profligacy of the age, and the depravity of James's ministers, that Sunderland who went all lengths with his master,

and was constitutionally responsible for his worst acts, was already in correspondence with his rival and successor. It would be as little probable as fair, to attribute this astounding treason to any more deeply depraved motive, than the selfishness of an unprincipled minister, who had gone great lengths, and fearful of the coming reaction, which the besotted bigotry of the Sovereign made daily more apparent, sought to avert the fate of Strafford by rivalling the baseness of Sydney, in opening a correspondence on his own account with the heir and champion of the opposition.

But the great step in which James at once declared the design of a religious revolution, and at the same time divested himself of all parliamentary or constitutional restraint, was the famous Declaration for liberty of conscience. This famous State Paper at once suspended the execution of all penal laws concerning religion, and freely pardoned all offences against them. It declared also that the oaths of supremacy and allegiance, and the usual tests enjoined by statutes of the late reign should no longer be required of any one before his admission to offices of trust. It went much further than the recognised prerogative of dispensing with prohibitory statutes. Instead of relieving individuals from disability by special letters patent, it swept away at once the solemn ordinances of the legislature, by a sort of dormant and monster veto roused for the occasion. There was indeed a reference to

the future concurrence of the two Houses, but so expressed as to throw a doubt on the probability of their meeting, and a sneer at their authority when met. The corresponding proclamation in Scotland spoke out in a still bolder tone, which, though in a less nicely balanced constitution it might have passed with less censure, was understood in the worst sense of absolutism and anti-parliamentary government.

Though nothing could have been conceived less in the spirit of the Constitution, and pointed moreover as it was against a strong national prejudice in favour of religious distinction, yet addresses were not wanting in support of this ill-starred proclamation, numerous and loyal enough to delude the King as to the real temper of the nation. Indeed after making every deduction for the notorious servility and eager promptitude of the legal profession, the wavering feeling of the Church between its loyalty and Protestantism, and the extent to which corporations had been packed, and even the Grand Juries of counties also selected; it is a little surprising that on the eve of so total a desertion James received the amount of support he did on this occasion. The nonconformists were in some measure deceived as to the object of the Declaration, or at least were grateful for the immediate indulgence imparted to them. And the general low tone of political morality in the country was indicated by the increase of these addresses, on the prospect of a lineal succession by the birth of a Prince of Wales.

But notwithstanding the explicit terms of the Declaration, and the notorious design of the Sovereign who promulgated it, the rational Catholics were anxious to get the more permanent and constitutional security of an Act of Parliament for their protection. Accordingly in 1688 the King, much against his will, began to take measures for the assembling of a new Parliament. With this view attention was paid to the remodelling of corporations. The proceeding with this object in the last reign appears to have hardly gone beyond the exclusion of the Dissenters, and the recognition of the right of interference of the Crown. The interference now exercised by James designed to introduce both Catholics and Dissenters into the corporations, had from their relative numbers in the towns, the practical effect of giving a predominance to the latter. And though the Dissenting interest had been loyal since the Restoration, and were now in the first instance grateful for promotion and power; yet their traditions and sympathies were too decidedly Protestant and liberal to be relied on for any lasting support to James's designs. And this arrangement for a parliamentary election that occurred under other auspices may, as far as it had any effect at all, be looked on as favourable to the Whig or Revolution party. The screw too was turned with equally ill success in the counties on the country gentlemen, and many, who refused or evaded an adhesion to the Court and its candidates, were erased

from the list of Deputy-Lieutenants and Justices of the Peace.

The next act in this ignoble and calamitous drama was the attack on Magdalen College Oxford. The facts are well known—the intrusion of a Romanist President, the expulsion of the fellows who refused to elect him, and the general dispensation with all statutes and chartered privileges that such proceedings implied. There was less of dangerous absolutism in this than in the remodelling of municipal corporations; and probably somewhat more of precedent might have been adduced in its favour at least from Tudor times. But it was all the more invidious as directed against obscure scholars and loyal churchmen, whom charity and policy should have combined to protect. And the more as it was done to introduce the devotees of a hateful superstition into a seat of education, that has been in all ages suspected of being a soil too favourable for the growth of such pernicious exotics.

This infatuated and ungracious contest with the Church was continued by the well known prosecution of the Bishops for a seditious libel, in addressing a petition to the King remonstrating against his injunction on the Clergy of May 4, 1688, to read his Declaration of Indulgence in their churches. It would be idle to compare this prosecution and the slight imprisonment it led to, with the sufferings of many religious and a few political martyrs; nor can we justify the lengths to which the Church and its

leaders had already gone, at least in the theory of passive obedience, nor are we bound to attribute to these Prelates any very enlarged ideas of the limits and objects of a Constitutional opposition, in the check thus loath and late offered to the King's despotic will. It is obvious their motive on the occasion was a religious objection to the measure of Indulgence, and a professional independence, that rejected the abuse of the service and ministers of the Church as the heralds of despotism. While the point of law involved in the libellous character of their petition was of importance, in a period of feeble and interrupted parliamentary action; as establishing or negativing the right of subjects of the highest rank to tender their advice and remonstrance to the Crown.

The trial itself is a well-known scene in general history, and the satisfactory result turned on the firmness and integrity of the jury, who found a proper verdict on the merits, though the legal point was involved in some technicalities from the abuse of the Prerogative. For if the King had really the right to suspend and announce the suspension of statutes at his will, a resistance to such a Prerogative could not be warranted, though couched in language clearly not libellous, and scarcely published in the sense that would be required in a modern trial. While James was thus, with very partial success and increasing and almost universal opposition, endeavouring to restore the gloomy despotism of the

Tudors among a people whose fathers had returned the Long Parliament, and who had themselves known the easy monarchy of Charles II.: his peculiar zeal for the restoration of Popery not only cost him more friends than his love of despotism, but appears to have outrun the designs of the Catholic courtiers, and even the wishes of the Pope and his Nuncio. The diplomatic memoirs of the period would appear to intimate that his foreign policy was as infatuated as his domestic. For after having incurred just reproach and contempt for his subserviency to French interests during his brother's reign, and having commenced his own with a fresh step of mercenary degradation; he now, when the storm was muttering in the Texel, began to show coldness to Louis, and rather to draw back from the French alliance. Thus the only power, that could press Holland and arrest or occupy the Orange armament, was allowed to remain neutral, though on all grounds well disposed to act in his support. The invitation to the Prince of Orange of June 30, 1688, was only signed by the leaders of the Whig or old opposition party, and Lord Danby who had been a minister and impeached in the last reign.

But the leaders of the Tory or old Cavalier party were fully cognizant of the measure, and though with less zeal and cordiality hailed it as the only escape from present and future evils. The birth of a Prince afterwards known in history as the old Pretender, whose unbroken adversity was not even

enlivened by the solitary burst of chivalrous adventure and partial success, that threw a gleam over the early career of his son, was an event that led parties to precipitate their measures. For a lineal male succession would both vastly strengthen the King's actual position, and threaten to perpetuate the momentous changes in Religion and Polity contemplated; while the interests alike of the Princess of Orange and the Princess Anne would fall, involving in their ruin the mighty party combination that had ranged round the one, and the narrow almost family coterie of ambitious spirits, that had concentred round the other.

It need scarcely be remarked, that there is no question at the present day about the legitimacy of this unfortunate child, whose birth precipitated the catastrophe of his House. And the doubts long thrown on it and in a less degree actually entertained, must be in a great measure attributed to the malignity of party spirit and the exigences of a party crisis. But James had little cause to complain of such suspicions, as the accouchement of the Queen was conducted in the way most calculated to excite them; and the unscrupulous character of the Papists and foreigners, with whom he had surrounded her, suggested the idea of a great political fraud on the nation so obviously conducive to their views and interests.

The landing of the Prince of Orange, his general acceptance, and the as general desertion of the

King, his flight, inconvenient capture and return, and second permissive escape, were the rapidly moving scenes of the autumn of 1688, and well known points of general history ushering in the assembly of the Convention Parliament. It may be observed that this great Revolution of 1688 combined all the advantages of a welcome invasion correcting the possible excesses of a general revolt; presenting the independent character of a national act with the regularity and discipline of a military occupation. Neither William's position in Holland, nor the power of Holland itself were such as to endanger the national independence of England; nor could his army have maintained itself against the will of the people, though sufficient as a police to support the Civil Power and repress any turbulence, that might naturally attend so peculiar a crisis. When we consider these peculiarly favourable circumstances, as well as others to be mentioned hereafter, that controlled or modified the character of this Revolution; we must admit the special and directing hand of Providence in a combination of events, that no human wisdom could have commanded, and which no antecedent conduct of jarring factions had merited. These external features of the Revolution of 1688, and also the personal character of William III., at once able and unpopular, moderate in ambition and neutral amid factions, have been too much left out of consideration by writers, who have seen in the success of this great

struggle nothing more than the natural sequel of earlier domestic contests, and the complete development of the principles of the Long Parliament. Such a combination in favour of the establishment of liberty in other lands we have no reason to anticipate, though every cause of thankfulness that it was so ordered in our own case.

James's first flight was so voluntary, and excited so little sympathy, that it might really be termed an abdication, and was so in everything but form. His flight however was intercepted, and his return to London, though attended by no signs of improvement in policy, so far excited the feelings of a portion of the people, that his presence was inconvenient to the new Government, and necessitated a certain degree of menace and restraint to induce him to a second and uninterrupted escape. On his departure the Convention Parliament commenced its important and intricate labours. A sort of great national assembly had met in the first instance, consisting of the House of Lords, the Corporation of London, and any members then living who had served in any of Charles II.'s Parliaments. This irregular but influential body took immediate measures for the maintenance of order in conjunction with the welcome invader, now in peaceful possession of the capital. But their most important duty was the arrangement for the meeting of a Convention Parliament, the technical expression as we have seen before at the Restoration for a Parlia-

ment regularly constituted but not regularly summoned or opened.

This was at Christmas of 1688, and on 22nd Jan. 1689, the Convention assembled. Their first care was to address the Prince to take the administration of affairs, and disposal of revenue into his hands; as a sort of parliamentary sanction to the power, he had already rather irregularly assumed. On the 18th the Commons with but little opposition came to their great vote, "That King James II. having endeavoured to subvert the Constitution of the kingdom, by breaking the original contract between king and people, and by the advice of Jesuits and other wicked persons having violated the fundamental laws, and withdrawn himself out of the kingdom, has *abdicated* the Government, and that the throne is thereby *vacant*."

Another resolution followed the next day, that it had been found inconsistent with the safety and welfare of a Protestant kingdom to be governed by a Popish Prince. This latter resolution carried the full principle of the Exclusion Bill, and moreover was agreed to by the Lords, who thus in practice went the whole extent of the change effected. But upon the former resolution several important divisions took place. The absurd proposal with all its indefinite train of consequences, that nominal allegiance should be retained to James as King, and all power vested in William as Regent, was only lost by 49 to 51. Though the zealous royalists

would, to avoid the semblance of a transfer of allegiance, have entailed on their country the antagonism of hereditary Protestant Regents in power, and hereditary Popish Kings in exile. The Lords then resolved that there was an original contract between the King and the people by 55 to 46. A theoretical proposition, more in the spirit of the French Revolution than of our own, yet necessary at the time as setting at rest the idea of the Divine right of monarchy. They concurred without much debate in the rest of the Commons' votes, substituting the milder and more literally true word *deserted* for *abdicated*. They next omitted the final and most important clause "that the throne was thereby vacant" by a majority of 55 to 41. The Danby or Tory party in the Lords asserting a devolution of the Crown on the Princess of Orange, as by a regular legitimate descent. Both parties at this time seem tacitly to have assumed the spuriousness of the infant Prince of Wales. The Whigs without any necessity, from mere hate and contempt of his race, but the Tories from the awkward necessity of reconciling a change they had determined on, with their principles of loyalty and legitimate succession. Encouraged by this difference between the Houses, the Tory theorists and actual friends of the late King numbered 151 votes against 282 in favour of agreeing with the Lords in striking out the clause about the vacancy of the throne. A conference ensued between Committees of the two Houses upon their amend-

ments. In this conference as might be anticipated from the points in controversy, the Whigs, who were for asserting the abdication and vacancy, had as much the advantage on the solid grounds of political expediency and the special necessity of the case, as the Tories had on the principles of Constitutional law and the proper sense of words. The alternative seemed to be between an impracticable adhesion to the principle of legitimate descent, or the admission of the dangerous principle of electoral monarchy; or viewed still more narrowly which was the least evil, the solitary and exceptional change of succession to be sanctioned, or the endless perplexity of a line of Regents *de facto*, keeping out a line of Kings *de jure*, a day of modern Poland or centuries of Merovingian France. It seemed quite one of those occasions where a happy change is the truest conservatism, and stubborn resistance is really the crudest innovation. Such occasional and abnormal changes we have seen were not unknown to the Saxon Polity, and more than once received the sanction of a parliamentary epoch, at the accession of the Lancaster branch of the Plantagenets, and again at that of the House of Tudor.

The House of Lords or its Committee of Conference at last yielded to the urgency of the situation, and the firmness of the Commons, and adopted the resolutions without amendment; making up now for their reluctance by a resolution, that the Prince and Princess of Orange shall be declared

King and Queen of England and all the dominions thereunto belonging. The Commons with a wiser patriotism delayed to concur in this resolution, until they should have completed the Declaration of those rights and liberties, which were alone the justification of the great change effected. This Declaration being at once an exposition of the misgovernment which had compelled them to dethrone the late King, and of the conditions on which they elected his successor, was incorporated in the final resolution, to which both Houses came on 13th Feb. 1689. The settlement of the Crown was on the Prince and Princess of Orange for their joint lives and the life of the survivor. The exercise of the regal power to be vested however in the Prince alone, to be exercised in their joint names, after their deaths to the issue of the Princess; in default of such issue to the Princess Anne and her issue; in default of such issue to the heirs of the body of the Prince. This seemed to provide for any reasonable contingency. But yet so uncertain is human life, and so rapid the tendency to extinction in Royal stocks; that within a quarter of a century, a still remoter branch from the lineal heirs was on the throne, and the principle of parliamentary selection to be again invoked. Thus terminated the great contest that had lasted, though with considerable intermission, since the reign of John, between the Crown and people of England. It little resembled the class struggles of other countries and of later times, it was occasionally

masked under the rival pretensions of different royal branches, and oftener had assumed the badge of religious distinctions or of religious zeal, to excite or justify a course determined on. But it had ever been directed to the preservation of known laws, or the recovery of unforgotten rights, rather than to the operation of abstract principles and the invention of some ideal perfection. Parliament had been the engine of warfare. The aristocracy of birth no less than of wealth, the preferred leaders of the campaign, the lawyers, and last and loth the Church had lent itself to the movement. But the mob, as distinguished from other classes, had rarely taken a prominent part in the struggle, and except during the few dark days that ushered in the military conflict between Charles I. and the Long Parliament, not even the streets of the capital were disturbed by the ascendancy of that dangerous class, to whom their leaders and deceivers assign the exclusive name of the people.

The Constitutional advantages derived from this great change are read clearly enough in the very nature of the struggles so fearfully terminated. The advantage, as has been well described by the great Constitutional historian, consisted not only in the rights secured and principles asserted on the part of the subject, but in the altered title and lower tenure as it were of the Royal authority. The great change of the Revolution itself, the temporary intrusion of a foreign and not popular Prince, the

extinction of Anne's issue, and the Protestant Stuart line by the death of the Duke of Gloucester, the consequent introduction of a still more alien and unknown branch of the Royal stock, combined with the regular succession of exiled representatives of hereditary dynasty, to make the actual possessors of the Crown cling to their parliamentary title, to shun for many generations the idea of prerogative, to repudiate the hazardous claim of Divine right, and so far from straining the antagonist checks of the Constitution to allow them the fullest play, and to sink into a mere expensive ceremonial attached by custom to the real government by the two Houses, and the anomalous and limited constituency that returned the Lower. We shall see in the following pages that as tyranny is not the only vice, so every virtue did not follow the loss of power; and a wasteful profusion, coarse profligacy, and general pecuniary corruption in the highest circle characterized the age, when Kings ceased to be ambitious, and people had not yet become so, but Parliament ruled both. The triumph over the one was signalised by the absorption of all power into the hands of the fortunate leaders of the majority. While an indifference was certainly shewn for the unrepresented masses, by the enormous growth of that indirect taxation, to which they were unconscious contributors, and a severity in the criminal code, in the law of impressment, and other institutions which, measured by the amount of human suffering they un-

justly ensured, cannot be lightly estimated; but by the deep thinker on politics cannot be compared to those forms of unconstitutional tyranny, which by superseding the law, gagging the press, coercing conscience, and checking discussion, would perpetuate every evil which has been found curable.

It seems admissible to consider the period of both William and Anne as the development of the great change of 1688, and the principles it involved. In some characteristics it resembled the reign of Charles II. in the free scope given to parliamentary action, the universal practice and familiarity with Parliamentary government, the strange and scarcely accountable fluctuations in public opinion, indicated by the result of certain general elections, the great profligacy of the upper classes who practically monopolised power, and the extraordinary apathy of the great body of the nation under a system, which however admirable in theory was chiefly brought home to themselves by heavy taxation and distant if not disastrous warfare.

The Lords were probably induced by the perils of anarchy, to make up for their former reluctance by the unconditional vote in favour of the sovereignty of William of Orange. Nor was this apprehension either unfounded or confined to that distinguished body. But the Commons insisted on the Declaration of rights as prior and introductory to this devolution of sovereignty.

This instrument in the way of declaration settled

many points, that the misgovernment of the late reign had forced into an invidious prominence.

The pretended power of suspending laws or their execution by the royal authority without consent of Parliament was declared illegal. As was also with rather a vague generality the Commission for appointing the late Court for Ecclesiastical affairs; and all other Courts of the same nature were declared illegal and pernicious. The same censure was passed on the levying of money without consent of Parliament. The right of subjects to petition the Crown was properly asserted in reference no doubt to the case of the Bishops. Elections were to be free. No standing army maintained without authority of Parliament. Debates and proceedings in Parliament were to be free and unimpeached in any other Court or place. Other principles of no great novelty or special significance were laid down with reference to judicial proceeding, which the conduct of Jefferys and his associates had suggested as necessary or important.

This declaration was in the next session confirmed by a regular act of the Legislature, with some little modification as to the illegality of a dispensing prerogative, which was referred to a statute to be passed that session, to point out the limits within which it might be exercised. But this delicate statute never appeared. And the constitutional law has been settled, not only in the spirit, but according to the letter of the original declaration.

The declaration against the legality of a standing army expressed, rather too strongly and absolutely for practical convenience, an idea that was certainly constitutional. This would appear from the negative proof of there being no power known to the constitution to inflict martial law, or provide for the quarters of troops without special enactments for the purpose, which necessitates the somewhat pedantic annual renewance of our Mutiny Act. Not to mention that the now admitted right of Parliament to appropriate supplies, as well as to raise the revenue, would have led to the same result, had a military force been retained against the will of the Legislature.

The curious case in Sir T. Jones's Reports, p. 147, shews that at the arbitrary close of Charles II.'s reign, neither the necessity of a garrison, nor the usages of an obscure and detached jurisdiction, conferred the right on a commander to imprison an English soldier at his own discretion in derogation of common law right.

The thirteen dreary years that William III. filled his elective throne are less interesting to our grateful and patriotic feelings, than to constitutional research. Partly from his own errors, and still more from the peculiarity of his situation, William did not meet with the cordial support or loyal indulgence that the great benefits he had conferred, and the moderation of his sway, had justly merited from English parties. His lavish expenditure on favourites had a precedent

rather than justification in the conduct of former sovereigns, and was from his personal unpopularity regarded with less indulgence than the meretricious grants of Charles II. or the more economical debaucheries of the two first Georges.

The new and enormous taxation, required by his naval and military establishments, were in an enlarged sense the price justly paid for the Revolution and change of dynasty, that brought England forwards as the champion of continental Protestantism and liberty against the organized force and centralized revenue of Louis XIV; from the cheap and inglorious neutrality to which the French and Popish leanings of the Stuarts had condemned her. But this explanation was neither obvious nor always satisfactory to tax-payers, who beheld in the rapid growth of Customs and Excise a portentous development of that indirect taxation, which pressed in the nature of a poll tax on the humbler classes.

While these faults of character or misfortune of position rendered William an unpopular sovereign, with what in modern slang is rather disrespectfully termed the masses; it is not difficult to see how little acceptable a succession derogatory to hereditary right, the letter of the law and the spirit of the Church, must have been to these aristocratic and professional classes. The crimes and faults of the last reign were forgotten, extenuated, or deemed expiated by dethronement and exile.

Thus schemes were early projected and corres-

pondence opened for a restoration by many leaders of the Tory party, whose criminality must be measured both by the evils they would have entailed on their country, and the degree of confidence they betrayed in their Prince. The real strength and only cordial support of William's government lay in the commercial body, the upper class of towns; and these in the decay and unpopularity of dissent, had lost the great moving engine and bond of sympathy with the lower classes. William's government was thus preeminently one of sufferance coldly supported by the Whigs, who had everything to fear from a counter-revolution, and jealously crossed by the Tories, who were not agreed on any terms of Restoration.

At the commencement it was not so, but as invited and elected by the nation at large, his government included the prominent men of both the leading parties. But the treacherous leaning of too many Tories, even of those in his confidence, to the Court of St. Germains, and the noxious schism of the nonjurors, which gave an undeserved character to a mischievous error, obliged him to form his Cabinet during the greater part of his reign of such materials as the Whig party could supply. And this necessity of the time gave rise to the custom, since habitual, of forming a government exclusively from one party in the state. A practice which, though obviously defensible in theory, has perhaps been carried too far in practice, is scarcely needed in quiet

times, and occasionally departed from on an emergency. A permanent chief or commission of chiefs might seem as conducive to the public service in the Navy or the Law, as it has been found in the Army. While even in other offices involving the traditions or expressing the objects of party, it might seem possible to admit the application of a principle in one department, and yet to ignore its urgency at least in another. To have for instance liberal and moving reformers to preside over our domestic and financial departments, and yet to harmonize with the prevailing bias of our neighbours in the tone of our foreign office. This seems a sounder principle for occasional or habitual coalitions, than the one usually resorted to of holding in abeyance certain important questions or classes of questions, on which the component members of the government are not agreed, or what amounts to much the same thing, leaving such topics as open questions. Of course extremes should be avoided in such combinations, but extreme politicians in countries of some political experience are rarely entrusted with official responsibility. At the crisis that gave occasion to these remarks, the Whigs were naturally a little dissatisfied, that men who had shared the splendid misrule of Charles II., and even participated in the darker criminalities of the last reign, should share the sweets of office with those, who had borne the burden and heat of a quarter of a century opposition.

Some of the corrupt or subservient tools of the

last reign, who dishonoured the Bench were deservedly deprived of the high office they abused. The Act of Indemnity that was intended to secure other offenders was impeded by the altered relations of party, that marked the close of the last reign. But the difficult question was well settled by an Act of Grace sent down from the throne the next session. In remodelling the corporations, or rather in restoring the abrogated municipal rights to their condition prior to the measures alluded to at the close of Charles II.'s reign, the Whig majority in the Commons shewed some wish to retaliate by excluding from the restored corporations those, who had been active or pliable in the surrender of their Charters. This, though perhaps no more than just, yet as indicating a vindictive feeling, and calculated to render one interest predominant in those important electoral bodies, was properly over-ruled by the Lords, who however, in throwing out the whole bill, would have left the corporations the exclusive strongholds of Toryism and High Church principles, that was intended by the Corporation Policy of Charles II.

In finance matters both parties agreed to hold the national purse-strings tighter than they had been. The eight years war that followed immediately dissipated entirely these schemes of economy and retrenchment. But the idea of the Peace establishment was only £1,200,000 a-year, of which about a half was to be reserved for Court expenditure, and civil charges upon it in the nature of our

Civil list. And the remaining £600,000 was deemed sufficient for the defence of the kingdom, and contingent expenses of that class. The revenue had improved so much from the increase of wealth and population under the peaceful reign of Charles II., that taxation calculated to produce an income of £1,200,000, had, in James's reign, averaged £1,500,000, without including £400,000 a-year granted by new taxes voted in the Parliament of 1685 for eight years. The average expense of James's government, more frugally conducted than his brother's had been, was about £1,700,000 a-year, which would still leave a dangerous margin of ways and means for unknown and unauthorized application. This error, for constitutionally speaking it was now held to be an error, arose from the Parliament of 1685 having voted supplies without appropriating them to specific objects, and in ignorance of their probable amount. The Convention Parliament continued the measure on its actual footing till December, 1690. The next Parliament only granted the customs for four years, and rather ungraciously conceded the excise an avowedly hereditary revenue for the lives of William and Mary and the survivor. They provided it is true for his enormous war estimates on a scale of magnitude England had never seen before. But the personal distrust implied in their temporary votes justly wounded the King's mind, and alienated him from the Whig majority, who seemed to support his throne but as a

tool of party. It is curious to contrast the suspicion and illiberality of a Parliament, that owed so much to his interposition with the reckless prodigality, with which Parliament met and anticipated the wants of the far less worthy princes of the House of Hanover. Possibly their very want of talent and character may have been considered constitutional recommendations, in the moral and delicate experiment of parliamentary government.

William's undoubted talent, enlarged views, and ample experience gave an ambitious character to his internal government, that was sufficient to awaken the jealousy, that his character and services failed altogether to quiet. And he should have felt that a Prince of considerable foreign resource, and from whom his ministers on questions of war and European policy sought to receive advice instead of offering it, could scarcely expect to be an exception to that constitutional vigilance, which if not actually needed in his case, was still necessary as a precedent and barrier for less worthy successors. But William appears to have misunderstood the nature of this opposition, and to have considered the Whigs as Republicans on their good behaviour, who sought to reduce a limited but undoubted monarchy to the grade of a Dutch Stadtholdership, which for military and diplomatic purposes had given a royal capital to a Republican column.

Yet there is reason to suppose both from the literary remains and public manners of that age, that

a republican spirit hardly existed, except in some few and now unpopular dissenting denominations. However William was induced for a time to employ the Tories as more complaisant to Royal authority, though but half reconciled to his own succession. The intrigues of these statesmen with the exile of St. Germains is a characteristic though not very creditable part of our history. And Carmarthen and Marlborough, if not Godolphin merit all the censure, that the virtuous indignation of Whig writers has heaped upon them. Though the moralist would scarcely class with the same political delinquency, the natural anxiety of the Princess Anne to solicit the forgiveness and reconciliation of her father, even though it obliged her to separate her cause from that of her sister. Much embarrassment, and possibly many of the failures of the war are to be attributed to the number of Tories or rather Jacobites, who had been introduced into the subordinate offices of the state by Godolphin. It is more singular that some discontented Whigs should have opened negotiations with the Sovereign they had virtually dethroned. But whether this was in real resentment at his successor, or as is more probable in some of them, from a cowardly wish to be provided against a possible restoration, it was a mark of the growing corruption of the age, and the decay of earnest and sincere conviction in public men.

The schemes however for the restoration of James failed both from the schism among the Jacobites

who began to be termed compounders and non-compounders, according as they were prepared for a restoration, with or without some guarantees for religion and law; and from the arbitrary nature of the exiled Monarch, who cared not to disguise his preference for an unconstitutional return. The war that terminated with the Peace of Ryswick in 1696 was both expensive and unsuccessful, though the Peace obtained a recognition of the succession from all foreign powers, and thus damped for a time the intrigues of the exiled Court. But the nation saw with alarm the ominous though moderate commencement of the public debt, and Parliament reviewed with jealousy the military expenses, that seemed now to admit of reduction.

The reduction was on a scale of unreasonable simplicity, worthy of a certain school of modern reformers. It was first proposed that a force of 7000 men only should be kept up, the standing force of 1680, when the British sovereign was subservient to if not a pensionary of France. This was however augmented to a force of 10,000, though in the altered state of Europe, and the new relations of England to the great centralised military monarchies of the Continent, the one limit was about as absurd as the other. William's military experience saw this so clearly, that he was tempted to do the one unconstitutional act of his reign, by leaving sealed orders on his departure for Holland to keep up 16,000 men. This order ministers obeyed in

equal violation of the vote of the Houses. But the new Parliament that assembled the next session enforced the original reduction to 7000, with the additional and most offensive proviso, that they were to be all British natives, thus separating the King from his favourite Dutch Guards and French Protestant refugees. These points seem to have been carried by the not unusual combination of a liberal opposition, with the strong national prejudice, that is so influential in the other party. But it is worthy of remark, both through this reign and that of Anne, that Parliament, though based on so anomalous and partial a suffrage, appears to have been singularly free from Government influence. And Government itself obeyed the impulse of adverse parties, as they triumphed at successive general elections almost as regularly as action and reaction in the material world. The organised management of Walpole, and the vast expenditure of the State under George III., not to omit the steady and tenacious will of the latter monarch, restored in a great degree the reality of the first, though weakest order in the State, by its independent influence in the Houses of Parliament themselves.

In a similar spirit to their army estimates, though far less injuriously to the country, was the resumption of the Irish forfeitures. These confiscations lamentably accruing as the penalty of a resistance, that had much of religion and loyalty to elevate it above the usual feuds of that unhappy country, had

been lavishly squandered by William among his Dutch Guards and favourites. But though the Commons acted well and wisely in rescuing these grants, and thus checking the exuberance of favouritism, they evaded the spirit in availing themselves of the letter of the Constitution, in tacking these resumptions to money bills, which could not be modified in the upper House; thus depriving the Lords of an undoubted share of their jurisdiction. The Lords on this and a former occasion acceding at the King's desire.

Parliamentary enquiries also followed the peace of Ryswick into some of the failures in the late war, more particularly relative to the Admiralty department and the Civil War in Ireland. Such enquiries had been attempted before into the conduct of military and naval commanders, but successfully resisted. The success of the promoters of enquiry on this occasion established a perhaps necessary, but often inconvenient precedent, which entailing the examination of witnesses, production of despatches and accounts, invests the public service with a publicity that must be often detrimental. The first attempt of what has been known in our times, by the rather vague description of an enquiry into the state of the nation, failed in the hands where it originated. It went beyond the recognised scheme of modern opposition, by proposing a joint Committee of both Houses to consider the state of the nation, and what advice was to be given to the King concerning it. This would have been a great error from the vague

and indefinite nature of the functions assumed, and from the proposed fusion of the Houses in a form, which the dire example of France has shewn to be uncontrolable by the executive. Burnet censures on much the same grounds, an apparently milder though equally abortive measure, constituting a permanent Council of Trade and protection of the interests of merchants.

But without knowing more than is recorded of the constitution and powers of this new body, it is out of place to criticise the design either on general principles, or in relation to the notorious India Bill of 1783, of which it would appear an ancestor.

The partition treaties, that led to the impeachment of four Ministers, are easier to be justified on their European merits, than to vindicate the constitutional principles involved in their execution. And the only and very partial excuse, that can be tendered for the great Somers' irregular and indefinite submission to the Royal will, is to be found in the fact above alluded to, of a constitutional sovereign being so unlucky, as to be the first diplomatist and strategist of his age, and as such to command the assent of his ministers on points, where English politicians are rarely accomplished. That this feeling was very strong in William's wisest and most constitutional ministers is apparent from the interesting correspondence of Lord Somers, as given in Lord Campbell's Lives of the Chancellors. Somers clearly erred in fixing the Great Seal to blank powers, and again to

a ratification on which he had not been consulted, thus allowing an unconstitutional latitude of action to the sole will of the Sovereign, apart from his responsible advisers.

The reign of William III. is so important as the first page of a new period, that some of the improvements or modifications of the Constitution effected during this period should be considered in detail.

The seventeen years Parliament, that occupied the greater part of the reign of Charles II., had disgusted and alarmed the nation at the prospect of a permanent legislature; both as liberating representatives from the recurring control of their constituents, and exposing them for a longer period to the influence of the Court. A bill was therefore introduced for triennial Parliaments, affirming, and at the same time misstating the earlier practice, which we have seen above only required the triennial summons of a Parliament as the minimum of legislation, and could scarcely be construed as requiring a new election on each occasion. This bill however supported in general by the Whigs and opposed by the Tories, was lost by a prorogation in 1689, passed both Houses, and was vetoed by the King in 1693, and at length assented to by him in Nov. 1694. Thus triennial Parliaments became the letter, and annual sessions, from the temporary character of the Mutiny Act, and appropriation of supplies, the practice of our Constitution. And though the seven years' duration of Parliament was restored by the Septennial Act on the accession of the House of Hano-

ver, and still remains the legal limit of representative existence, three or four years is still found the average duration of Parliaments, as marking about the period of the recurrence of momentous questions, or the casualties of administration. Nor would it be difficult to prove that this duration is more in accordance with the popular will, than either a longer period, or one so much shorter, as would render constituencies careless and anticipate public opinion.

The law of treason too received an improvement in favour of the security of the subject, that the lax interpretation of the celebrated Act of Edw. III. had endangered. As has been observed before, the law of treason prior to that celebrated enactment, was very vague and undetermined. Thus, Mortimer a great state offender no doubt, suffered for encroaching as it was termed on the royal power, that was in fact of usurpation, though without violence to the reigning Sovereign. The treason statute of Edward III. was distinct, though sufficiently comprehensive in its provisions. Treason included not only the act or design of murdering the King, Queen, or heir apparent, but also properly enough, the violation of the Queen, of the eldest daughter, and wife of the eldest son of the Royal house. Also levying war on the King in his realm, or being adherent to his enemies here or elsewhere. As also forging the Great and Privy Seal, and the more vulgar offences relating to the Currency. The actual murder of certain Ministers and Judges in discharge of their duties, was also perhaps wisely in a ruder age placed under the

same awful ban. And in all these cases the escheat or forfeiture of property accrued to the Crown, whether the delinquent held directly of it, or of some inferior lord.

This Act, though looked on in its own age as a master-piece of legislative skill and patriotic exertion, was, as might be expected from the variety and incongruity of the offences comprised, too often abused to the danger of the subject. The most usual and dangerous extension of it in construction was, that a conspiracy to levy war, though not in itself a distinct treason under the statute, might be given in evidence as an overt act of compassing the King's death. This of course might be made to include the different forms of private war slowly laid aside, and arrangements for mutual protection and support, still necessary from defective police and abuse of authority. This common construction of the Act seemed negatived also by the occasional and temporary Acts passed under Elizabeth and Charles II., rendering conspiracy to levy war treasonable, and which would have been superfluous had the usual construction of the statute been warrantable.

The important statutes of 36 Geo. III. c. 7, and 57 Geo. III. c. 6. will be a subject of future remark, as settling the actual law of treason, on the basis of the construction put upon the Act of Edw. III., with some proper limitations as to the objects of the war levied. The extension to the protection of

the Houses in their legislative functions, is a just and obvious consequence of the more parliamentary form of government prevailing in modern times. Under the head of levying war several outbreaks of mere rioting have been included, as that of the destroyers of meeting-houses on Sacheverell's trial, though not the analogous case of the Tory rioters at Birmingham in 1791. The lawyers made a subtle distinction between a riot of a definite and specific object, which was a riot merely, and a similar outbreak to destroy all places of such a description; which seemed either the assumption of supreme power, or a levying of open war for that purpose. However the riot Act of Geo. I., which made such tumultuous outbreaks capital offences, when accompanied with violence, renders it more convenient for prosecution to treat them as felonies under this Act, rather than as actually treasonable.

The same latitude of construction applied to the Act of Edward VI., which required two witnesses to support a prosecution for treason, had admitted the practice of one witness to prove one act, and another another, tending to the same treasonable conclusion—a manifest departure from the spirit of the Act, and calculated to deprive the accused of the advantage of variance in the evidence against him on any point. But by the statute of William the overt acts deposed to by different witnesses must relate to the same species of treason; not for instance, to levying war, and murdering the King.

It was perhaps the great advantage of the vicissitude of parties at the period under consideration, that each faction in turn learned by its own sufferings the evil of oppression, and thus, though every desire existed and was occasionally shewn to retaliate, yet a slow but general advance was perceptible in the principles of justice and reason. To instance some of the last cases where exact justice was strained in State Trials. In Ashton's case it was left as a question for the jury to decide whether the bearer of treasonable correspondence was so far cognisant of the fact as to implicate him in the treason itself – a point that clearly admitted and required further evidence as to the complicity and habits of the accused; which was not wanting in the similar case of O'Quigley in 1798. In Anderton's case evidence was admitted of the similarity of type in a printed treasonable book, with that employed in the press of the accused. An analogy clearly more fallacious than that of handwriting—which would never now be permitted to convict.

The administration of the law however, down to a much later epoch improved more in its strict adherence to statutes, than in the spirit in which those statutes were drawn. A monstrous case will have to be stated in the days of George I. of a treasonable conviction and actual execution for a *libel*, under a specific act for the security of the Hanoverian succession. In our age, when the unbridled license and profligate audacity of the Press is the great

curse and scandal of the times, the verdicts and scaffolds of George I.'s reign seem as incomprehensible as the attainders and burnings of the Tudor age. A bill for regulating trials for high treason fell to the ground in 1691, by a difference between the Houses on a point of privilege, introduced by the Lords in their own favour, as to proceeding in the High Steward's Court. But in 1695 this excellent statute passed, notwithstanding the reluctance of the Court, which yielded to the Tory opposition and more independent Whigs. The Act provides that all persons indicted for high treason shall have a copy of the indictment five (now ten) days before their trial, and a copy of the panel of jurors two days before, that their witnesses for the defence should be examined on oath, and that the aid of counsel might be employed for the defence. It cleared up the doubt above alluded to as arising from the statute of Edw. VI. that the several overt acts deposed to must relate to the same treason. It limits prosecutions for treason to the term of three years, except in the case of actual assassination attempted.

The right of all Peers, and not a mere nominated list as heretofore, to sit in the High Steward's Court was allowed. While a later statute of 7 Anne, c. 21, which may be alluded to here as a corollary of the Act of 1695, enacted that ten days before the trial a list of the witnesses, to be produced for the prosecution, is to be delivered to the accused, with their

professions and residences, along with the copy of the indictment. Our happy inexperience in treason trials in modern times may account for, rather than excuse, the blunder of the law officers of the Crown in Frost's case in 1839, which, from the doubt thrown on the regularity of the proceedings, probably saved the lives of three villains, and gave occasion to an annual absurdity in the House of Commons.

The liberty of the Press has commonly been supposed also to date from the Revolution, or at least from the reign of William III. But this must be understood in rather a limited sense, and subject to the grave exception above alluded to. It is true the licensing Act that expired 1679 revived in 1685, for seven years lingered on to the close of the session of 1693, and has never since been renewed. But though this general restraint ceased, there were from time to time statutes like that alluded to in protection of the Act of Settlement, that tabooed, if one might use such a phrase, certain subjects, taking them out of the arena of free discussion, as things about which no difference of opinion was safe or admissible. Still more stringent than this was the usual feeling of the Judges and practice of the Courts in cases of libel, and which continued with little mitigated severity far into the reign of George III. Thus the Judges held in Anne's reign, that a libel on the Queen's ministers peculiarly in her confidence, was a libel on the Queen herself. The truth of a charge was rarely admitted in justification, either of

a libel, or even in mitigation of sentence. And most of all, the Judges held throughout this period, that the Court, and not the jury, were to decide on the question of guilty or not guilty of the *libel*, as a point of law, the publication being the only fact for the consideration of the jury.

From the peculiar policy of the two last Stuarts, tending to favour alike Popery and Despotism, and to encourage the former through the medium of a general toleration, the principles of civil and religious liberty were to a certain degree antagonistic. And this relation has affected the party politics of England in some degree down to our own times.

It has been already shewn that the political weakness, or moral strength of the Dissenting body did not avail itself of the tempting boon of toleration, held out by the Prerogative for ultimate Popish objects. But that the great body acquiesced in the ascendancy of the Church, which they felt to be the only effectual barrier to Romanism. It might have been expected that not only toleration, but comprehension on some neutral and recognized basis would have rewarded an alliance so valuable and so disinterested. The last was found impracticable, both from the infinite variation of opinion and ritual among the sectarians themselves, and also from the danger of strengthening the nonjuror schism in the Church itself, if the ancient and uniform liturgy were modified to meet the views of the Dissenters. Toleration, in the sense it bore in that age, was indeed extended to

nonconformists generally, with the exception of Romanists and Unitarians. It protected the persons and places of worship of the sectarians with certain limitations; and the Act of Toleration has altogether the air of a boon to a weak and unpopular body, rather than a concession to a great national element. As it did not extend to opening offices and the municipalities to Dissenters, it would hardly be deemed worthy the name of toleration by their descendants, who have enlarged the rights of conscience to whatever they have conscience to claim as a right.

The Romanists, as identified both as partisans and protegees with James and his insane attempts, did not participate, as on general principles they should have done, in the religious toleration of the Protestant sects. They were subjected not only to general official disqualification and political incapacity for a century full after the date we are arrived at; but also to a variety of harassing and humiliating privations and oppressions: which though I believe scarcely enforced in England except on the eve of some outbreak, as in 1715 or 1745, were not allowed to become a dead letter by the Protestant Parliaments and Orange administrations of Ireland. The experience of our own age of the consequence of restored political vitality, has not been such as to throw any discredit on the wisdom and substantial justice of the restrictions removed. Apart from all reference to the truth and piety of their creed, and in addition even to the more obvious difficulties of

their divided allegiance, their foreign connexion, the organization of their priesthood and subjection of their laity, the Romanists were in a political point of view, a body so formidable that their political disarmament was a first article of public safety. Numerous enough to be of serious consideration any how, their numbers were all the more dangerous by being for the most part concentred in those influential classes, that are the natural soil for intrigue or insurrection. The most ancient nobility of England and the most barbarous peasantry of Ireland, were elements of ambition and despair, that required a more vigilant exclusion and more severe coercion, than would have been needed to repress the machinations of another sect, or even of the same sect otherwise distributed.

But such as the Toleration was, that William and his Parliament meted out to the different dissenting bodies, the Nonconformists received it with a grateful cordiality, and the Romanists with a submission that is almost equally surprising; and the more so as this imperfect and partial arrangement was maintained for a century of comparative calm and undoubted prosperity.

The infamous Act of 1700 against the Roman Catholics was repealed in 1779, and does not appear to have been ever enforced against the laity.

The nonjuror schism in the Church of England itself, with its influence on a still wider body of clergy and laity, who shared its opinions without embracing

its sacrifices, caused more embarrassment to the Revolution settlement, than the antagonist bodies just referred to. The evil of this sect or party is more to be traced in the good they prevented, than in the mischief they actually accomplished. Entrenched in one University, all powerful in Convocation, not unrepresented in Parliament and the press, they had sufficient weight to prevent any measure for embracing Dissenters or for amending the Liturgy: embarrassing Government by the factions of a clerical Parliament which led to its disuse, they originated no measure for extending the influence of the Church in the affections and education of the people, nor in combating the growing infidelity and irreligion of the upper classes. Fanatical under William, ambitious towards the close of Anne's reign, and sullenly dying out under the Hanoverian dynasty, the nonjuror party personified in succession a principle, a passion, and a prejudice, as the altered circumstances of the times, and their own perceptible drift towards the doctrines of Rome alienated them more and more from the people and the Church.

The important Act of Settlement must now be noticed, by which the Legislature provided for the perpetuity of Protestantism, in connection with the Monarchy of England.

The Bill of Rights had only provided for the order of inheritance of the Princess of Orange, her sister Anne and their issue. The King it is said already wished the prospective rights of the House

of Hanover, as descended from James I. to be recognized. But the House of Commons threw out the clause as unnecessary, and ran the risk, however slight in appearance at the time, of allowing the Protestant Monarchy to die out.

But, in 1700, when the untimely death of Anne's only surviving child the Duke of Gloucester, and the death without issue of the Princess of Orange, rendered it too probable that the existing limitations would terminate of themselves, it became necessary to provide for the future, and preclude the possibility of a Popish Jacobite restoration. No other claimant for the throne seemed so fit an object of the nation's preference as Sophia, Electress of Hanover, and her issue. They were the nearest to the hereditary line of succession, who had maintained, though it is to be feared with little personal piety, the great and pure doctrines of the Augsburg Confession, so their accession would be the smallest departure from lineal descent, compatible with the Protestantism of the Crown. They were in themselves a quasi-royal stock, common in the feudatories of Northern Germany. Their hereditary dominion was too small to excite apprehension or present rivalry in trade or power, and its very remoteness seemed not only to detach its princes from our insular factions, but even from the dangerous and wily combinations of western politics. The other claimants disqualified by their profession of the Romish faith, were in addition to the exiled family at St. Germains, the

heiress of Henrietta of Orleans, sister of Charles and James, whose marriage with the Duke of Savoy had carried a claim to the House of Piedmont; together with the members of the Palatinate family, who had of late years apostatized from Protestantism.

Men of different political views will of course dwell with satisfaction and energy on the hereditary, or parliamentary title of the Brunswick family, both of which are as clear as important. But, as it is the happy, almost awful privilege of our national Church, that it can show both an apostolical succession and the doctrine of the Apostles too; so we may rejoice, that the heirs of Cerdic and the Conqueror have superadded to those titles the honourable and not unprecedented election of a free people. While the hereditary right should call forth the chivalrous allegiance of the subject, the legislative title should be ever before the Prince's mind as the groundwork of his right, and the motive to patriotism.

Some limitations of the Prerogative were introduced in reference to the future dynasty, and in just jealousy of their foreign tastes and connexions. But as these were in some important particulars habitually violated, it will be time to consider them, when we come to review the conduct of the Hanoverian Princes, and the undeserved indulgence of their Parliaments. One article directing matters of executive government to be transacted in the Privy Council,

seems meant as a reflection on the modern practice not indeed commenced, but made the rule under William of conducting Government by a cabinet of Ministers, a select Committee, unknown to the constitution, of the Privy Council, which is in theory the executive government. Curious questions might arise as to the degree of complicity, that would be inferred by being a cabinet colleague of a minister, whose acts had rendered him liable to impeachment. The complicity would certainly not embrace the Privy Council at large, who, though entitled to tender advice to the Crown, are not necessarily consulted by either it or its ministers; and in practice consist of a large honorary body rarely summoned, and comprising the leaders of all factions antagonistic and defunct. But it would seem reasonable, that mutual confidence and consultation should involve every member of a cabinet in the consequences of the act of a colleague, unless ignorance or protest could be pleaded. This attempt however to restore the political activity of the Privy Council was found either so inconvenient or dangerous, that it was repealed by two Acts early in Anne's reign. The evils, to which the multiplication of places and pensions had led, in crowding the benches of the House of Commons with the creatures of the Crown, are largely dwelt on by patriots of this period; and induced the preposterous exclusion of all such stipendiaries from the House as one of the articles of the Act of Settlement, without reference to the magnitude of their

trusts or the dignity of their character. This was too absurd to have been long endured—for by detaching the House of Commons from the fountains of public information and instruments of power, it would have weakened its authority, in lowering its tone from a school of statesmen to a conventicle of demagogues; or, on the other hand, might have destroyed the monarchy, in arraying the national representatives in opposition to a power, they might not exercise, and honours they could not attain.

This monstrous and abortive enactment was repealed in 1706, and two enactments substituted for it, that obtained every popular object without inconvenience or danger. These two provisions, which continue to this day a barrier against the influence of the Crown in the House of Commons, are: first, that every member of the House of Commons accepting an office under the Crown, except a higher commission in the Army, shall vacate his seat, and must submit to a re-election in order to regain it; secondly, that no person holding an office created since 25th October 1705 shall be capable of being elected or re-elected at all. All holders of pensions during the pleasure of the Crown were also excluded. Instances of specific exclusion of public officers had occurred before, as of the Stamp Commissioners in 1694, and of the Commissioners of Excise in 1699. But the principle of excluding placemen, except in those very prominent and important offices, that render their presence in Parliament necessary for

the transaction of business and explanation of measures, is so valuable, that it should receive a broad construction on the constitutional ground, and not as being in the nature of a penal statute against the placemen themselves. The independence of the Judges was confirmed by their commissions being *quamdiu se bene gesserint*, for life or good behaviour, instead of *durante bene placito*, during the royal pleasure. The subserviency of the Judges had been the great opprobrium of the Stuart times, and had probably led to far greater wrong and suffering than illegal taxation or other abuse of the direct Prerogative. No Judge can now be dismissed from office except for conviction of some offence, or by an address of both Houses. The popular error that this great improvement was owing to an early suggestion of George III., is probably owing to that prince having proposed, not only to renew the commissions of the Judges as usual on a new accession, but to make them in future permanently independent of the demise of the Crown—a practical reform, but not to be compared in value to the independence of royal or ministerial patronage. The Judges are still exposed to the influence of promotion or translation, but one could scarcely suggest an escape from this, without resorting to the principle of corporate self-election in the tribunals—which indeed gave monarchical France just and able magistrates, but would probably lead to too great an isolation of interests and opinions, and a reluctance to change and adaptation.

The last clause in the Act of Settlement, that a pardon under the Great Seal should not be a bar to impeachment, roughly settled by a definitive enactment a nice and dangerous question, that has been already considered in the course of this work.

The new Parliament that assembled after war was renewed, and Louis XIV. had acknowledged the son of James as King of England, was more decidedly Whiggish, and asserted the Revolution principles more pointedly than its predecessors.

The unfortunate exile known in history as the Old Pretender, was attainted of high treason, a violence that could merely be palliated by its absurdity, though meant only as a national denunciation. In the same spirit it was made high treason to correspond with him or remit money for his service. And the oath of abjuration of his title was a still more searching measure for breaking up his party in the kingdom, and strengthening the basis of the government. It was enforced not only on all civil officers, but on clergymen, graduates of the Universities and schoolmasters, acknowledging William as lawful and rightful king, and denying any right or title in the pretended Prince of Wales. It must have been particularly hard on the non-jacobite Tories, who professing and indeed practising allegiance to the government, still felt the denial of the Pretender's right, a violation of their hereditary theory. Many like Lord Nottingham had made a subtle distinction to save their theory, between a

King, whom it was proper to obey as king in law, and another whom they might still term rightful by birth, though not entitled to power in law.

The reign of Anne may partly be deemed a continuation of the Revolutionary or transition epoch, whose most interesting period was comprised in the reign of William. And the points in which it more resembled our later constitutional history in the abandonment of the government to party, and the subsidence of the Crown, so to say, from a prominent or active part in public affairs, were rather due to the inertness of Anne's own character, and the natural disinclination to act against her nearest blood relations.

William had no scruples of this kind. In antagonism to the Stuarts he was more Whiggish than the Whigs themselves. While his active exercise of every prerogative allowed by the Constitution to their utmost extent, and even occasional violation of its letter if not spirit, gave the Tory opposition the opportunity of appearing in the new character of partisans of Parliament, and even raised a spirit of republicanism among some of the suspicious or unplaced Whigs. But it was, as the period of Whig or Tory principles displayed in greatest purity, and with least modification from external circumstances, that the reign of Anne is most worthy of study; and did the limits of this work permit would suggest the appropriate occasion for a dissertation and comparison of those two great party principles. To those who wish for a lumi-

nous, and on the whole candid comparison of the two parties and their combined influence on the state, the opening of Mr. Hallam's sixteenth chapter will be a satisfactory and safe guide. With a leaning, as was natural to the Whig party, he is perhaps on the whole too favourable to both. For assuming a disinterestedness rarer in that age than our own, and a freedom from passion and faction rare in any age, he delineates what Whigs and Tories ought to have been rather than what they were, and what each party would have been, unmodified by the influence and antagonism of the other. On the whole their relations at this period are as well summed up in Madame de Stael's well-known and epigrammatic definition, that the Tories loved Monarchy and approved of liberty, and the Whigs loved liberty and approved of Monarchy; as in more lengthy treatises. But as this peculiar relation, turning on the traditional antagonism of Monarchy and Liberty, handed down from the Long Parliament and the Revolution of 1688, gradually ceased from the altered state of affairs, and still more perhaps from the changed position of the two parties in reference to the Crown; it becomes necessary and is more pertinent to the intention of this work to trace the analogy of their principles as exhibited in later times. And here we must distinguish between temporary and partial changes owing to the externals of time and place, and the slow but sure progress and development of party principles, that kept

pace with that of the constitution and tendency of the age. Under the first head we must class the abnormal position of the Whigs, as the depositaries of Crown influence, and the recipients of court favour, during the two first Hanoverian reigns, and the critico-economical position into which in consequence the Tories were thrown. A similarly exceptional position would be assumed in our own day, should the great territorial party, from the loss of the financial preference they had so long enjoyed, become violent economists to the destruction of our military establishments and the dissolution of our Colonial system. But very different has been the gradual modification of views, or perhaps rather application to new topics and questions, that has moulded the later character and relations of our English parties.

As the power of the Crown has become a part of history, and the expenditure and patronage of the Executive been more and more subjected to the will, and exercised through the instrumentality of Parliament, the struggle of parties and the divergence of principles has been transferred to other subjects, and these opinions again in their turn modified by circumstances and the progress of the age. Thus an unreasonable preference and intolerant support of the Established Church, in derogation of the claims alike of sectarians and Romanists, was for many ages a badge of Toryism, and was the legitimate heir of the extravagant loyalty of which

the Stuarts were often the unworthy objects. This feeling mollified in its expression, and far more rational in its conviction, still characterizes the powerful party in the state, whose influence is felt on many questions of education, of endowments, and privileges. On the other hand, the Whigs as the traditional patrons of dissent, though rarely themselves dissenting from the Established Church, have been led by an unwelcome, though perhaps inevitable tendency to the patronage of Romanism in Ireland, and of lax and irreligious opinions generally. So again, on a totally different class of subjects, it was natural that a party based on the great territorial interests, should lean to the Peerage and landed aristocracy, should prefer as a basis of representation rural districts and small influenced towns, to the larger masses of commercial wealth and population; should have watched jealously the rise of new men and families, and rather opposed than favoured the aggrandisement of the mercantile and manufacturing interests. This pervading instinct whether disguising itself as a principle, or avowing its motive as an interest, has tinged the policy of the Tory party in all ages, and has led to many of their greatest errors in later times: to their opposition to Reform in Parliament, that made that great national measure so one-sided and imperfect, to the difficulty thrown in the way of men of talent and character, who would fain advocate their side of the question, and last not least, to the delusion of Protection,

that was to give a preferential advantage to one description of property at the expense of the general community. In thus noting the tendencies, we see the dangers, and suggest the safeguards for both of these great parties. If Liberalism tends to irreligious laxity, and Conservatism is wanting in social adaptation, we must look to religious principle and popular sympathy as the correctives in either case respectively. And the best statesmen for quiet and progressive times, though not possibly for the crisis of restraint or effort, that requires the concentration of a more impulsive character, will be found among the most religious of Liberals, and the most popular of Conservatives. This very imperfect sketch, which is intended rather as an application and following up, than as a substitute for Mr. Hallam's masterly dissertation, to which the reader is referred, will save us from again more expressly returning to the subject, when the parties and principles come before us repeatedly in the sequel.

We must now proceed more rapidly with the leading points of Anne's reign in relation to our subject.

The impeachment of Sacheverell, though a trivial proceeding in itself, and directed against an unworthy object, was not insignificant in its consequences, nor as a display of the state of parties in the nation. This divine, who was the unintentional means of changing a ministry and concluding a peace, had preached a sermon, in which the old doc-

trine of passive obedience was laid down generally, but the Revolution of 1688 treated as no violation of the principle. This distinction maintained too by his counsel on his trial rendered the prosecution very difficult, as his case did not fall within the penal sanctions, by which that great constitutional settlement was supported. The general Tory view, which was the line of defence his counsel adopted, was that passive obedience to the Royal authority was the religious duty of subjects, but that the Revolution of 1688 was lawful from its necessity, the non-resistance of the Sovereign, and the unanimity of the two other branches of the Legislature. The favour with which these sentiments were received by the nation, a favour so earnest as was shewn by the next general election, and consequent fall of the Whig ministry that had ventured on the impeachment, may be viewed as a proof of the Conservative instinct, rather than the Tory principle of the nation, that intuitive conviction of the evil of change, that would make order the rule and revolution the rare exception. While the excesses of the mob in honour of the High Church divine, though partly accounted for as on other occasions from a natural antagonism to the Government, were still indicative of the popularity of the Clergy, and the contempt into which the Dissenters had sunk. The line of defence adopted obliged the managers of the impeachment to lay stress on those points of the Revolution, most politic on general grounds to conceal, and to bring

prominently forwards acts of rebellion and resistance to authority, scarcely wise to parade as precedents. While the sanction of the Homilies and other formularies of the Church invoked by the accused, placed his accusers in the false position of the impugners of a ritual of their own religion, and in the present state of the public mind, venerable in the eyes of the people. The Lords voted Sacheverell guilty by 67 to 59, but passed so light a sentence, that it seemed a sort of triumph of the culprit rather than an assertion of principle against him. The sentence interdicting him from preaching for three years was probably as light a grievance to his congregation as to himself.

The ministerial revolutions of Anne's reign, except so far as they were affected by the reaction on this impeachment, belong rather to general history and the memoirs of her Court. Personally attached to the Tory party, even at one time to the extent of sanctioning a restoration of her exiled brother, she was influenced by the genius of Marlborough and the intimacy of his wife, to lend the influence of the Crown for the greatest and most celebrated portion of her reign to the rival faction. Though with this party Marlborough's connection was on the ground rather of European than British objects. That illustrious commander, but unprincipled statesman, and basest of men, saw in the Whigs the war party of his day, more hostility to France, more sympathy with endangered Holland and down-

trodden Germany, more spirit, ambition, and financial audacity than in their rivals, with whom was his early connexion, and possibly conviction. It was therefore with the Whigs, as the best advocates of his military policy, and the most liberal paymasters of his armaments, that Marlborough maintained a long and splendid political connexion. The decline of the Marlborough influence at Court was about cotemporary with the fall of the Whig party from the reaction above alluded to. The brilliant Bolingbroke and subtle Harley came into power on High Church and Tory principles, with a distant though ill-defined prospect of a restoration, which could hardly have been so guaranteed, as to avert the most calamitous results, and compromise all the securities of the Revolution. It is true that the Whigs had not personally ruled in Anne's cabinet during the early part of her reign. But Godolphin's administration though miscellaneously composed, mainly depended on the Whig phalanx for support in the Houses, more particularly in the war votes of the period. In 1708 the Whigs had forced their way in to the exclusion of other factionists. But their monopoly of office was short-lived, as the Masham intrigue, supported on the hustings by the reaction of Sacheverell's impeachment, brought in the opposite party in 1710, with full Court favour and a triumphant majority at least in the lower House.

The war of the succession had raged in Spain, Flanders, and Germany from 1702 to 1710, with

an expenditure, that exceeded William's war estimates, as much as Ramillies and Blenheim exceeded in glory Steenkirk and Landen. The conferences that had been opened by the Whig Government before their fall, interrupted by that event, were resumed by the new administration with a secrecy and separation from the Allies, that gave its character of insular selfishness and narrow nationality to the Peace of Utrecht; and to the party that negotiated it, a stigma that it is to be hoped the extensive diplomacy and costly wars of George III. have pretty completely effaced.

Sufficiently grave reasons were not wanting for the conclusion of this Peace, which like most of our treaties at the conclusion of war, left us without a gain and our allies without security. But taxation had trebled since the Revolution, and yet the Debt ominously increased. The war had been more glorious, and the supplies raised with less difficulty than in the last reign. But the landed interest was dissatisfied with the new order of things; and the working classes must have felt the new load of indirect taxation, though they submitted with singular resignation to both that, and the nearest approach to a conscription for the service of the war, that was ever attempted in this country by 4 Anne, c. 10. The prospect of establishing the imperial candidate on the Spanish throne, however desirable in itself, seemed hardly practicable as a permanent arrangement against the will of the clergy and their

organized party. Nor did it necessarily follow, though in this case it actually did occur, that a French prince, on the throne of an independent nation, would support the French interest, and sink into an obsequious vassal of the head of his family. Again, there was the fear that the House of Austria might again become too powerful, and as sincerely Catholic as the Bourbons, might again threaten the independence and religious liberties of Germany and the North. Not to mention the usual and just complaints of our weak European allies, who allowed us to fight their battles and waste our treasure in their service with little aid from themselves. These arguments, though they prevailed at the time from the reactionary influences at work in this country, have not been thought so valid by later politicians, partly from experience, and in some measure from reasons that will naturally suggest themselves to the reader, though beyond the scope of this work.

But a subject more immediately connected with the progress and security of the Constitution, was the intrigue with the exiled Court for a restoration, which never wholly abandoned during Anne's reign, acquired a more definite object towards its close, as the prospect of the Hanoverian succession disclosed its not very attractive features. The intrigues of Marlborough and Godolphin, and other still more pronounced Whigs, can only be accounted for, as the resource of selfish and ambitious men against some possible contingency of fortune, that

might render such a connexion desirable. The English Tories and Jacobites were for a restoration after the Queen's death, but with guarantees for the religion and liberty of the state. The Scotch Jacobites, in the spirit rather of simple loyalists and soldiers than of politicians, were for an unconditional restoration, with the enthusiasm subsequently displayed in 1715 and 1745. The latter suggested the abortive expedition of 1708. The wilier English Tories now in office, and supported by the independent Jacobite opposition, opened negotiations with the exiled family at the close of 1710, with the view of superseding the Act of Settlement, but yet combining the religious and parliamentary constitution of the State with a legitimate Stuart dynasty. It is not necessary to repeat or suggest to the reader the manifold considerations that would have rendered this arrangement impracticable or temporary. The wrongs and humiliation of exile, the retaliation of party, the inevitable consciousness of an unparliamentary title, and above all the profession of a priestly and unpopular religion, would have all combined to make a constitutional restoration a very difficult, if not impossible experiment. But far bolder and more zealous than the cautious and undecided Harley, were three other statesmen in Anne's last cabinet, on whom the hopes of the Pretender rested. In 1712 St. John Viscount Bolingbroke, the founder of our long bright school of parliamentary eloquence, of whom no speech is

recorded, but whose swelling periods seem to live in the reports of admiring cotemporaries or electrified hearers, was united in a baneful connection with Ormond and Buckingham, and possibly other of the high Tory party; with a view to supersede the Hanoverian succession by a sudden *coup d'etat* of restoration.

In 1713 the Queen's precarious health seemed to invite the *denouement* of the intrigue. But though little is known of her private feelings, and feeble as they would probably have been, opposed to the existing league of the favourites of the Bedchamber and the intriguers in the Cabinet; it was probable that she halted between a natural dislike of the Hanoverian family, and a proper apprehension of the consequences of a restoration to, at least, the Church as by law established. It is hardly probable that any selfish fears for her own interest influenced her against her natural connexions. For an undue value of power was not her conspicuous fault, nor as all parties agreed in supporting her title, and valuing it as at least a suspension of hostilities; had she any cause to fear her helpless and unpopular brother supplanting her in her own life-time. The Premier himself wavered in his dangerous project, and his ascendancy consequently decreased in the Cabinet. Bolder measures seemed needed. Adherents of the Stuarts were brought into civil and military places of trust. An agent of the Pretender was even received as an envoy from the Court of Spain, and

language most unfavourable to the accession of the House of Hanover was freely indulged both in Parliament and out of doors.

But the sudden death of the Queen, and the indecision, or perhaps rather the indefinite object of the Jacobites in not seizing the critical moment, lost the only chance of a Restoration of the hereditary line; and ushered in the long but inglorious prosperity of the Whig faction, which it will be the subject of the next chapter to analyze and review.

A sketch of Anne's reign would be incomplete without a passing reference to the Union with Scotland: an event of sufficient importance to deserve a more elaborate notice in a chapter, where the relation of the several members of the British empire, and their effects in modifying the Constitution, should be considered, did but space permit.

But here it may be sufficient to mention that in William's reign the Scotch Privy Council was abolished: a body that had survived any utility that it might ever have exhibited, had been odious in history as the instrument of cruelty unscrupulously wielded by successive factions, and was just that combination of the judicial and executive, which the experience of all ages shews to be inexpedient; even had its rules of practice been agreeable to common law, or its principle of action been other, than the ascendancy of a party and the proscription of its adversaries.

The parliamentary union of the two countries

which followed in 1707, was based on articles of mutual treaty between the two legislatures; but was no doubt expedited by the course taken by the Scotch Parliament with regard to the succession, that would have led to a separation between the two crowns on the Queen's death. The terms of the Union were extremely favourable to Scotland in respect of taxation, and commercial and colonial advantages, where the gain was entirely on the weaker side. The apportionment of members, though based on fiscal contribution, seems scarcely adequate considering the rapid growth in wealth and intelligence, which might have even then been reasonably expected from so energetic and generally educated a people. The measure was not however for half a century popular in the northern kingdom, and the natural feeling of regret at the loss of national identity, the absence of Court and Parliament, and the large emigration of the nobility and talent of the nation, was not very obviously compensated by the wider field opened for talent and enterprize, for employment and wealth, in the vast southern metropolis, and eastern and western possessions of the united and imperial isle.

CHAPTER VI.

HANOVERIAN EPOCH.

Apparent failure of precedent struggles—Disregard of humbler classes—New financial policy—Odious and absurd criminal law—Real advantages obtained—Comparison with Continental States—Septennial Acts—Foreign Policy—Funding system—Revival of religious and moral principle—Policy of 1716 and 1746—Exclusive ascendancy of the Whigs, how far justifiable—Borough system—Parliamentary management—Walpole's administration—Specimens of legislation of the period—Chatham.

COULD the mighty minds of the Long Parliament, and the hallowed spirits of the Reformation, have witnessed the full and apparently final development of their work, they would have had small cause of satisfaction in the installation of the House of Hanover, and the progress of the Georgian æra. The specific objects of those great movements seemed to have been attained, but the real result to have failed, or to have disappointed the expectation formed.

The Church had been reformed on the basis of Scripture, and in harmony with the existing political institutions of the country. But vital religion seemed almost as extinct among its ministers, as the principles of morality were disregarded among the laity generally.

The supremacy of Parliament was recognised, even to the extent of changing a Dynasty. But

what was the exercise of this power, what was the constitution of this Parliament? The parliamentary constitution of the first part of the eighteenth century might be defined, the ascendancy of a class, with a view to its own temporal interests and moral corruption. Every legal anomaly bequeathed by a feudal age, or introduced by the practice of a commercial one luxuriated in unchecked growth. The criminal law indeed owed to this epoch its darkest and most Draconic enactments. While for Treason, in its subtle parliamentary application, was enforced a penalty, which, without any profane or violent abuse of language, the devils in hell must have themselves suggested. A process by which the just enfranchised spirit, on its very way to the far unknown, was brought back again to earth and its tyrants, and subjected to torments as cruel as obscene. Parliament, that had fully secured its first and highest object, the custody of the national purse, threw a constantly increasing burden of taxation by customs and excise on the humble and industrious classes. While they lavished the frugal revenue of Elizabeth, on the tasteless magnificence or gloomy profligacy of an alien Court, and maintained for German or colonial objects, a standing army that outnumbered the extemporised levies of Agincourt, or the feudal followings of the Plantagenets. Nor can we satisfactorily account for the corruption of Parliament at this time by the corruption of its origin. For though a large portion of the House of Commons now sat for simple nomination boroughs,

or were returned in many other places by venal and reckless bodies of electors; we do not see any marked or indeed any superiority in the numerous body of members, who yet did represent actual and substantial constituencies in the counties and larger towns. Like their nominated colleagues they appear factious in party tactics: and dead to all higher interests they seemed so little conscious of the principle of representation; that so far from raising the cry of Parliamentary reform, the more popular politicians of this epoch rather discountenanced any movement, calculated to interfere with the existing constitution of the Lower House.

The singular apathy of the great body of a free people under gross misgovernment, and their neglect of the means actually in their hands for an improved administration, if not a real reform of the Constitution, may be in some measure accounted for by the generally low state of morality, which deadened the perception of right and wrong; and also by the steady and continued prosperity, the security of person and property, the constant extension of colonial empire, which the firm though selfish aristocracy secured to its docile subjects. Yet though this corrupt period contrasts unfavourably with the noble struggles that preceded it, and the pure and constant development of free institutions we have since witnessed, we must yet not be blind to the advantages achieved by the earlier struggles, nor to the value of institutions possessed, rather than used, and which have been at once the material and ma-

chinery of our own reforms. The two great points by which the value of every Church and every Government must be tested were already won. The Church was doctrinally based on the Scriptures. And the Government was in recognized and in some degree actual dependence on the governed. These were the two inestimable advantages already possessed by our ancestors of the Hanoverian era, and though both were alike strangely neglected by their possessors, during a long period of corrupt and torpid prosperity; yet when at length Church and State arose and trimmed their lamps, they found the bequest of martyrs and patriots was a real though neglected treasure; and principles long recognised had to be enforced and developed, rather than established, and institutions to be reformed and enlarged rather than invented.

Nor, though it is a slender and unsafe subject of congratulation, should we forget that low as was the tone of public spirit and conduct in our country at this epoch; that it did not appear low as compared with the effete feudality, or military centralisation of the continental monarchies. It is at the darkest period of this era that we are able to contrast by two happily recorded anecdotes, the prayer of a French and English soldier on the field of Fontenoy, very much to the advantage of the countryman and disciple of Wesley. We hear one diplomatist of George II. complaining of the shameless venality of the peasant house of Parliament of Sweden, and see another

rebuking the heartless atheism of Frederick of Prussia at the crowning mercy of Rosbach. While all political writers who visited France during this period, were struck by the total neglect of the interests and wishes of the public, that was silently sapping the throne of the Bourbons.

To those who look at Constitutional Law merely in its theory and positive enactments, and to whom no page on the statute book, or social habit is material, in illustrating an epoch and indicating national character, except in its immediate bearing on the great depositories of power; the unfavourable view taken of the Georgian era may seem as unfair as it is unusual. This Saturnine epoch being too generally regarded by writers, as a sort of epicurean paradise of the affluent and educated classes, who had wrested personal and intellectual liberty from the hands of Kings and Priests; and were not yet exposed to the pressure from without, nor felt the convulsive tremors that foreboded the coming earthquake. Parliament in its anomalous constitution and aristocratic basis was all powerful. The Crown was an expensive but otherwise inoffensive capital to the social column. The Church though nominally that of Latimer and Laud seemed to compromise matters with the laity, and lowered its own doctrines to the level of the general practice, and neither denounced fashionable vice, nor censured reviving schism. The Press was free and sometimes violent, but not dangerous, as its appeals

were but to the few, and on topics little interesting to the many. Taxes were fairly voted, but corruptly applied. Justice was administered with some exceptions fairly according to the letter of the law; but that letter, as regarded small offences, would have been a disgrace to a heathen and barbarous age. That such a statute as 13 of 24 Geo. II. could ever have passed, may well cause surprise. And though it is not a very satisfactory result of a free government, it would really seem doubtful whether a simple aristocracy, elevated as it must be above mere sordid considerations, or a despotism not divested of the consciousness of moral responsibility, could ever have enacted such statutes, as those of 10 and 11 William, 12 Anne, and 24 George II.:* which the eager mammon-worship of the commercial classes obtained from profligate statesmen or empty benches. The frightful misapplication of capital punishments, which characterised this whole era, and disposes at once of the question of its morality, has hardly received the attention it deserves. And judging as we must do all human conduct by its motive, and its result as bearing on the good of the many, we cannot escape the conclusion, that the statesmen and legislators of this age shamefully betrayed their trust, and habitually acted on personal or party considerations. Nor would it be

* Acts inflicting the punishment of death for privately stealing from the person, for stealing in a dwelling house to the value of £5, or in a shop to the value of £2.!!!

too much to say that more innocent blood was shed, by the law lending its heartless pedantry to protect the claims of avarice, than by the religious persecutions of the Tudors, or arbitrary practice of the Stuarts. The practical character of the English people, which, without reference to general principles or consideration of original right, seeks in some prompt and effectual manner a remedy from some pressing evil, has been urged as in some degree explaining, though not justifying this crude and cruel branch of legislation. But the real reason must be sought in the selfish and class principles of legislation in the eighteenth century. While the plausible pedantry of lawyers justified the existence *in terrorem* of statutes, that were to be rarely acted on, and Ministers found in the prerogative of mercy a magazine of cheap and popular patronage, which, while it mitigated the evil, prolonged the existence of a system at length as universally reprobated as its reckless iniquity deserved. Two remarks worthy of record, as connecting this particular question with the general principles of Constitutional law, are attributed to Mirabeau and Mackintosh, the most original thinker and the fairest disputant on these important topics. Mirabeau, in expressing a just and natural disgust at the inhuman severity of our criminal law, not only as tested by principles of justice, but as compared to the theory of law under the existing monarchy of France, yet observed as an important advantage on the other side the perfect fairness of an English trial, while in his own country so oner-

ous and hazardous was the condition of the accused, that if charged with having stolen the two towers of Notre Dame, it would be prudent to seek safety in flight. Mackintosh again, deploring in 1810 the infatuation of the English Parliament, in rejecting Romilly's just and moderate measures for reforming the criminal law, and thus leading to the most invidious comparison between the stubborn inhumanity of the English statute book and the enlightened moderation of the Code Napoleon then overshadowing the Continent; yet adds with singular wisdom and temper, that a system whose main principle was the security of Government, and the centralisation of power in one hand, must in its tyranny and degradation injure the national character and preclude improvement. While a system faulty and unjust in many of its details, but which embraced the great principles of search for truth, personal independence, and local self-government, bore in itself the germ of improvement, and the means and aptitude for self-reform. (See Life, vol. ii. p. 58).

After this digression on a subject rather characterising the age, than influencing subsequent developments, we must return to our summary of public proceedings. George I. commenced his reign by the concentration of all power in the Whig party, on whose oligarchy he reposed his entire confidence. This course, differing as it did from the practice of William and Anne, has been censured perhaps more than it deserves. It was a course suggested by gratitude, and having additional grounds of se-

curity and simplicity to recommend it. George was not an accomplished statesman like William, who could preside and moderate over the jarring counsels of his ministers, nor had he like Anne a semi-title to the allegiance and favour of the Jacobite party. Nor does the great Whig historian forget naively to suggest the danger, that had the Whigs not obtained an actual monopoly of place, they might have soured into a republican party, and thus led the country into new and perilous combinations. This seems a very early admission of the modern remark, that a Whig in opposition is a Radical, and in place sufficiently Conservative. The error in fact was more in degree than in principle, and consisted rather in the permanent and total exclusion of the Tory party, than in the forming an exclusive administration. The party exclusiveness too was enhanced by the aristocratic spirit of the age, which, except in rare instances, narrowed the recipients of political power to certain families of a great connexion. This became so habitual, that when George III. first brought in men of the Tory connexion, and persons of the middle class, more particularly if of Scotch or Irish extraction; it was resented as a personal affront by the Whigs, and created an opposition, that anticipated rather than corrected the subsequent errors of his administration. However, the rigid exclusion of all but Whigs from George I.'s administration threw the large and inactive neutrality of Hanoverian Tories, or Tories who accepted the Act of Settlement, into the ranks

of Jacobite opposition. While this growing disaffection naturally gave confidence and basis to the rebellious movement of 1715, which affected Scotland and the North of England in favour of the exiled family. This insurrection, inferior in picturesque detail and dazzling though transient success to the similar movement of 1745, was yet far more formidable in its conception, as based on a broader mass of support, and directed against an unsettled and unpopular Government. But the name of Parliament, the possession of the capital, and the wealthy though unwarlike South, supported by such an army and navy as now was at the disposal of the executive, prostrated at once the lingering feudality of the borders, and the heroic exertions of warlike Scotland. The severity of the Government scarcely exceeded the claims of political justice, and in one respect is most favourably contrasted with the atrocities of 1746, in that it was principally directed on the ambitious leaders of revolt, and not on the humbler prisoners, who had fallen into the movement from ignorance or devotion to their local superiors.

The trials were conducted, probably for the last time in our history, with some leaning of the Court to the side of the prosecution. Chief Baron Montague is said to have even reprimanded a jury for acquitting some of the prisoners, as allowing enemies of the State to escape. However speciously writers may reason on the actual treason, that was

committed and manfully suffered for in 1716 and 1746, there is a moral instinct in all our natures stronger than the arguments of sophistry, that however necessary it was to punish a dangerous infringement of a great national arrangement, will never view this treason as equal or similar in guilt with that of those, who, not in preference of one claim to another, but in derogation of every right, seek not to substitute one ruler for another, but in the ruin of all seek universal plunder and indiscriminate bloodshed.

The impeachment of the late Tory ministry has been generally thought a straining of the law for party vengeance or party security. For the intrigues to supersede the Act of Settlement by a restoration, though deeply compromising the future interests of the country, came within no construction of the Law of Treason, as they at the most only invaded the interests of a future and contingent Sovereign. So recourse was had to certain terms and concessions of the Peace of Utrecht they had negotiated, which being favourable to France, were held as adhering to the Queen's enemies within the statute of Edward III. But as the construction could hardly be brought within the spirit of that law, and the motive was certainly not treasonable or rebellious, it would have been incomparably more constitutional to treat so gross a breach of duty, as a misdemeanour of the highest and most disqualifying kind. The impeachment of Lord

Oxford ultimately failed; though the Lords shewed considerable disposition to prejudge his case by committing him to the Tower, yet on a subsequent altercation with the Commons on the order of the several charges, the prosecution was given up with an abruptness, that implied an acceptance of pretext rather than cause. Bolingbroke sought safety in exile, and was attainted in his absence in the spirit of party vengeance of an earlier age. The delicate question would have arisen in these proceedings of the personal commands of the Sovereign. As the instructions for the preliminaries of peace, though not under the Great Seal or signed by a Minister, were authenticated by the late Queen's request, and were notoriously agreeable to her personal desire for peace at any price.

The first constitutional change that marked the Whig ascendancy of this period was the Act for Septennial Parliaments. This important measure, which owed its origin to the unwillingness of the Government to meet the General Election, which would naturally occur in 1717, was no doubt wise on higher than party grounds in the unsettled state of the kingdom and new dynasty. But, as intended for a measure of permanent practice, it was justified on more general grounds, which for the most part must be held valid. The Triennial practice arising, as has been shewn above, in a mistake as to the earlier Constitution, had only twenty years' precedent in its favour. Nor had the experience been

such as to make up for its want of venerable antiquity. Though it had not done permanent mischief, it had as it were worked the Constitution too fast, and by rapid reaction upon action had embittered factions, neutralised national policy, and checked internal progress. The Septennial Act was no doubt in theory, an abridgment of the liberty of the subject, as suspending for four years additional, the interference of constituencies and their control over their representatives, who for that period were likewise exposed to the influence of Government, or the supineness of a secure permanent trust. But in practice these tendencies have been largely corrected by the course of affairs, whose emergencies demanding an appeal to the nation continually abridge the seven years limit, and still more so by the influence of the Press and public opinion, which bears more directly the greater that appears the confidence reposed. As a temporary measure, the Septennial Act was necessary to give a fair chance to the experiment of the Hanoverian succession, and though it had the collateral effect of establishing a party; yet this even was not to be regretted, as a good Constitution could scarcely have been worked with an unpopular dynasty, but by that party so aristocratic in composition, and yet so devoted to the ideal of liberty and parliamentary control. A succession of such general elections and violent reactions as had shaken the policy of the able William and popular Anne, must have perilled the throne of the first Georges,

and have launched the bark of the State into new seas of revolutionary change. Nor could the advent of the Tory party to power have been safely admitted, with theories at least tending to a restoration, and leaning necessarily for support on the bolder and more uncompromising spirits of the Non-juror and Jacobite party. It has been already suggested that an average parliamentary period, which scarcely exceeds the triennial duration, is more popular in its tendency than either a longer or a shorter limit. And the chief practical consequence immediately deducible from the Septennial Act was the supineness of members, indicated by the diminished attendance at divisions, and the growth of the system of pairs.

As the Peerage bill of Sunderland never passed into a law, it is scarcely necessary to discuss its merits at any length. Its object was to secure, and against Royalty itself, the actual majority and ascendancy of the Whigs in the Upper House, by prohibiting further creations. The measure being in the highest degree both factious and aristocratic, passed the Peers with ease, but was rejected by the Commons, no less perhaps from motives of personal ambition, than regard to the spirit of the Constitution, which would have been audaciously violated by the proposition. It may be another question, whether the power of creation has not been occasionally abused for party purposes, and even too lavishly exercised on personal objects. But there

can be no doubt, that Sunderland was guilty of audacious criminality, in pressing so great a change on the ignorance or indifference of his Prince. A change which would have not only violated an article of the Union, but have converted the national aristocracy into a close and unpopular oligarchy, barred against the entrance of merit or extent of service, and from the tendency inherent in privileged castes, gradually to shrink into imbecility from physical extinction. No revolution could have more altered the character and relations of an order, whose independence of the Crown is scarcely so important, as their distant but certain sympathy with popular feeling.*

The unpopular personal character of George I. was the great cause of Jacobitism, and the constant opposition, which led a constitutionally disposed Government to revert to such measures as the last, as well as to sundry suspensions of the Habeas Corpus Act; which were never pardoned in the advisers of his great-grandson, when necessary to preserve the very existence of society.

The ignorance and neglect of his duties, his rapacity and petty selfishness, the venality of his favour-

* It is curious that the Minister compromised by so daring a proposition and total failure did not resign. A removal to another department of Government was throughout this period the general resource of a defeated or unpopular minister, without either his own resignation or that of the Government to which he belonged.

ite, and most of all his Hanoverian predilections, exhibited George I. as a bad King in the narrower sphere, now allowed for bad conduct in royalty by the Constitution; and must have required considerable vigour and wisdom in administration, to reconcile even a discerning people to the lesser but by no means trifling evils, the Act of Settlement had entailed on them.

The Jacobitism of the Clergy found its natural organ in Convocation, and more particularly in the Lower House of that body that represented the parochial and Chapter Clergy, among whom the bias of their profession was not centralized by the influence of patronage. For it is hardly necessary to observe that the Episcopate nominated by the Crown, or rather its advisers, gradually assumed a Whig and Lower Church complexion, while the body of the clergy, beneficed in greater numbers by Colleges, Chapters, or the territorial proprietors, reflected the political principles of their patrons with some enhancement of professional enthusiasm. The subject of Convocation having after a long interval been revived of late years, and with a singular analogy of party and object, to what it exhibited at the beginning of the last century, it may not be out of place to notice the pretensions and circumstances that led to its disuse, and would render its revival at least equally impolitic.

Convocation was the Parliament of the Church, sitting like the lay orders in two Houses, summoned,

prorogued, and dissolved by the Crown; and originated in the same financial necessities and safeguards as the other. For, as was observed in an earlier part of this work, it was an ancient though obsolete custom to tax the clergy separately from the laity; as their contributions voted were not always or generally in the same proportions. Even after the Reformation, as every subject was in contemplation of law of the religion of the State, it was quite consistent that there should be a spiritual Parliament, to regulate that department of national affairs, nor could such a trust, be otherwise devolved, than on that great corporate profession, that undertook the national worship and religious instruction of the people. But circumstances changed, dissent became a great fact under the Stuarts, became no less recognized in theory after the Revolution. Convocation then found itself in the false position of a national assembly, with topics no longer national, and with subjects no longer a nation. This difficulty of position, amounting almost to a nullification of authority, and awkwardly clashing with the functions of Parliament, even as regarded advice; was enhanced by the fanaticism or ambition of partizans, who unable to influence the great Lay Parliament with their views, were glad to embarrass the Government and agitate the country with the protests and votes of a Synod. National in pretension, but sectarian only in object as well as influence, they should have avoided political questions, and

every occasion of conflict with Parliament or the Crown. And as the Directory of a great Corporation, the most venerable and influential in the kingdom, they might have done much for education and public morals, as well as Church reform, and Church extension, by acting in concert with the Crown, and as the respected petitioner rather than the impotent antagonist of Parliament. It is needless to inform the historical reader that such was not their course. The political feelings already alluded to as paramount in the Lower House, exacerbated by the perhaps natural tendency of a profession to take an extravagant view of its own interests and importance, led the Convocation into a course of useless and discreditable faction, that terminated its existence in 1717. A long arrear of wrongs and grievances sustained by the Church at the hands of Government formed the general topic of debate, in which factious partizans masked their hate of the new dynasty and preference for the exiled family. It was not to be expected that the appointment of the Episcopate, that most striking badge and cause of the Erastianism of the English Church, would always be exercised, so as to avoid the censure of more reasonable critics. And the preferment of Hoadley could hardly be reconciled with a due regard to the distinctive doctrines of the Church, though his political principles, that rendered him most obnoxious to his clerical brethren, are now common to most public writers. But this appointment led to so much violence in

the Lower Convocation, both against the Crown and the Episcopal chamber of their own assembly; that the Crown was induced to exercise its prerogative of a permanent prorogation, with the general approbation not only of sectarians, who might fear the consequences, but of Churchmen, who regretted the present scandal of such proceedings. Since then Convocation, though formally summoned with each new Parliament, is closed as soon as assembled, and has never been allowed to proceed to the dispatch of business till the present year, 1852. It is hardly necessary to add, that the Sovereign is competent to limit to any extent the proceedings of this newly formed assembly. For adopting even in its fullest extent the analogy of Parliament, it is a Parliament, that has no power to make laws or grant supplies, and as such can have only a formal existence and nominal duration. Yet as a form calculated to excite hopes that can never be realized, and keep alive pretensions that had better be dropped, it would be more wise to disuse altogether even the formal summoning of an assembly, which in addition to the scandal of the divisions it would embody, could never be but the council of a particular religious community, and subject to a Parliament composed of many hostile elements.

In the same Whig and Low Church spirit that now actuated the Government and Parliament, several statutes of the close of Anne's reign, pressing on Dissenters, or in some degree infringing the general

toleration, given at the Revolution, were suspended in 1719, and perfect religious liberty obtained for all sectaries. Yet throughout this period, and indeed down to our own times, the Test and Corporation Act remained as a great barrier against political power, a singular proof either of the weakness of the Dissenting body, or the correct distinction they drew between the enjoyment of religious liberty, and the acquisition of political power, which both seem now embraced in the idea of toleration. The bench of Bishops from their limited number, their age, moderation and loyalty formed a convenient and natural channel of communication between the Crown and Church. And probably some sort of compromise so obvious as to be understood, rather than expressed, may have existed throughout this period, whereby the Government would support the existing bulwarks of the Church, and the Church rulers not oppose or agitate against the annual indemnity Acts, which protected Dissenters in those paths of ambition, which were nominally reserved for Churchmen.

Bishop Atterbury's attainder, or as it was now more moderately termed a bill of pains and penalties, was as in Fenwick's case in the reign of William III. the resource of the Legislature to get rid of a dangerous man, against whom the evidence was not sufficient to support a verdict of treason at law. It is of course open to the same censure or even greater, as in Fenwick's case, evidence once forthcoming had been suppressed; and is perhaps the

latest instance of this kind of violence in an act of the Legislature. The deprivation of him as Bishop of Rochester, was a striking proof of the really Erastian relations of the Church with the State, and both by this warning and the removal of a very able and restless intriguer, did much to break up the Jacobite party among the upper and educated classes, who had numbered it is said not less than fifty in the Parliament of 1728. From this time the Jacobite party steadily declined. Watched and tampered with by Walpole, who kept them in good temper and France on good terms, their subsequent daring rising in 1745, ending in total failure and atrocious cruelty, was all the more disheartening from the unprofitable result of a really brilliant feat of arms. The scarcely opposed march to the heart of England, shewed both a neutral nation and a defective army, but the slender adhesion offered in their hour of triumph was more clearly indicative of the weakness of their party, than if the rebellion had been suppressed at once. Strangely too the dissensions in the Royal family, instead of compromising secured the Dynasty. Disaffection naturally centred in a quarter, whence a safe and speedy prospect was afforded, and Tories and Jacobites found an equally certain and far safer way of annoying the King and damaging the Ministry, in paying court to and supporting the heir apparent, than in corresponding with the Pretender. At length towards the close of this period,

all disaffection, whether of Tory tradition, or Whig disappointment, was absorbed in the blaze of Chatham's national character and world wide successes. And this reunion of Tory sentiment to Whig loyalty in a really national party, prepared for the young heir of the House of Brunswick, that steady basis of support on Protestant and Monarchical principles, that gave the tone to the policy of his long reign, and carried him over difficulties greater, than any his family had before encountered. Yet even into this reign of our own days, a few Nonjuring congregations held on quite down to the new epoch of the French Revolution; as in 1793 a Bishop Cartwright of that sect was still living at Shrewsbury, though of course a very loyal subject of King George III.

This digression may be excused as explanatory of the decline and gradual extinction of a once powerful faction, whose origin and mischievous tendency was alluded to in the last chapter.

In resuming a consideration of the altered position of the Crown, and the change in its resources of power and influence under the new Dynasty, we must give great importance to the increased and permanent military force at its disposal. We have seen the profligate but popular government of Charles II. supported by a mere household brigade of 5000 guards, scarcely sufficient for the ceremonial of the Court and capital, and the garrison of the few forts and arsenals, but which did not include the force in

Scotland or those on the Irish establishment. The peace force allowed William III. was only 7000 men, though England was now immersed in the system of Continental wars and alliances for the balance of power. Here again I conceive the limit intended only for England and the jurisdiction of her Parliament, and that in the cheaper countries and more warlike populations of Scotland and Ireland, an irregular but effective force was maintained on a larger scale. But subsequently to the wars and national glories of Anne's reign, a standing force of 17,000 men was maintained, even in peace, by the United Parliament of Great Britain, independent of those on duty in Ireland, and charged on its now thriving revenue. Yet the army was always an unpopular institution, tolerated only as a necessary evil, and alone kept in cohesion as a disciplined body by the Mutiny Act renewed each session from year to year. Nor was this feeling confined to theoretic liberals or opposition Whigs like Pulteney, but was largely shared by the numerous though less enlightened Tory opposition of the period, who regarded it both as a novel support and instrument of a scarcely naturalized dynasty, and as superseding in honour and importance the old feudal army, associated with their family and party traditions.

The Mutiny Act of 1718, contained for the first time the capital sanctions, by which discipline might be enforced, which was quite an innovation intro-

duced from the Continental armies. In 1735, an Act prohibited the approach of troops to the scene of a Parliamentary election, except under certain circumstances. A provision more plausible than really advantageous, and little in the spirit of that most undemocratic epoch.

The rebellion of 1745 and the war panic of 1756, led to the embodiment of the long-desired militia. But from causes deeply rooted in our national character or social system, this force has never succeeded as a general armament of the property and respectability of the country. And when renewed from time to time in moments of alarm, the national spirit has generally diverged into yeomanry and volunteer corps, composed of the upper and middle classes, and a regular militia drawn exclusively from the lower ranks, which though rather a tumultuary force in itself, served as copious reserve battalions for the recruiting the regular force.

Another less unusual, but far greater source of influence was that already alluded to, as derived from pensions and places, which, in spite of the Act of Anne mentioned above, was filling the benches of the House of Commons with the stipendiaries of the Ministry. The evil became so apparent and was so constant a topic of complaint with the Tory opposition, or country party as they termed themselves; that in 1743, the Ministry themselves brought in a bill, which has effectually limited the number of

placemen in the House ever since. There is reason to suppose, that this measure was more directed against the Court than the Ministry, as it excluded the officials of pageantry and ceremonial rather than of the active administration, and it appears to have been unwelcome at Court, both from the notes of the King, and the speeches of some of the favourite prelates.

The consideration of the two first Hanoverian reigns has been intentionally blended as a whole. For the same policy, and pretty nearly the same Ministry predominated throughout the period. And the pacific and constitutional but corrupt policy of Walpole, that marked the close of George I.'s reign, and the first years of his son's, was more censured than relinquished by his successors, except in his continental relations, where he was least open to blame. The actual corruption, that somehow attaches to the name of Walpole, scarcely characterised his policy more than that of other statesmen even of his own country in that age; and perhaps has become more peculiarly associated with him from the otherwise creditable circumstance, that he signalised and maintained his rule by no sanguinary triumphs on the field or scaffold. An attempt has actually been made of late years to deny Walpole's complicity with the system of parliamentary bribery in use in his time. This, however, is rather too charitable to the First Lord of the Treasury of George II., and it would appear that a practice began

almost upon the Union with Scotland of paying members, who attended on Government divisions, a considerable sum as a sort of retaining fee. This practice is said to have originated in the demands of the Scotch members, who with smaller means, having no necessary property qualification, had to incur the expenses of a longer journey than the English members, and a residence in an extravagant metropolis. The natural result was, that needy and grasping English members soon shared in the Scotch largess, and that that allowance being unknown to law, and the mere indulgence of the Minister, was also confined to those members on whose votes he could rely. Many members, no doubt, of average respectability, reconciled these payments to their own conscience, as a fair remuneration for assisting in the necessary business of the State, the party they really preferred, and in the altered style of living and society, a natural substitute for the homely wages allowed in older time by constituencies to their deputed knights and burgesses. Besides this almost recognized payment, there was a large Secret Service Fund at the disposal of Government, which was tolerated from the supposed necessity of checking or tampering with the agents and partizans of the Pretender, but which was probably largely employed in the arrangement of elections, and the purchase of boroughs to consolidate the power of the Whig aristocracy. The love of money, never altogether dead, and least of all in the English character, na-

turally becomes the master passion of the soul in the torpid lull of the more elevating passions for freedom, military glory, and religious truth, that marked this Saturnian epoch. It is curious and instructive to adduce a parallel instance of parliamentary corruption in another country, revealed by the diplomatic correspondence of the period. Our ambassador in Sweden applies for the not unreasonable sum of £6000, to secure a majority in the Peasants House of the Diet, for the party adverse to the claims and interest of the Pretender. The diplomatist argues shrewdly enough, that if the neediness of a body of yeomen discharging the temporary duty of senators rendered them accessible to such an inducement, it was well worth investing such a sum in securing the neutrality of a warlike and enterprising people—the Scotch of the Continent in their good as well as bad qualities.

The privileges of Parliament were another instrument, that the good accord of both Houses with the Executive Government permitted the latter to convert to its own purpose, and to visit members of the House itself with expulsion for attacks on the House or its majority, and to fine or imprison others for the same offence either against the House generally, or some of its members individually. But this subject of privilege, which in its origin has been already alluded to, did not assume so important a character at this time, as to merit the more careful consideration, which must be given to the cases of Wilkes and

Burdett in the long and stormy reign of George III. The general theory with regard to the admissibility of petitions, which is not very clear, and where the Commons seemed disposed to carry matters with too high a hand even against electors, seems as deduced from the practice from the Kentish Petition for the War in 1701 to the City of London Petition of 1753 against the Jew Bill, to have been this: a petition should not refer even in the most respectful terms to any thing done by the House it addresses, nor impute any irreligion or disloyalty to any measure actually before the House. Indeed, the Legislature of this period appears to have had a very natural horror of petitions generally. As few on public topics appear to have been admitted, till the faint mutter of Reform towards the close of the American War, and the agitation against the Slave Trade in 1787, found vent in petitions, which, at least on the former subject, would have been certainly rejected by the Parliaments of George II. The celebrated law case of Ashby *v.* White, involves rather too much technicality for the general reader. But divested of the intricate legal questions it involved, the antagonism of the two Houses arose from it in consequence of the Lords maintaining a writ of error overruling the Court of King's Bench, and thus entertaining themselves the question of a borough-vote having been well or ill rejected at an election for Aylesbury, which was the original cause of action. The Commons held this

to be a great breach of their privilege, and an actual interference with the constitution of their House, such as only the House or its Committees ought to determine. The points of Law and Privilege raised, not without difficulty in themselves, were further exasperated by the rivalry of factions, which at the time prevailed in the several Houses, and by the conduct of the plaintiff, who acted on the support of the House of Lords, with an interested alacrity that rather hurried the deliberation of the question. The decision of the point was for the time prudently avoided by the Crown, who prorogued a second time the Parliament, and thus allowed the question to drop. Though the assumption, that all commitments by the Commons would naturally abate by a prorogation, is not self-evident, nor has been admitted on later occasions.

But the form in which, what was called Parliamentary Privilege came most into opposition with the liberties of the subject, and most influenced public proceedings, was in reference to the liberty of the Press. Not only attacks and remonstrances were treated as breaches of privilege, but publications whose tone and object was disapproved, and even the infant attempt at giving a fair and full report of their own debates and proceedings were viewed as high breaches of privilege by the Houses and punished as such. In an age when the Law itself was so nervously jealous on the subject of the Act of Settlement, that an inoffensive young printer of the name of

Matthews actually suffered the horrid and revolting death of a traitor, for publishing a Jacobite pamphlet rather too clear in its purport, for which, as a mischievous attack on a great National Settlement, he ought perhaps to have suffered a year's imprisonment; it was not to be expected that the more undefined power of Privilege would fail to make some reprisals on the growing antagonism of the Press. Consequently many political pamphleteers, or opposition journalists were from time to time fined, imprisoned, or reprimanded for publications adverse to the opinion of the majority, even though not reflecting on the votes or speeches of the House. But one case of Privilege, as directed against the liberty of the Press and diffusion of Parliamentary knowledge, is important in itself as marking the dawn of newspaper reporting, and of interest to the writer as implicating an ancestor of his own in the struggle for the freedom and information of the Newspaper press. It is not mentioned by Mr. Hallam, but may be found in Lord Campbell's Life of Lord Chancellor King, that Raikes, a printer of Gloucester, was summoned to the bar of the Lords by a resolution of 26th February, 1729, for having ventured to give in his country newspaper, a report of proceedings in their Lordships' House. This was voted a breach of Privilege, and the daring journalist reprimanded accordingly. It does not appear in what degree the worthy printer submitted to their Lordships' censure, but

the tradition of his family handed down through four generations is, that he removed his journal establishment to another county town, and continued his reports from such data as he could obtain from the capital. This jealousy of publicity as regarded their proceedings, is not a little remarkable, as it characterised both Houses, and not less the popular party than that which relied less on outward support; and is evidenced to this day by the bare permissive attendance of reporters for the Press, and their frequent exclusion with other strangers. The feeling probably originated in the idea of their being secret councils, whose deliberations it was advisable to keep concealed till their result was known: and likewise in the infancy of opposition there may have been a natural reluctance, to expose the names and sentiments of prominent speakers to the eye of power. The occasionally exercised practice of excluding strangers is most valuable, as ever protecting the Houses from the mob intimidation, to which the National Assembly of France was exposed.

The Revenue Laws with their penal sanctions, that rose like an exhalation with the rapid extension of indirect taxation, have been instanced as another source of influence to the Executive, unknown to the earlier ages of the Constitution. But except in the power of connivance or dispensation, it is difficult to attribute any real influence to measures emanating from Parliament, and so unpopular in their exercise.

With all these acquisitions of influence to the Executive, scarcely contemplated by the arrangements of 1688, though perhaps necessarily flowing from it; there can be no difference of opinion as to the decline of the *personal* influence of the Crown. This arose, not only from the elaborate and successful measures adopted by Parliament to check this authority, or identify it with their own, but from other personal causes or partial changes in the distribution of the Executive, that must be noticed at this period. The average of Royal character, meaning by character the combination of ability and the will to exercise it, had throughout the whole Anglo-Norman Dynasty from the Conqueror to William of Orange, very far exceeded the usual energy of royal houses for so long a period; and this must have been felt, though partially in the history of the Constitution, and in the fortunes of the country. This perhaps superfluous energy has certainly not been traced so visibly since the death of William III., and ministerial power has risen in the ratio that the personal influence of the Crown has declined. What was originally the instrument of action has been the agent itself, and wields power in the name and under cover of a great ceremonial authority. Nor did the transfer of executive power from the General Privy Council to its special Committee or Cabinet fail to contribue to this end, both in superseding the actual will of the Monarch, and consolidating the authority of his select advisers.

A king presiding in a Privy Council of twenty or thirty individuals of very different opinions, and many of them very undistinguished politicians, would naturally exercise much greater influence and balance different parties, than when closeted with seven or eight eminent men connected with each other by party and perhaps family ties. Added to this, the two first Georges, who fall within the survey of this chapter, were both personally unpopular from want of grace and the dignified familiarity, which can only come from habit and ease of position. And having a little principality in Germany, on which to indulge the military and despotic tastes, which they shared at least equally with other princes, they had the good sense to abandon the mysterious politics of a rebellious but civil list paying people to the skilful leaders of that great Whig connection, to which they were mainly indebted for their throne, and who were certainly the fittest to wield their delegated authority. Yet though in this period, ministerial influence probably attained its maximum, while the royal sovereignty was at its lowest depression compatible with the reality of monarchy; there were still two points in which the ministries of the day unduly consulted the royal will, and from love of place gave a real weight to what in other respects they treated as a form and tradition. It would have been certainly an opportunity on the accession of a petty and frugal German Prince, to put the Court expenditure on a footing,

that might have still seemed liberal to the Hanoverian Elector, while it would have been a great reduction of the actual civil list. An economy thus exemplified in the highest quarter would have been beneficial far beyond the reductions it embraced. For a different scale of remuneration would have gradually pervaded all departments of the administration, the incomes of professions would have more or less harmonised; and even in the expenditure of independent incomes, more frugality and moderation would have been practised, and a larger margin provided for the independence of younger branches, the extension of territorial influence, and the promotion of those great works of improvement and civilisation, which must mainly depend on the excess of income over ordinary expenditure. But neither in this, nor the more serious matter of unnecessary continental warfare did the Walpoles, the Pelhams, or Chatham himself think fit to limit the extravagance* of the Royal parvenu, nor the German companions of the Hanoverian Elector. It is evident that on the latter point there was but one opinion among the successive ministers of George I. and George II., though unhappily an equal uniformity in yielding their better judgment to the tastes of their Royal Master for

* Indeed in 1729 an additional £115,000 was voted to make up a deficiency of the Civil List. The want of reports put the debates beyond our reach, but they are said to have been violent even in the Lords.

continental warfare. Chatham indeed diverted this propensity into the more national, though perhaps not much wiser career of maritime ascendancy and colonial acquisition. But certainly the censure on the two great wars of the next reign, undertaken as they respectively were to retain an invaluable possession, or for national existence itself, comes with a very bad grace from the traditional heirs of a party, that had supported the Hanoverian wars of George II., and boasted the ominous splendour of Chatham's conquests, which altered the relations of our colonies, and involved us in embarrassments not yet removed.

In closing this sketch of a period in our Constitutional progress rather instructive than interesting, we may notice two or three points, that have not come within a continuous survey of actual events.

An instance of early reporting in a country newspaper has been given, but this was not the practice even in the most prominent journals of the capital till a much later period. Newspapers, indeed, became permanent political organs in the reign of Anne; and towards the close of her reign were first subjected to a stamp duty, with a view to check the circulation of the opposition press, which narrowly escaped a renewal of the old censorship, or at least an acknowledgment of the names of writers. This period, intervening as it did between the liberty of the Press, and the later ascendancy and

unequalled audacity of journalism, was perhaps the peculiar era of political pamphlets, which generally in the spirit of the opposition created great sensation, and gave no small trouble to the party in power.

The purchase of seats in Parliament was so necessary a consequence of the rotten borough system, by which the franchise was still preserved to places where wealth and population had disappeared, that it must have commenced at least as early as this epoch. As tending to introduce the monied interest to Parliament, it would have been opposed to the ascendancy of the territorial aristocracy, and may have provoked the Act establishing a landed qualification for members by the 9 Anne c. 5, made more stringent by 33 Geo. II. c. 20. This Act which requires from members of English cities and boroughs a landed income of £300 a year, and for counties £600, if based upon property generally, would seem reasonable enough, and only such a qualification as the State should require, and prudent constituencies exact to secure competence and independence in their members. Like all general rules of law, it is based on grounds of general policy and average experience, and must be expected to lead to occasional inconvenience in particular circumstances. It did not apply to the representatives of the Universities; as made before the Union it did not extend to Scotch members; and by a particular clause there was an exception in favour of a merchant

worth £5000, and who was himself a voter where he wished to offer himself as a candidate.

It is not a little remarkable that a Ministry, that had failed so completely and in so audacious a measure as in the restriction of the Peerage Bill, should not immediately have gone out; which would seem to imply that ministerial responsibility was limited to the actual advisers or projectors of a measure, and did not affect the whole Cabinet.

The South Sea bubble, that broke in 1721, and covered its projectors with disgrace and its victims with ruin, was one of those indications, like our own railway mania of 1845, of the natural tendency of a commercial people in the absence of any higher public excitement. As might be expected from the greater corruption of that age many more persons of influence and station were implicated in this disgraceful speculation, than in the exaggerated notions of internal traffic under which we laboured eight years ago. And the bribes given to members, ministers, and witnesses to promote the project in George I.'s reign have happily had no parallel at least in the higher quarters in our own times. The £10,000 paid to each of the King's mistresses with a view to this measure was unspeakably disgraceful, after all this country had done and suffered to obtain a constitutional Government, and pure religion on the throne; while their impunity contrasted painfully with the measures dealt to inferior offenders, and the generally merciless character of the penal law at

that time. The abolition of the Scotch secretaryship in 1724 would more properly be noticed in the course of affairs in that kingdom. But the motives for the change, in addition to a personal rupture, and some disturbances very naturally arising from the introduction of the English excise system, were equally just on principle, and equally applicable to the Irish difficulty, which we still enhance by the jobs and faction of a local and separate administration.

The impeachment of the Lord Chancellor Macclesfield the same year on no political ground, but simply for malversation in his office, was a tribute to public opinion, and viewed in relation to the abuses in that Court tolerated down to our own times, would prove how much easier it is to punish an offender in a corrupt age, than to reform a system in a pure one. Though some attempt in that direction was made on this occasion, in the way of prohibiting the sale of offices, and the use of suitors' money.

In 1730 an Act passed on a subject whose principle at least has been revived of late years, though with a very different object; prohibiting foreign loans, except as authorized under the Privy Seal. The opposition on this occasion viewed it rather in the light of giving an unfair advantage to the Dutch, the rival capitalists of Europe. The following year a step was made in law reform, though to an almost absurdly trifling extent, in restoring to

the native tongue those legal proceedings, which had borne in the Norman French the badge of the Conquest to the time of Edward III., had then been for a time English, and had latterly adopted in Latin a mark of the influence or monopoly of the more educated class.

The scandalous state of the Prisons, ready to occupy and signalize the philanthropy of Howard, attracted the attention of the Government and the Legislature about the same time. A small instalment of a vast debt owing by the powerful few to the helpless many, which, with something of the morbid feeling of remorse, has in our own time extended to forget the crime in sympathy for the criminal, and to educate, feed and lodge the felon at the cost of the innocent population. In somewhat the same sense, the Gin Act of 1731, which loaded the indulgence of intemperance with a higher duty and license, than was conducive to the revenue, may be considered the first and not ill-judged attempt to grapple with a growing national vice of a northern and unpoliced people. The frauds on the revenue must have been great indeed, if the Tobacco duty be taken as an example, where the gross income was estimated at £758,000, and only £160,000 reached the Exchequer. Yet in spite of these frauds, and the resolute resistance of the northern kingdom to contribute to indirect taxation, the increase of consumption in this period of peace and prosperity raised the custom dues to above

£3,000,000, though still levied on the scale established at the Revolution.

Walpole's principal failures were connected with the revenue, in tampering with the sinking-fund, and in projecting a general excise, or substitution of duties on consumption for those on imports. Though no doubt he was wrong in the one case, and did not carry his point in the other, he was looked upon by his cotemporaries as an able finance minister; and certainly had no cause to lean against the fundholders, who as an interest were as indissolubly bound up with the Revolution and Settlement; as the purchasers of national domains were with the fortunes of the French Revolution.

His failure to carry out Stanhope's comprehensive toleration, by a bill for relief of Dissenters from the Test, and Quakers from the formality of Tithe process, was an indication of his regarding religious toleration in its enlarged modern sense, as well as perhaps his lukewarmness in the cause. That the Dissenting interest throwing itself into the scale of the ministry, could only number 123 against 251 on division, is a proof of the degree both of weakness and unpopularity to which it had fallen.

The pressure employed by the Minister on some of these occasions, marks the never very clearly defined point of the constitutional extent of power, as exercised on the opposition. More particularly on the defeat of his Excise scheme, the Minister not only revoked some valuable sinecures, but even

deprived several peers of their regiments, an example of authority that has not been imitated in later times. That opposition leaders should be struck off the Privy Council was more natural, in the transition state of that body from a Council of Government to a mere assembly of notables. But the Chancellor Macclesfield's expulsion for gross misconduct gave a criminal character to the subsequent erasure of Pulteney, whose real offence was that of a partisan, though mixed with some personal attack on a member of the royal family. It is curious in tracing the gradual progress of events, and the slow emerging of our modern questions and actual difficulties, to notice that in 1736 the first riot of immigrant Irish labourers is recorded, and in reference to their competition with English workmen. It is hardly necessary to remark, that literature was neglected by the powerful Minister, as much as national glory and elevated principle. In this respect he differed from the earlier leaders of the Whig party as well as from his successors. Yet with all his faults, if we compare him with his rivals, either of the old Tory opposition soon to be lost in the blaze of Chatham's genius and the sun of royal favour, or with the discontented and revolting sectionists of the Whig party, we must admit Walpole to have been on the whole the wisest and fittest for the helm of State.

The general tenor of opposition in his time gives no very exalted idea of either the wisdom or principle of his antagonists. And the unprincipled folly,

that urged with the same breath a reduction of the army and the declaration of war, was well followed up by the subsequent secession of the opposition in a body, after a fair division of 260 to 232; as if the game was up, and no obligation any longer attached to the representatives of the nation.

The systems of the three leading statesmen of this period, Stanhope, Walpole, and Chatham, respectively, may be characterised as premature reform, prosperous inaction, and useless glory. Though neither the first nor the last of these statesmen could vie with Walpole, in either the duration of their power, or their complete ascendancy. Stanhope's abortive measures indicated a tendency to those reforms and adaptations of the Constitution, that have been favoured by the more modern school of Whigs. While Chatham always pursued that course of warfare and colonial conquest, that has from other causes been identified with the later Tory policy. Grenville was in anticipation of Chatham's efforts, and Newcastle carried on a feeble perpetuation of Walpole's management.

Though it will have been seen, that a rather lower estimate than the popular one has been here formed of Chatham's policy, yet in one respect he deserves especial credit, and forms in himself an epoch that must be noticed in this work. In his thirst for glory, totally free from a particle of avarice, he widely differed from the whole race of greedy time-servers, who in every department and grade of

the public administration, from Marlborough and Scraggs to Walpole and Rigby, had plied politics as a profession, and worked the State as a profitable business. His virtue and fame, rare among his contemporaries, were fortunate enough to form a new school of statesmen not very enlightened nor always very consistent, but at least aiming at a higher object and following a purer path than their predecessors. Such was the party that ultimately gathered round his more illustrious son, and directed the fortunes of the Empire for nearly half a century under Pitt and the heirs of his policy. The character of Chatham, which in its faults as well as worth, in its pride and affectation, its hate and seclusion, no less than in its courage, honour, and probity more resembled that of the great men of antiquity, and their travesties in modern France, owed much to the classical education, which was a passion rather than accomplishment with the intellectual aristocracy of the period. And in the magnificent projects so regardless of the sufferings of individuals, and the ultimate welfare of millions, we see the classic and heroic character, in strong contrast to the Christian philosophic type of an ordinary English statesman.

By one and all, however, of the Ministers of this epoch was the scandal and burden of the Hanover connexion felt so strongly, that even Walpole had projected a severance to take effect on the next succession. A measure to which George II. was the

more readily inclined, from his preference for his younger son, who would have succeeded to the German principality.

The jurisdiction of the House of Commons over its own Constitution, so peremptorily asserted in the case of Ashby *v.* White above alluded to has never been since disputed. But the exercise of the right has been found much more difficult than its assertion. And the spirit of partisanship shewn in the decisions, and even the nomination of Committees under the Grenville Act was a scandal within our own memory; though even this approximation to competence and responsibility in the tribunal was looked upon as a great improvement on the mode of deciding controverted elections at the time now referred to. The reference was to a Committee of the whole House, and the discussion of the merits was a mere party debate, and desperate division, as in any Committee on estimates or other administrative subjects. It was in fact a converging series of such decisions with majorities from 7 to 4, that ultimately obliged Walpole to resign. But the scandal continued unabated for a much longer period. Nor, as has been observed, did even the Grenville Act secure election committees from party packing, nor their decisions from grave and just censure. On the occasion of Walpole's fall it would appear from the divisions, that most of the large constituencies were adverse to him, though on different grounds. The great counties generally leaned to the old Tory

opposition as did some large towns, but most of the latter returned members of the revolting section of the Whigs, that was all for domestic purity and foreign war. Indeed it was the solid phalanx of small and nomination boroughs in the hands of Government and the great allied Whig families, which not only maintained the corrupt domestic policy of Walpole, but also the peace and prosperity of our foreign relations during his administration.

The chivalrous but ultimately unfortunate expedition of the young Pretender in 1745, which was the great event and scandal of the next administration belongs to general history, and more particularly to that of Scotland, which was the principal scene of his triumphs and reverses. But it is within the scope of this work to review the policy that was so weak in resisting, and so barbarous in punishing this remarkable attempt. The Union with Scotland had very naturally, though very unjustly caused great dissatisfaction in the Northern Kingdom, which was heightened by the partial introduction of our revenue laws. Nor was this Union in the first instance accompanied by any general disarmament of the warlike mountaineers, or the introduction of a magistracy, that would supersede or compete with their Clan Chiefs in influence or authority. Thus a broad basis of discontent and actual array was provided for the cause of the young adventurer. Then to the south, England was denuded of troops, for a most unnecessary and discreditable campaign on the Continent.

While the Hanoverian Dynasty, with all the advantage of the possession of the Capital, of Parliament, and the Executive power, was but languidly supported even by those classes and districts, whose judgment approved the existing order of things; and the essentially more spirited elements of the nation, the country gentlemen and the mob, were disaffected or neutral. Thus a handful of Scotch Highlanders penetrated into the heart of England, and all but restored a fallen dynasty. And the want of opposition as well as support, they met with south of the Tweed, evinces both the unwarlike character of the English people, and the general apathy that pervaded all classes. Every thing was decided by the army. The Tory aristocracy awaited the course of events in sullen neutrality. Thirteen Whig Peers it is true proceeded to raise regiments, but their patriotism ended in jobs. And as little disposition was shewn any where but in London, to volunteer for the Government as for the Pretender. But the vigour, that would have been more creditably shewn in anticipating or frustrating this rebellion, was amply displayed in the bloody reprisals, which the cowardly and vindictive Government took for their panic and disgrace. It is unsafe to speculate on the degree in which political justice should be measured out. The object of all punishment being to deter from crime, not only the crime itself, but public opinion on the subject have to be taken into consideration. And this is more par-

ticularly incumbent in the case of political crime, which is an offence against the public, and whose punishment should be the mere exponent of public opinion on the subject. Thus even on grounds of policy, any undue severity on such occasions is to be deprecated, that could elevate rebels and adventurers to the rank of victims and martyrs. This leaves untouched the questions of how far Christian forgiveness is incumbent on rulers in avenging their own wrongs, and the Royal Prerogative of mercy peculiarly applicable, where the offence was very general and the degrees of complicity very different. All of these considerations would have suggested a different treatment, than what the unfortunate adherents of the Pretender experienced on the fall of his fortunes in 1746. Not to mention the hellish English punishment of treason, to which many prisoners were subjected with very doubtful legality, whose nativity and offence were alike confined to Scotland, and the comprehensive transportations, to which the mass of the captives were sentenced by consent, to avoid the risk of defence and capital conviction. There were wanton outrages on the inhabitants generally of the disturbed districts of the Highlands, which in the abuse of overwhelming power on every age and sex of a helpless peasantry, and in the sickening cant of liberty applied to justify the vilest excesses, too forcibly suggest that England too has had her La Vendee, on a small scale indeed, and happily not boasted of by either

statesmen or historians. One blushes for the Parliament that could vote thanks, indemnities, and an enormous pension to the Duke of Cumberland for a triumph it was difficult to miss, and for outrages no peril would have justified. But one pities still more the pious author of the "Rise and Progress of Religion in the Soul," for feeling himself bound by his Protestant zeal to laud in the taste of a Court Chaplain, a monster that a Court even has rarely produced, and in whom a careful perusal of the memoirs of the period has not enabled me to find one redeeming trait, except by comparison with his protegée and accomplice, General Hawley.

No stronger argument could be adduced against bringing civil war into a country on any pretext, than the disastrous course and disgraceful termination of this contest; as the suspension of law and liberation of the fierce passions of our nature at once undid three centuries of constitutional progress, and restored a portion of the kingdom to the anarchy and cruelty of the age of the Roses. The proper limit, which policy no less than mercy would have assigned to the subsequent reprisals of justice, would have been to punish capitally the leaders whose ambition had urged themselves, and whose influence had drawn dependents into the contest, and to all minor offenders to have dealt a general amnesty or moderate punishment. For one's soul revolts at the frightful scenes of Carlisle and Kennington Common, where the misguided loyalty of

Highlanders, or the religious zeal of the Lancashire Catholics endured a punishment, with which no Christian ruler would harass the last moments of the vilest offenders. It is curious to contrast the heroism and martyrdom of these last champions of despotism, with the ferocious projects, dastardly actions, and mild punishments of modern traitors of the Chartist and Irish School.

The legislative measures of the Government subsequent to the rebellion of 1745, were more judicious, though they came too late for the evil they should have anticipated. An act of indemnity protected, with a long list of exceptions, both the partisans of the late movement, and also the excesses of the military and judicial power, who had clearly violated the law in its suppression. The disaffected districts of the Highlands were disarmed, and the patriarchal jurisdiction of their chiefs, so long recognized, was superseded by the ordinary magistracy and tribunals of the kingdom. Thus deprived of their chiefs by exile or execution, often transferred to new hands by the extensive confiscations, and with a compulsory change of dress and habits, the mountaineers of Scotland ceased to alarm the peace of the Empire: and in half a century the same offensive function was transferred to a party in the sister island. Yet it is a proof either of the unwarrantable fear, or still more unjustifiable cruelty of the Government of this period, that many years after, when the throne of the Brunswick family was as well established as any in Europe, Dr. Cameron,

the brother of the unfortunate chief of Lochiel, visiting his native land for private business, after years of exile, was seized, and actually suffered the horrible death of a traitor in the sight of secure and luxurious London, in the full civilisation of 1753. This is generally supposed to have been the last act of this sad tragedy. And as in collecting the closing incidents, that distinguished this unhonoured epoch from the following reign, the historian though reluctantly is obliged to analyse the last days of a system happily terminated: it may be also noticed that with the last blood of the Stuart rebellion, may be traced the last instance of the political power of a mistress in the English Court and Cabinet.* That an aged and decrepid prince, who was indebted for his throne to a certain profession of Christianity, should have exhibited the last instance of this discreditable influence, is scarcely less disgraceful to himself, than to the public opinion of the day that permitted it.

Yet even in this corrupt age, when religion was perhaps at a lower ebb than at any other period, there were some indications both in the upper and lower regions of society of a coming reaction in faith and morals. Thus, after the Lisbon earthquake, masquerades were prohibited by proclamation. The drill of the Militia on Sundays was opposed by many laymen in Parliament, as well as by the Bishops collectively. I know not whether

* Some of the influences of the Regency at the beginning of this century scarcely suggest a valid exception.

to attribute to this or an opposite sentiment, the principle of Lord Hardwick's Marriage Act in 1753, and the opposition offered to the Jews' Naturalization Bill, which caused the loss of many seats in the mild general election of 1754, and the mobbing of several liberal Bishops.

A few administrative changes occurred in this period, of which the following are most worthy of notice. There were now two Foreign Secretaries for the Northern and Southern departments, in reference to the geographical situation of the Courts, with which they corresponded.

An Irish secretary was now for the first time appointed by the Lord Lieutenant, independent of the Cabinet of St. James, and possibly of other political connection. The Parliament too of that peculiar country offered great facility for jobbing and favouritism in this age, by the grant of pensions on the Irish establishment, a real grievance, and accordingly never dwelt upon by the patriots and demagogues of later times. This dangerous facility was afforded from the circumstance that the Irish Parliament voted supplies without specially appropriating them, as was the cautious practice in Westminster. And thus large funds were at the disposal of the Government without any scrutiny of Parliament as to their application.

Ireland is a painful subject throughout this period, and may well be deferred till the chapter, where the collateral adjuncts of the British Empire will be considered. But it may be observed that the

strong government based upon and in its turn maintaining Protestant ascendancy, while it gave greater security to life and property than later systems, and so formed the material prosperity of the country, left untouched the religious and social evils that were in due time to bear their appropriate crop of agitation and disaffection. The Church was supine, education neglected, the nobility factious, the gentry dissolute and indigent; and while the Orange Parliament was intent on its own jobs and factions, the great Roman Catholic mass were gradually pressed into the cohesion of an injured and the sentiment of a religious party. Nor did this strong Government and exclusive legislature prevent a very full amount of faction in Parliament, and occasional riots of a very serious nature in Dublin; as on the suspicion of a Legislative Union with England in 1759, which was resented by the populace in a spirit worthy of later times, but with at least no avowal of Catholic sentiments. Where every class behaved ill, it may seem invidious to single out any as prominently guilty. Yet looking at the advantageous position occupied by the Protestant Hierarchy in Ireland, throughout the whole of the eighteenth century, as both the depository of religious truth, the educated link that connected the Irish people with a free and civilised state, with ample resources and prostrate rivalry, one cannot but admit, that where many daughters had done far short of excellency, this institution had more signally failed than most others. And in meting out

the fortunes of systems according to their tested merits, one cannot but indulge in gloomy forebodings as to the fate of an institution, that has so signally failed as an instrument of national conversion and conciliation, and has produced prelates to rival the worst instances of Papal infamy.

One should hardly conclude a constitutional survey of this period, without a passing notice of the origin of Methodism, both as illustrative of the opinions of the period, and as exercising some influence on the progress of public affairs since, in the warmer tone of morality it has imparted to all classes, the revival of religion in the Church, and of agitation and popularity in the Dissenting body. Like the original secession of the Puritans under Elizabeth and James, the simple and pure minded founders of Methodism did not seek to establish a sect, and still less to weaken the Church, but to carry out the principles of that Church to their legitimate extent; and without leaving its pale to indulge in a tone of preaching and elevation of practice, that was more in harmony with its Articles and Liturgy, than with the ordinary tone of its ministers or wishes of its hierarchy. This semi-union was found in the result impracticable, and in consequence a vast mass of zeal and respectability in the middle and lower classes has been transferred to the ranks of general Dissent; which may date its revival in the important elements of numbers and devotion from this unintentional secession towards the close of George II.'s reign.

A few other points of practice and statistics may be noticed before concluding this chapter and period. The practice of putting the high office of Lord Treasurer in commission, with a First and Junior Lords, which began in Anne's reign, has never since been departed from. Its practical advantage seems to be that it admits of the First Minister of the Crown being a member of the Lower House, if necessary for the public service or for party combinations. And this has likewise been generally the practice, as the Commons originate and prolong the most important discussions, and this very discipline is the best school for statesmen in the parliamentary sense of the term.

In estimating the population of this period one has to regret the deficiency of statistical informa tion, or even of any enlightened interest on the subject, which obliges us to have recourse to calculation rather than actual numeration for our sum total. Mr. Finlaison has calculated by retrospection from the first census, and from other data, that at the commencement of this period the population of England and Wales exceeded five millions, Scotland having about one, and Ireland not more than two. I am disposed to think this a full estimate for England at least. As the interval down to the first census in 1801 must be deemed on the whole favourable to population, as a period of internal peace and prosperity : war itself affecting rather the purses than the persons of the nation, the tendency of paro-

chial relief being to stimulate population, and the tide of colonial emigration flowing in a far scantier stream than at present.

The debt, that arose like an exhalation from the Revolution of 1688, did not exceed £16,000,000 at the death of William III., though paying a heavy rate of interest. The wars of Anne and the European system, in which the anti-Gallican combinations of our own revolution had entangled us, raised this to fifty-two millions at the accession of George I., paying an interest of £3,300,000.

The origin of this system of funding has an important bearing on the subject of our inquiry, both as a new source of temporary relief and permanent fiscal burden, and as introducing a totally new interest, that of the fundholders, into both our social and political relations. In this latter point of view it has scarcely excited the attention it deserves. For though party politicians naturally rejoiced in the increasing securities thus given by the moneyed classes to the new dynastic arrangement; few economists or philosophers remarked on the extraordinary fact of the creation of this new species of property, which was in its principal tangible capital and generally actual money, though its interest depended on the taxation of the country. A question is sometimes best viewed on the negative side, and it may reasonably be enquired, if Government had had no occasion or permission to borrow this money, would it have demonstrated its existence in some

other, and what form? Or, if it did not, have we any right to assume there was an increase of wealth in the country, whose surplus accumulations found investment in the need of the State debtor, and produced an increase from State taxation? This inquiry would lead into considerations removed from our subject, but I conceive there was an actual increase of wealth in the country, that found its natural investment in this form, and consequently to the arrest and discouragement of those great works of enterprise and capital, that have characterised the last quarter of a century. It would seem as if foreign war and home debt absorbed the surplus wealth of the 18th century, which in the 16th had raised churches and colleges, castles and palaces, and in the 19th has covered our island with the convenience and dangers of rapid internal communication.

Historians, as eminent as Lord Mahon and Mr. Macaulay, have dwelt on the enormous official incomes of this period as compared with the moderate resources of the State, and thus indicating great corruption; yet I hardly think the proof is sufficiently general to bear out this view. For the Duke of Marlborough, whose immense official income or rather incomes, from several sources, which is generally adduced as an instance, is scarcely admissible to prove a system. His deserts and good fortune, as both the greatest commander and greatest favourite England had ever seen, were as rare in

their combination, as the base and greedy avarice, that grasped at every gain from the most magnificent appointment to the pettiest allowance within his reach.

Though there was no general statute or proclamation on the subject, yet there appears to have been some check on the power of going abroad, more particularly in the case of persons of rank, who were obliged to solicit permission to travel, while the fees, payable at the Secretary of State's office for an ordinary passport, tended very much to prevent the continental excursions of those of less means. This jealousy, which does not appear to have been of ancient date, except in the case of judicial proceedings, probably arose in Elizabeth's reign from the suspicion of the influence of Roman Catholic Courts and foreign education on the youthful aristocracy. And this feeling would naturally be revived in greater force on the accession of the House of Hanover, when in addition to Jesuit intrigues, the sympathy for the exiled family might influence young Englishmen on their travels.

The Riot Act, originally limited to the life time of Elizabeth, had been renewed and made perpetual at the beginning of George I.'s reign, on the occasion of certain Tory or High Church attacks on Dissenters and chapels in London and Staffordshire. It is sufficiently stringent in its provisions, and on that account all the more merciful, and has perhaps done as much as any other enactment to main-

tain a habit of order among our people, together with the right of the freest expression of opinion.

The House of Commons throughout this period, and indeed down to the Irish Union consisted nominally of 558 members; 513 from England and 45 from Scotland. But as has been noticed above, the attendance at divisions shewed a great languor or negligence of duty on the part of members, more particularly after the Septennial Act had given a greater permanence to their position. Lord Mahon has given an interesting list of thirty-six seats in the first Parliament of George I., that returned members of the same name, as usually represented those places down to the Reform Act of 1831. And indeed in most of the seats that survived that measure the names might be continued to the present time.

It would be anticipating the serious discussion that awaits us at the conclusion of this work, to subscribe to Lord Mahon's approbation of those hereditary seats, that combined in some degree the permanence of peerages with the popularity of elections. But as a matter of fact, we cannot omit to state that throughout all this period, and in some degree down to 1831, all the eminent statesmen of the age owed to the smaller boroughs, that figured in the disfranchising schedules of the Reform Act, either their introduction into public life, or their refuge during some part of it. At the commencement of this period the Peerage, including 26 spi-

ritual Lords, and 16 representative Scotch Peers amounted to a maximum of 207. But of these many, as Roman Catholics, were debarred of senatorial privilege, and but a small portion, as in our own days, habitually exercised the right they enjoyed. It is curious that with a smaller aggregate number of Peers, the number of those of the highest or Ducal rank was greater than at the present time.

CHAPTER VII.

GEORGE III.

State of Parties—Change of system rather personal than political—Divisions of the Whigs—Chatham, Rockingham, Bedford—Wilkes' case—Bute—Incapacity of Government, and faction of Opposition—Junius—Duke of Grafton—Lord Camden—Commencement of American troubles—Comparative view of 1770 and our own time—Rockingham administration—Burke—Lord North's administration—Important secession of Fox—Progress of Colonial troubles.

In pursuing the chequered yet still progressive fortune of the Constitution through the long and stormy reign we have now arrived at, the writer must claim an additional measure of indulgence, on the ground both of the difficulty and necessity of the subject treated of. If history, as it approaches our own time, and has a more direct bearing on the party and class interests of the present time, becomes on that account more difficult to treat impartially; and as its materials become more abundant, and the authenticity of facts better ascertained, the value of this matter is more doubtful, and the inference from facts more questioned; it surely is no reason for a political writer to evade the crisis of his task, though it may be a ground for increased diligence, and a more watchful regard for truth and justice. It has,

therefore, been always a matter of regret to me, that Mr. Hallam's masterly work should have closed at the opening of this important reign. As the continuation of a work, whose silent but irresistible influence on the reading public has been, to establish at least the theory of Whigism, and to alter the character and dogmas of Toryism itself, might have, if pursued in the same spirit through this reign, have dispelled some of the prejudices of the Whigs, and compelled them to some change of sentiment on the character and policy of George III.

And yet so indelible is party spirit in its milder form, that I can hardly attribute to any other cause the favour, with which writers so just as Hallam and so philosophic as Mackintosh, have regarded the epoch of the two first Georges. The view of that period given in the last chapter is, I am aware, far less favourable, and indeed taken from a different point from that chosen by other writers, who have viewed it rather as the millenium of the Constitution, at length placed beyond the reach of its early reverses, and not yet exposed to the strain of new combinations, or the effort to repel new elements. Yet I would be far from confining the strictures to the rulers and statesmen of the period: the blame extends equally to the people and public opinion, that supported or tolerated such men and such a policy.

In order to arrive at a tolerable notion of the first relation of parties to each other, and of the King to

them that produced the first embarrassments of George the Third's reign, and rather unnecessarily both suggested and stigmatized his later policy; it is desirable to study a little the natural history of the two great parties, that were again to appear in fierce antagonism on the arena of English politics.

The Whigs, a still ruling party, strong in the high aristocracy, the public offices, the phalanx of rotten boroughs and the professions, had perhaps rather lost than secured the affections of the middle class in general, during their long career of prosperity and corruption.

The independent Whigs, who respected the earlier theory of their party, and looked to Chatham as their leader, were through him alone connected, though not closely, with the existing Government. As the principles of a party are best instanced by the known character of some one or more of its leaders, we may say that the Whigs of this date professed the principles of Somers with the practice of Walpole.

On the other hand the Tories, long excluded from public affairs, were in the mass but little more than a ponderous squirearchy, yet strong in their parliamentary position on the broad basis of the county representation, the attachment of the Church and rural commonalty, and the leadership of some distinguished members of the Aristocracy. Their principles, never very defined or consistent, and at this time less so than usual, were pretty much what

might have been expected from a party formed by Clarendon, misled by Bolingbroke, and again absorbed into nationality by the genius and glories of Chatham. Their theories, high Church, monarchical, and antiquarian, generally were such as Clarendon would have approved; to this were added somewhat of that idea of personal rule and popular interference, that Bolingbroke had associated with the Sovereign, and which was as far removed from the costly ceremony of the Whigs, as from the formal idolatry of Clarendon. While Chatham, not indeed as a Tory, but as the first Whig statesman of sufficient liberality to admit, and genius to attract the co-operation of Tories, had infused, particularly into the younger men, some portion of that aggressive and enterprising character, that now for the first time characterized an essentially inert party. So far from there being any design in the young King to substitute one party for another, and thus invert the assumed policy of his family since their accession, there does not appear to have been any party connection, or party leaning in that direction, beyond his well known and not unreasonable attachment to Lord Bute. The association of Leicester House had been rather with the independent or anti-Walpole Whigs; and the real restorer of the Tories to power was Lord Chatham; whose character had attached them generally to his government, and whose liberality had employed them in many departments, with the same national spirit that he had

raised regiments of the disaffected Highlanders, in neglect of the Act against Popish enlistment.

Lord Bute was a Tory, at least by birth and connexion, and, introduced into the Ministry, deserted by Chatham, and opposed by the compact phalanx of the aristocratic Whig connexion, who resented as an insult or wrong any participation in their vested rights; he naturally looked about for support in other directions, and fell back upon the loyal, though not very intelligent Tory party in the Lower House, and took to his counsels some of the rising young men of their long proscribed aristocracy.

With respect to the propriety of bringing forward Bute at all, with his limited abilities and experience, and total want of a parliamentary following, I cannot altogether subscribe to Lord Mahon's general position, that a king should only appoint a minister as designated by public service. Surely a king has the same liberty to advance and give an opportunity to a personal friend, that any other patron has. There must be a beginning and some little impulse in all careers. The country would have lost the services not only of Barré but of Burke, but for Lord Shelburne's not always infallible patronage.

The blame was much more Lord Bute's, who in middle life was led by his ambition to grasp at a position for which he was unfit, than that of the young King, who favoured an old friend, and probably like other ingenuous youths, rather over-rated the powers of his early instructor. Nor again, in a

constitutional point of view, could an influence be deemed less objectionable, when acting in the secrecy of private friendship, than when coupled with a definite employment and ministerial responsibility.

However this step, false no doubt on the part of the favourite, led to the principal embarrassment of the early part of George III.'s reign ; and indirectly from the new schism of parties it occasioned, to the virulent opposition that averted no error, though it embittered and deepened every contest of the dangerous period that was to follow. The Press, America and France, were destined to be the successive adversaries of the simple young Prince who ascended the throne in 1760. And each of these adversaries, though the first and third appeared in their most odious and uninviting forms, enjoyed the patronage of that Whig opposition, which in power had doomed the printer Matthews to a hideous death for a foolish pamphlet, and had waged with France the most senseless wars of continental interference and colonial aggression. Indeed, so far were the Whigs from being a peace party at the accession of George III., that one of their earliest charges against him and his supposed advisers was the ignominious conclusion of the war, that raged at his accession. Though what could have been the object of protracting hostilities is not very apparent, when Spain had thrown herself into the scale of France, and our own alliance on the continent was limited to overmatched Prussia and decaying Holland.

There is no doubt that both George III and Lord Bute wished for peace. The King was the first of his family, who was not a professional soldier, and therefore could not fancy himself a great general. But the national feeling, too strongly expressed on this occasion against the peace, may have had no small weight in future years, in encouraging a warlike pertinacity, that was clearly not natural to him, though too common in the breast of kings. Considering the stock he came from, George III. was a wonderful man; and it is difficult to say for how much of private morality, particularly in the higher classes, we are indebted to his example and authority. But so corrupt a people and so selfish a ruling faction as the Whigs did not appreciate the simple virtues of their sovereign, while they were acute to mark every error of temper or judgment. The venality of the Boroughs at this first general election of the reign was, what might be expected from a sink of corruption, agitated by no particular impulse of passion or opinion. Sudbury actually advertised itself for sale.

While on the other hand the King was betrayed into the error of striking off the list of the Privy Council, even so independent and eminent a Whig peer as the Duke of Devonshire, for mere retirement from office the mildest form of opposition. Here it must be owned there was a personal interference on the part of the sovereign uncalled for, and not even justified by the precedent of Pulteney in the last reign.

The Civil list for the new reign was fixed on the liberal vote of £800,000 per annum; and shortly after the King's marriage, a jointure was granted of £100,000 to the Queen in the event of her surviving him.

Chatham, as we must call him by anticipation, had left the ministry, because it would not add war to war, and involve Spain in the almost general hostility raging. This was afterwards necessary, in consequence of the intimate union entered into by that country with France, known by the name of the Family Compact. This which seemed to justify Chatham's foresight was not on that account more pleasing to the new Minister. The general peace of Paris was therefore hastened, to the damage as was said of our remaining allies, and on terms but little advantageous to ourselves, considering that the fortune of the war had been favourable to us by land and sea. Yet the terms of peace were approved by the largest majority, that had ever yet silenced an organised opposition in Parliament. The ministry were supported by the long inert strength of the Tory party, some of whose leaders now appeared in office, by a large section of the Whigs, who from economic or other motives feared Chatham's warlike tendencies; and by a new party of no very definite or perhaps consistent political opinions, but who as the King's friends were disposed to support the personal policy of the sovereign, and found in the firmness of his character, and unusual length of his

reign, a basis of support and a field of patronage they hardly deserved. It of course very much depends on the character of the sovereign, how far such a surrender of opinion to his personal views is justifiable. But I hardly consider such a course is reconcilable with the principles of the English Constitution, and the nature of a representative trust, except in the limited range of subjects, where the sovereign's personal peace and domestic happiness are rather involved than any public consideration. Yet though heavy majorities supported the early pacific policy of the young King, it cannot be denied that the talent of the country was from the first arrayed against his government. And while the liberal party as represented by the Whig nucleus of opposition, denounced the peace and abandonment of allies, as virulently as they did the war and support of allies at a later period, the genius of political writing and party bitterness rose with a new wing from the ignominious stagnation it denounced.

The remarkable chain of libellous pamphleteers from De Foe and Swift to Paine and Cobbett, that not inappropriately link the ephemeral audacity of modern journalism, with the graver malignity of an earlier time, are worthy of a treatise by themselves, both as a moral phenomenon, more curious than attractive, and as exerting the influence in anticipation our newspaper press was subsequently to exercise.

It was perhaps the first significant indication, that Parliament as legally constituted, and as packed by the combination of parties and influences, did not fully express the opinion of the public, that the political pamphlet rose into the dignity of an organ, and spoke or seemed to speak the sentiments not of the million readers of modern newspapers, but of the myriads who found no exponent in Parliament. This was the natural history of Wilkes, and of the abler but not better Junius, and arising as they did from a political necessity of a corrupt age, they were destined in the result of their combat with authority, to add at least one other great feature to our constitution, and leave an impress of their action both on the pride of Parliamentary privilege, and the tone of political writing.

There was another circumstance of the times which naturally irritated independent genius, and almost marked out the sinister path for its political career, which was the neglect of literary and general talent in the formation and even the patronage of governments. This error had characterised all ministries from the accession of the House of Hanover, not of course intentionally, but rather from the natural distaste and unfitness of genius for the matters of routine and detail, which, with the increase of security and civilisation, must every year more and more occupy the several departments of Government. It was truly absurd on the recent occasion of the natural and obvious elevation of Mr.

Disraeli, to see the newspaper press indulging in superfluous justification, or profound inference at the unprecedented circumstance of the rise of a literary man to a leading political position, as if it were indeed a triumph of the liberalism of the age over aristocratic exclusion and medieval prejudice. Whereas not to mention the brilliant cabinets of Elizabeth and James, where the Philosophy of Bacon and the Poetry of Spenser could commune with the historical lore of Raleigh and the mathematical researches of Mildmay; one would suppose that every newspaper scribbler must have heard of one John Milton, who was secretary to the Protectorate; of Isaac Newton, who was a Master of the Mint; of Addison and Prior, who represented poetry and prose in the public service of Anne. And that it has been in proportion as our institutions have become more liberalised, that genius has shrunk from the degradation of the hustings and drudgery of the bureau, to the more congenial field of independent speculation and irresponsible disquisition.

The constitutional embarrassments of the early part of George III.'s reign had so little chronological sequence, and may so mainly be referred to three remarkable though not equally respectable characters; that under the heads of Bute, Chatham and Wilkes, may be classed every important combination of party suspicion, of faction, or popular ferment, for the first ten years of this stormy reign. The rise of the American troubles and the constitutional

points they involved deserve a separate notice in anticipation of the chapter devoted to the collateral relations of the Empire.

The moral to be drawn from the wretched history of Bute's unpopularity, and the still more disgraceful popularity of Wilkes is this; that personal favour will irritate the whole caste of professional statesmen, and that any injudicious persecution of a worthless demagogue, will convert him into an honoured martyr and formidable opponent. In the cases as they actually arose, the position of Bute was rendered still more untenable by the close organisation and official experience of the Whig aristocracy, and the vulgar national prejudice against him as a Scotchman and hereditary Jacobite. While Wilkes' persecution was rendered at once more tempting and less worthy by the inordinate flagitiousness of the man, which exceeded the usual license of at least English patriotism, and his want of public talent, that rendered him comparatively harmless in a parliamentary position.

The complications arising from Lord Chatham's reluctance to take office, impracticable behaviour in office, and unaccountable faction after leaving office, are not so easily disposed of, as turning upon the eccentricity of a great but greatly over-rated man.

The negociations with this statesman and the combinations he formed, broke up, or stigmatised, are the natural outline of the early part of this reign; but can scarcely be intelligible, without some

preliminary sketch of the relations of Lord Bute to the Crown, and the proceedings of both Government and Parliament against the libellous demagogue who ultimately triumphed over them both. Lord Bute's career is soon told—raised to a position by the favour of the young King, which neither native talent nor acquired official experience had fitted him for, he appears to have indulged in some of those little egotistic expressions of pride and complacency, that argue rather a weak than a bad mind, and in some of those friendly and family jobs, for which Walpole and Newcastle ought to have prepared the public, and which were perhaps more excusable in a man of provincial and long proscribed connexions. His elevation obtained for him the cordial animosity of the great Whig connection, while his origin exposed him to the insult of the rabble. Before these untoward circumstancees he quailed and resigned office, no doubt to his own peace and safety, but little to the relief of his young sovereign, who not only bore the odium of this short ministry and the peace it had achieved, but was always represented for years after, as being under the control of this mysterious and unpopular nobleman, though not only all official connection, but even personal attachment had ceased between them. It was natural enough that speakers like Wilkes, and writers like Junius should dwell on this imaginary influence. But it is wonderful and lamentable, that Chatham, after having treated the idea with contempt, when it

possibly had some truth, should seven or eight years later have raved about an influence behind the throne, and a power greater than the throne itself. The positive denial by two ministers no longer in office, that they had known or felt no such influence, might have convinced the most prejudiced of the falsity of the charge; and it would even appear that the discovery of the too intimate relations, that had arisen between the Earl and the Princess Dowager had deeply wounded the conscientious though not acute mind of the young King, and caused an entire estrangement of his affections from the guide and friend of his youth. He was succeeded in his ministry by George Grenville, little to the pleasure of the sovereign, and even less to the advantage of the country.

The great Whig party, towards the close of Walpole's ministry, had been divided mainly into two sections, the ministerial and independent, according as they yielded to the corrupt practical form, in which Whiggism presented itself in power, or held to the ideal transmitted from a better age. These two parties had virtually combined under the union of Newcastle and Chatham in the latter years of George II., but now were broken into at least four almost family combinations. Of these the Rockingham party was probably the most numerous, and certainly the most consistent, and formed indeed that nucleus of opposition, round which once more a great Whig party formed. But they were deficient in leadership, and though once in

office for a short time, were perhaps less acceptable to the King than any other section of public opinion. The Bedford party was also a powerful section of the great Whig connection, and though never professing Tory politics generally supported the Government, and indeed largely participated in the advantages and responsibilities of office. Lords Gower and Sandwich of this connection were deeply compromised in some of the most exceptionable and disastrous measures of this period. The Grenville and Chatham sections had less numerical weight on division, but were strong in the talent and character of their chiefs, and had still more of the cohesion and fidelity of a family party. Of these Lord Chatham and his friends were for the most part in opposition, and the Grenvilles as generally in power during this period.

The great Tory party presented but few salient points for remark, but alike from its numerical weight and its passivity, it was a most valuable basis for ministerial support. Composed for the most part of country gentlemen and a long proscribed portion of the aristocracy, it had neither fitness for office nor wish to originate measures, but basking in the return of Royal favour, it obeyed very steadily the impulse of the Treasury and Windsor. They had hardly any leader of note before the rise of Lord North, for Bute was an unpopular favourite ; Lord Egremont had little weight beyond his name and property ; and Dashwood's

character would have sunk greater talents than he possessed. But Lord North, and Jenkinson who had been Bute's secretary laid the foundation of that new school of Tory statesmen, that brightened in talent and refined in principle as it continued, till at length in Canning and Peel they seemed scarcely distinguishable from their nominal opponents, save by their preference of practical reforms to organic changes.

Thus then the parliamentary phalanx that supported the strong, and in some respects arbitrary measures of Government, down to the American war, and even during a great part of that struggle, was composed of the inert mass of the old Tory or country party, the more brilliant section of rising statesmen of the North school, who claimed the especial character of being the King's friends, together with the Bedford and Grenville sections of the Whig party, and for a short time even included the name of Chatham. This last statesman so evenly divided with Wilkes the embarrassments of the first fifteen years of this reign, that in beginning with the less estimable personage, one is rather led to prefer disposing of that career, that has at least the simplicity of consistency to recommend it; and in the uniform character of skilful and courageous villainy presents a striking contrast to the pride and affectation of Chatham's character, at once morbid and artificial.

The origin of Wilkes' troubles and triumphs was the publication of a libel, No. 45 of the North Briton,

a low and scandalous journal of no particular ability, but directed against the then ruling favourite. The libel itself was hardly distinguished from its predecessors in either ability or acrimony, though perhaps more personally directed against the sovereign. Wilkes was arrested under a General Warrant from the Secretary of State's office, and committed to the Tower. At first he was treated severely, but as soon as the prison rules were relaxed he received visits from two persons, whose actual or subsequent positions were not much in harmony with such an association. Earl Temple, the head of the Grenville family, though not party, seems to have acted from a personal hostility to his brother, then at the head of affairs. The Duke of Grafton was also at this time in opposition, though his connexion with any section of the Whig party was of the slightest, and his subsequent implication in all the errors of government deep and daring. Chief Justice Pratt, on a clear point of law, discharged the prisoner when brought before him, considering, that as a Member of Parliament he was privileged from arrest for libel, or for any other offence than treason, felony, or a breach of the peace.

Encouraged by this success, to which the haste and ignorance of his prosecutors had helped him, Wilkes openly defied the more tardy proceedings of the Government, set up a press in his own house, and commenced the profitable trade of a patriot and libeller. The Government very properly removed

him from the command of the Bucks militia; but with rather a stretch of authority also removed his supposed patron and instigator Earl Temple, from the Lieutenancy of that county and his seat in the Privy Council.

In the course of the session, and on his return from a short retirement to France, Wilkes was assailed the same night in both houses of Parliament. The notorious "Essay on Woman," long in manuscript, and only printed for private circulation among a few of his depraved associates, was brought before the Peers by Lord Sandwich, to whom it was dedicated, as a gross breach of privilege which it was voted, as well as another obscene and blasphemous parody found among his papers. In the Commons, where Wilkes sat himself as member for Aylesbury, the subject of his imprisonment and its cause was brought forward by Ministers; and after many debates and divisions it was carried by large majorities, that No. 45 of the North Briton was a false, scandalous, and seditious libel, tending to traitorous insurrection. Shortly after this vote Wilkes was wounded in a duel with a member of Parliament, who had taken an active part against him. The Lords addressed the Crown to prosecute the author of the obscene and blasphemous "Essay on Woman," which it could not be doubted the Crown was ready enough to do. While the Commons proceeded to expel the author of the North Briton. Wounded, and involved with all the three

great depositaries of power in his country, Wilkes did for once retire from the storm and sought refuge in France; while the proceedings for his expulsion and outlawry went on with little interruption from his absence. This appearance of being a persecuted man, together with the wit and courage he had shewn under very trying circumstances, raised a strong popular feeling in his favour. His gross and notorious immorality was thought not to exceed that of the higher orders in general, nor that of certain of his prominent persecutors in particular. Thus riots took place at the burning of his publication at the Royal Exchange as voted by both Houses. And a Jury in accordance, be it observed, with the law as laid down by the Chief Justice Pratt, awarded him a thousand pounds damages in his action against the Secretary of State for false imprisonment. However, with the intricate system of compensation exemplified in English law; while favoured by the mob, and on one point by the law itself, the other proceedings went on against him; and he was both expelled the House of Commons for his libel, and outlawed on the indictment at common law, to which he did not venture to plead or appear. The Ministers had also sought to overbear the explanation given of the law by Pratt on the subject of privilege, by resolutions in both Houses, that privilege of Parliament did not extend to charges of libel any more than of treason or felony. These resolutions were opposed by many

on constitutional grounds, who had little sympathy for the worthless demagogue who had given occasion for them, and had even less intention to embarrass the Government. It was noticed that on this occasion, however, every Scotch Member voted with Ministers, so deeply had that people felt the libel, that had been aimed at Royalty through contempt for them.

To keep up the appearance of constitutional fairness, though with some affectation, proceedings were also taken in the House of Lords against an obscure and worthless book, Droit Le Roi, perhaps the last of the Jacobite or Filmer school, which was voted a false, malicious, and traitorous libel inconsistent with the principles of the Revolution and the existing establishment. A vote which, even in its affectation, shews how the theory of Whiggism was generally recognised even by those, who urged on the arbitrary measures of this period.

The question of General Warrants, or Warrants that do not specify name and charge, was of much more constitutional importance. Precedents were not wanting for them even of a very late date, but they were generally justifiable on some plea of war or alienism, that seemed to take the cases out of the pale of common law right and ordinary proceeding. The opinion of the legal profession, headed and expressed by Chief Justice Pratt, was decidedly against them. And the resolution moved by the

opposition declaratory of this sense, though strenuously resisted by ministers, was almost carried on a close division.

On the whole, considering the precedents, Grenville's ministry cannot be blamed for having employed them, though after the expression of the great and independent authorities of Westminster Hall, they erred in still insisting on them, and in endeavouring to stifle the expression of Parliament on their illegality. The Ministers probably found some support in the antagonist feeling of the House to the Judges, and of its preference of its own privilege to the law as laid down elsewhere. Though Pitt and Norton both expressed themselves violently on opposite sides on the occasion, there is no doubt that Sir F. Norton was so far right; that there is a wide difference between an enactment concurred in, or custom recognised by the three branches of the Legislature, and a resolution only voted by one of them, with the heat and passion incident to a single contest.

From this time in 1764 to 1768 the prosecution and fame of Wilkes alike slumbered. In 1766 indeed, under the Rockingham administration, Wilkes having exhausted his own resources, and even the remittances of his partisans, was anxious to come to terms with the Government. Though still an outlaw he was encouraged by the resolution, at length come to by the House against General Warrants, to come over secretly to London on two

occasions. On the first Lord Rockingham prudently declined seeing him, but Burke acted as his negociator. The patriot's terms were a free pardon, a large sum of money, and a permanent pension of £1500 a year on the convenient Irish Revenue. The ministry did not dare to propose these terms to the King or to Parliament, but so great was their terror of a renewed contest with him, that they raised in private subscription a large sum for his immediate wants. On a second occasion he again came over and had an interview with the Duke of Grafton, which led only to an angry correspondence on Wilkes' return to France, as the Minister informed him that neither the King nor Lord Chatham thought fit to take any notice of his professions of loyalty and desire for pardon.

In the general election of 1768 Wilkes came over, and though an outlaw, had the effrontery to offer himself as a candidate for both London and the metropolitan county of Middlesex. Defeated in the City, he was returned by a large majority for the County. The House deferred to the next session the stormy question of whether, under the circumstances, he was competent to take his seat. He conducted himself however with address and submission to the law; surrendering to his outlawry, and being committed, his case came on a few months after, when by one of those unlucky blunders, to which political prosecutions seem peculiarly liable, it appeared there was a technical flaw

in his outlawry, which rendered it null and void. The original verdict was however affirmed, and he was sentenced to imprisonment for two years, and to two fines of £500 each for his two libels. Serious riots ensued on this decision. Wilkes was rescued by the mob, but had the good sense to escape from his dangerous friends and seek shelter in the prison assigned him. The riots however were renewed to break his prison—the military were called out and lives lost, and the usual absurd verdict of a coroner's jury on the bodies had to be honourably reversed by a more regular tribunal. Other riots followed, with attempts to tamper with the soldiery, and to damage or influence certain classes of workmen and artisans; —and altogether a new spirit seemed to have come upon the lower classes, who had scarcely shewn their strength, or even expressed their feelings in this tumultuary manner since the ominous beginning of the Long Parliament in 1640. Even during the term of his imprisonment the agitation was kept up by the death of his colleague in the representation of Middlesex, and the consequent election of his advocate Glyn in his place. Early in the following session of 1769 his case came before the House—a small party complaining of his imprisonment as a breach of privilege, and a larger number urging his expulsion from the House for his manifold offences. A fresh libel on Lord Weymouth, the Secretary of State, brought Wilkes again before the bar of the House, and incurred fresh censures

from that body, of which he was an elected though imprisoned member. While the Government were thus unworthily wasting the public time, and compromising the dignity and popularity of the Crown, the people with still greater absurdity elected Wilkes an Alderman of London; thus making him a magistrate of the very City that had been the scéne of his iniquities, and was now the place of his confinement. At length Lord Barrington, on the part of the Government, brought forward a substantive motion for Wilkes' expulsion, which was carried by a diminished majority of 82; being encountered by the growing strength of the opposition, and the ministerial majority being reduced by the reluctance of independent members, and the misgivings of the lawyers generally on the point. As might have been expected, Wilkes was re-elected, no other candidate venturing to compete with his popularity. The spirit of the House rose with this repeated provocation, and a majority of 146 affirmed his incapacity, and declared the last election for Middlesex null and void. This again produced a corresponding enthusiasm on the other side, and this enthusiasm took the, to its object, very welcome course of a large pecuniary compensation for the payment of his debts and the support of his agitation. This was perhaps the first, though obviously not the last, instance of paid patriotism. Indeed, from this time, not only in Ireland but even in purer England it has been the surest resource for

ruined fortune and damaged character, to become identified with any existing popular question or demand.

As a little episode in these transactions one may observe, that with their usual bad luck or want of common discretion, Ministers chose this moment to go to the House for half a million to pay the debts incurred on the liberal Civil List, as voted at the beginning of the reign. This great and unaccountable embarrassment probably arose from the profusion and gross mismanagement of the fund, that subsequently came under the reforming hand and just discrimination of Burke.

But a great pecuniary deficit, combined with no such splendour, as yet made Versailles the brilliant centre of the world, but with great simplicity and personal economy, naturally suggested the idea of parliamentary, or at least, electoral corruption — an application of public funds more distasteful, and indeed more unconstitutional, than the extravagance of luxury and dissipation. Under these circumstances and with these antecedents, Wilkes was a fourth time elected for Middlesex by a large majority over Colonel Luttrell the ministerial candidate. The House however voted by a majority of 54 that Luttrell, and not Wilkes, was duly elected, and repeated this decision on rejecting a petition from the Middlesex electors. This violent and unpopular step was defended by Ministers on the ground of expediency, as being necessary to maintain the pre-

vious determination of the House in closing its doors to Mr. Wilkes, and at the same time not depriving an important constituency of its share in the representation. But it, of course, involved the very serious principle of the right to make a resolution of the House equivalent to a law passed by Parliament, and touching the vital point of its constitution. There was obviously nothing to prevent, if this principle was once recognised, the House from gradually packing itself, if a majority already formed could operate on the several constituencies, by rejecting certain returns from personal objection to the members.

At this point may be placed the first movement of public opinion in favour of Parliamentary reform—a movement which, however little called for by the actual emergency, one can only wonder had not commenced earlier, considering the anomalous constitution of the Commons' House, and their gross neglect of the public trust reposed in them for at least the two last reigns. Some of the largest counties and cities declared they had lost all confidence in their present representatives, and prayed a dissolution with a view to ulterior changes. Blackstone too, that celebrated commentator on English law and able advocate for the *status quo* of all institutions as they existed in his day, fell into the not unprecedented dilemma of voting and speaking for his place against his book. For Wilkes' case certainly did not come under any of the heads

of disqualification, he had properly laid down as recognised by the law.

In the mean time Wilkes, still a prisoner in the King's Bench, according to the sentence against him, recovered by the verdict of a jury a disproportionate amount of damages from the Secretary of State for injury done to his papers. This absurd verdict, though perhaps influenced in some degree by the public opinion beyond the doors of the jury box, was so far from coming up to the demands of the mob, that the jury had some difficulty in escaping rough treatment at the hands of the populace, for not having carried their verdict higher.

These wretched proceedings suggest a variety of reflections, besides the obvious one of the general impolicy of making a worthless demagogue a person of too much consequence, by extreme and injudicious prosecution. Many argued at the time, and have done so since, that the talents as well as character of this notorious demagogue were so alike contemptible, that he would have done no harm if allowed to take his seat as elected, but would soon have sunk, as he did indeed eventually, into parliamentary insignificance. Though there may be some truth in this, I am disposed to think his fastidious and scholarlike cotemporaries rather under-rated his powers of mischief. For he had certainly wit and courage, which are more important for a popular party leader than reason or sentiment, and the exhibition of his sensual senility and wealthy sinc-

curism is hardly to be taken as a sample of what he could have done in the vigour of a fresh hate and stimulated by poverty.

However, by the peculiar line of prosecution and exclusion they adopted, the Government certainly fell into the great mistake of giving their opponent the right side of the Law and Constitution. And this seems to have happened quite as much from the real want of ability, shewn in the indiscretion of secretaries and the blunders of lawyers, as from any bitterness of resentment in the Royal or Ministerial breast. Indeed, as personally assailed in the first instance, it cannot be doubted that George III. had a very strong feeling against Wilkes, both of personal dislike, and of conviction that he was morally, if not legally, unfitted for Parliament. As there is a note on record, in which the King compares the case to that of one Ward, who had been expelled the House for forgery in the last reign. But this resentment ceased as soon as the demagogue sunk into quiescence, for the King appears to have in later years spoken familiarly to him at his levees, and rather rallied him on his former troublesome agitation. But two other points of great moment may be noticed in these transactions. The dangerous materials afforded to agitation by an ignorant and immoral people. Had religious education been general, or even not generally neglected, in the dense mass of population now grouped on the banks of the Thames, it is hardly conceivable that so bad

a man and so worthless a cause would have excited so much agitation.

Again, we may observe how beautifully law came into play to correct the excesses of party. And though juries perhaps leant too strongly to the popular side, yet it was of importance to have at hand that constitutional, even though prejudiced refuge from the vengeance of power. While the great and independent magistrates, who presided over the supreme tribunals, acted throughout these unhappy proceedings with a cool discrimination and equal firmness, that entitle them to the reverence of posterity. They could annul an illegal warrant, and reverse an irregular outlawry, and charge for damages, when arrest and seizure of papers had been unduly authorized; but yet could fine and incarcerate the popular object of the same proceedings as a blasphemous and seditious libeller. In the spring of 1770 Wilkes' sentence expired, and he not only stepped into the important seat so long denied him for the metropolitan county, but also into the magistracy of the metropolis itself, into which he had been elected as an Alderman. For some time he took a part in parliamentary opposition, but with neither much zeal or success. His principal exertions were in municipal agitation in the City, where on more than one occasion he contrived to embarrass and insult* the Sovereign, and where his services were

* As in the affair of backing press warrants for the navy, and in City addresses to the Crown.

eventually rewarded first by the Mayoralty, and secondly by the valuable sinecure of the Chamberlainship of the City, in which lucrative post his sensual old age gradually sunk into a sort of negative Toryism and actual Court attendance. An example that later patriots have not failed to follow, in either lucrative acquisitions or convenient inaction.

The career of Chatham and the complications of public affairs arising from his extraordinary reputation, and still more extraordinary policy, is in itself the political history of this period; as no measure was adopted, no combination formed, without some reference to his adhesion or opposition, and in almost every case was more or less modified accordingly. And the difficulty of the task is increased by the morbid affectation of proud patriotism, amounting, as it would appear on some occasions, to actual mental aberration, that tarnished the simplicity of Chatham's high character, and diminished the usefulness of his great talents. It was, perhaps, natural that a statesman, who was so *facile princeps* among his rivals and colleagues, and whose eloquence and probity were perhaps overrated by his cotemporaries, as shining amid the surrounding dulness and corruption of the age, should have felt any place but the highest in government as beneath his acceptance; and should have hesitated to incur the responsibility of office, without a supreme control over all official men and official measures. But he had little cause to complain of any want of concurrence or subordi-

nation in his colleagues, who on almost all occasions seemed with emulous humility to seek his leadership, and shelter themselves under his patronage. But probably the real difficulty was with the King, who was jealous of having a master in his minister, and who always held it a matter both of personal feeling and public policy, to have a section at least of the cabinet composed of his own personal friends, representing his own views and influencing certain public measures.

It is easy to regret the pride of the statesman and the obstinacy of the Prince, that prevented that cordial union which might have saved America, or evaded the hostile preparations of the Bourbon Princes by a more spirited anticipation. But it is doubtful whether as a permanent minister Chatham might not have lost his popularity and that mysterious ascendancy, which made his neutrality so anxious and his opposition so fatal. It is a very delicate question of morals rather than of politics, how far an able statesman is justified in enjoying independence and quiet in private life, when earnestly called on to assist a sovereign, from whom he may expect some obstinacy, and colleagues who may possibly show some insubordination. No general rule can be laid down for a decision, that must be influenced to an honest mind, both by the pressure of the emergency and the amount of resistance, that may be expected in the cabinet. But on the whole a statesman should feel that the triumphs of persuasion are not

limited to their more public and flattering exhibition, but should be laboured for in the closet as well as the senate; and a great senator should endeavour to bring public opinion to bear on the royal ear with the same force, that he represents the royal authority to the people. There can likewise be no doubt that with Chatham's love of power, and just dislike of divided responsibility was mingled much of antipathy and contempt for other politicians and political sections of the day. First the Grenville, and after them the Bedford section of the great Whig party were peculiarly abhorrent to him, so as to preclude any adhesion or co-operation. While for any shade of Toryism he had to oppose the traditions of his own school, whenever it was convenient to recall them; though he had in the last reign, with a truly national spirit, patronised many Tories, without any retractation of their supposed prejudices.

When the resignation of Lord Bute and the death of Lord Egremont in 1763 had left the King without an official adviser, and the Tories without a leader; the King, by the advice of Bute, and with the approbation of the Tories, sent for Chatham, who had been in opposition since the peace, and mainly from dislike to it. Bute and his own party looked on the great Commoner, for I anticipate his subsequent title, by which he is better known to posterity, as the greatest name among the Whigs, and the least exclusive too in his feelings and connexions. These overtures failed, and the hated

Grenvilles and Bedfords formed a personally Whig Cabinet, but which with a perverse obstinacy and incapacity, blundered into some of the worst application of Tory principles—the prosecution of a worthless demagogue, and the taxation of jealous colonies. On both these important topics the views of Chatham, though right, neither accorded with those of the Ministry or Opposition. While censuring in the strongest and most indignant terms the conduct and compositions of Wilkes, he deprecated the measures adopted against him; and though he objected to taxing the colonies, he always maintained the right of the mother country to supreme control over them.

The deaths of Lord Hardwick and the Duke of Devonshire in 1764 deprived the Whig party of the great magistrate of the age, and of the princely aristocrat, whose almost royal leadership had given a cohesion to the party, that was ill sustained under the somewhat similar auspices of Lord Rockingham. The loss of persons so eminent for experience and station, together with the peculiar and isolated line adopted by Chatham, on his last quarrel with Newcastle, left the Whig party more and more to the impulse, often factious or even personal, of its different sections; and rendered them, both in their violence and weakness, less fit to discharge the duty of a constitutional opposition. The overtures to Chatham were renewed in 1765, after the Regency Act had given the King a painful sense of the in-

competency of the Grenville Ministry, and the gratuitous insult they had inflicted on his mother.

The mysterious seizure that gave occasion for this Regency Bill, occurring to the King in his early manhood, and recurring on more than one subsequent occasion, was of that painful nature, that terminated his public before his natural life, and that at the most eventful crisis of a most perilous contest.

But for the present the Bedford-Grenville ministry went on with growing discontent and occasional riots in the metropolis, with no favour from the King; and no support as was absurdly believed from Lord Bute, who after his brief and not brilliant official career, seems to have honestly aimed at the peace of the King and good of the country, whether by occasional advice, or more generally by complete retirement. On this occasion Chatham seemed more disposed to accede to office, but it would appear was deterred by the unwillingness of Lord Temple to join with the Bedford section of the Whigs; and his presumptuous hope by a reconciliation with his brother Grenville, to be able to form a Chatham-Grenville government, neither leaning for support on the Court and Tories, and still untrammelled by the odium and jobs of the Ducal Whigs, as the Bedford-Newcastle section was termed. This was a bold but hopeless attempt to base a Government on public opinion alone, where that opinion, so wildly fluctuated between a Tory loyalty, and the idolatry of such a demagogue as Wilkes, without the stable

though perhaps interested support of the old Whig connection, and their vassal boroughs. The result of the ministerial crisis was the accession to power of the Rockingham Whigs, a very respectable section of the political world, consistent and rather advanced for the time in their liberalism, but no demagogues, and in most of their opinions not unlike the modern school of Whigs, who with some errors and variations are legitimately derived from this source. But the party was weak both in Court support and popular favour. Its leader, a wealthy aristocrat of respectable talents and character, had recognized but not fully appropriated the mighty political genius of Burke, and could not yet count on the future momentous apostasy of Fox. The rising reputation, and ultimately advanced liberalism of those two eminent men gave a weight to the Rockingham party, in its long subsequent opposition, it had not enjoyed in office, and gradually absorbed into its ranks every other section of Whiggism, that had not from conviction or courtiership merged in the great Tory majority. Thus it was mainly owing to the consistency and brilliant talent of the Rockingham opposition, that our party history was cleared of the scandal and complication of a plurality of jarring sections; and party was restored to the simple duality, which implies at least in the adverse leaders the consistency that determines adhesion, and the moderation that does not compromise in dangerous extremes.

The Rockingham ministry signalized their short government by repealing the Stamp Act, and otherwise endeavouring to restore amicable relations with the mutinous, though not yet revolted colonies. Another dependency of the empire, that since the battle of the Boyne had almost forgotten its peculiar function as the field of agitation, and source of weakness and apprehension, now again attracted public attention by the too well known phenomena of agrarian outrage and urban sedition. The first class of disorders was properly dealt with in the ordinary course of law; and the rights of tithe-owners and landlords vindicated, with at least as much severity as justice. One Popish priest, a significant fact, was hanged for his participation in the disorders, now first termed Whiteboyism, in the southern counties of Ireland. The Dublin agitation led to a parliamentary measure in the nature of the English Septennial Act, though the change was in an opposite direction. For in Ireland the triennial system had never been introduced, and their Parliaments, unless dissolved by the Viceroy, enjoyed an existence that might last the life of the Sovereign. This Septennial, or as it was framed Octennial measure, did not pass till 1768. It is needless to admit, that the exactions of the landlords, and neglect of the clergy gave abundant occasion for popular discontent, so long severely repressed; though no justification for outrages, that no government can tolerate, without forfeiting its place and claim to public respect and confidence.

Chatham's relation to the Rockingham government in 1766 was that of a patronising and rather contemptuous support. He concurred rather in commendation of their conciliatory measures to America, and in comparision to those of their official predecessors. But he repudiated the idea of any connection, and rejected all demand for assistance. The growing weakness, that was most creditably shewn in the large and undefined concessions to the colonies, some of which had already outstepped the limits of order and allegiance, was also indicated by the negotiations with Wilkes already adverted to, and by the abject application for assistance, not only to Chatham, but to other statesmen of less note. At last Chatham's pride or scruples were overcome, and he consented to take office, with the Peerage, by which he is better known in history, though among his cotemporaries the fame of the William Pitt of the Commons was never lost in the honours of his later earldom.

The vast and comprehensive policy, that Chatham had intended to have carried out, had health and mind been spared to him, embraced not only the American troubles, rapidly coming to a head, and the unsatisfactory state of Ireland ; but also the singular relations of the East India Company with the territory it had acquired, and the state to which it belonged ; and the affairs of the Continent, of which he took a large though not unprejudiced view. The highest praise, perhaps, of his negative

colonial policy was that it left affairs *in statu quo*, neither harassing the colonists with imprudent taxation, nor alarming them with any just inquisition into many of their late proceedings. His Irish policy would, from the sample carried out, have been of the indulgent order, rather tending to practical reform and the mitigation of the high Orange ascendancy, which was however far too deeply rooted in the Whig associations of the one, and the Protestant sympathies of the other great English party, to be as yet openly assailed or even censured.

His European scheme was for a great Northern and for the most part Protestant alliance, of which Prussia and England were to be, of course, the sword and purse respectively, to balance the combination of the Bourbon Princes and the Catholic interest of the South. With respect to the vast empire that was rising up with almost unwelcome rapidity round the factories of the East India Company, and by the triumphs of their slender battalions; his views, as far as they can be gathered from his known sentiments and notes to his colleagues, were unfavourable to the independent or even mediatorial sovereignty of the Company; and probably would have gone to the extent of the great measure of Fox, whose defeat opened the brilliant career of the younger Pitt.

As I shall have an opportunity of speaking hereafter on this same subject, I shall defer to that chapter an account of the constitution of British

India and the arguments by which so peculiar an arrangement may be justified; one may only observe that the sweeping change in the government of India, conceived by Chatham and proposed by Fox, was suggested by a system of abuses and oppressions then actually in existence, though now existing only in the articles of a newspaper.

We may, however, dismiss as mere conceptions one and all of these magnificent but not very practical plans. For the mysterious and protracted malady, under which the great minister laboured during almost all his administration, reduced him to little more than the influence of a name, and grievously perplexed the humbled sovereign and docile colleagues, who seemed to have gained no support or assistance after all their sacrifices. Chatham, though really prime minister, only held the Privy Seal, and abandoned the nominal lead and real details of the Treasury to the Duke of Grafton. This nobleman, so well known through the bitter personalities of Junius, was originally of the Bedford section of the Whig connection, but was now mainly relying on the Tories, as representing their high views of government and the personal policy of the King. The illness of their great leader, that was prolonged, as many thought, through affectation, during the years 1767 and 1768 reduced his colleagues to despair. The contest with Wilkes was in full force, the imprudence of the brilliant but reckless Chancellor of the Exchequer, the Whig C. Townshend, was

again exciting the jealousy of the colonies; while Chatham, in his profound seclusion and distressing illness, would neither act nor resign. His colleagues could not even obtain an interview with him, or any direct opinion in sanction or reprobation of any of their measures. While their almost ludicrous awe of him made them shrink from the natural suggestion of resignation. Even the Privy Seal was put in commission for a temporary and trivial object that did not brook delay, to spare the feelings of the formidable invalid. In 1767 the death of Townshend led to certain ministerial alterations not in a liberal tendency, nor such as Chatham would have suggested had he been taking an active part in the conduct of the Government. Conway retired from the Secretaryship of State and lead of the Commons, which made an opening for the Bedford Whigs, who came in in force, but did not add much weight or popularity to the administration. A new secretaryship was added from the growing importance of the American department, and Lord Hillsborough was the first and most luckless of colonial secretaries. Camden succeeded Northington in the chancellorship, which was an appointment more to propitiate their great colleague in his seclusion, than from any particular relations subsisting between the ministers and the most liberal judge of the day.

In 1768 a measure in restraint of prerogative was mooted, but with an opposition that threw it over

to the next session, when the ministry allowed it to pass. More properly belonging to jurisprudence, or the law of private right than of public authority, it yet was not without interest as a constitutional step. The doctrine that *nullum tempus obstat Regi et Ecclesiæ* was a badge of superstition and despotism, out of harmony with existing institutions: calculated to disturb property occasionally, with dormant titles raised for the Crown or the Church, but was perhaps more likely to be called out as a party-weapon to harass or impoverish more prominent landholders in opposition. An instance of this kind occurring by which the Portland family, so largely endowed by William III., was intended to suffer from a regrant by the Crown, a limit of sixty years was fixed, within which such royal and sacerdotal claims should be urged. The closing year of Chatham's nominal ministry was marked by a general election, which is spoken of as distinguished from all preceding ones by the extent of corruption practised. The cases that are instanced are, however, rather of corruption in the gross than in detail. Boroughs or seats were openly purchased by moneyed men; and the East Indian adventurers were named as the largest purchasers of Parliamentary power. Shoreham was the first borough punished for glaring corruption, by the fair and moderate extension of its privileges to the purer freeholders of the adjoining district of Sussex. At the close of the year, Chatham, though improving

in health resigned, and being reconciled to the Grenvilles the following year, he must be looked upon as in opposition to the remainder of the Duke of Grafton's government, and to that portion of Lord North's that he outlived. Though he scarcely went all lengths with the rising Whig party, but on the American question maintained an independent position, more plausible than under the circumstances practicable. The least justifiable portion of his last career of opposition, was the lending the weight of his name and experience to the absurd notion of Lord Bute's still prevailing influence over the King, at a time when he was really estranged from him; and when the improbability of the thing scarcely needed the express denial of two ministers, which it nevertheless elicited, and which must have satisfied any thing but party prejudice.

This slight sketch of the relations of the great statesman and great demagogue, with the governments and policy of George III., inevitably suggest the idea of that most able and mysterious writer, that seemed to appropriate the genius of the one and the venom of the other. The series of papers generally known by the name of Junius embraced the period of the Duke of Grafton's administration and following crisis from 1767 to 1771; but other letters undoubtedly by the same hand as Junius, extended through a longer period with the signatures of Mnemon, Atticus, Brutus, and Lucius, and possibly Corregio. It is perhaps as

useless as unwelcome to throw any doubt, or raise an opposite theory to that usually adopted, and which refers this celebrated series of papers to Sir Philip Francis. However some new light, and from a totally unexpected quarter, has been thrown by a late article in the Quarterly Review, No. 179, which suggests the moody and mysterious Lord Lyttelton as the author. The general opinion, however, in favour of Francis does not seem on the whole disturbed by this novel and elaborate theory; though to my own mind the rigid secrecy, and the confidence in such a screen from the first, appears hardly reconcileable with what we know of the rough and indiscreet character and party connections and dependencies of Francis. The literary and personal characteristics of these remarkable publications have employed many able pens, and scarcely come within the limits of this treatise. But their constitutional importance has been mainly evinced in the long chain of political leaders in the public press, which must acknowledge Junius as their tutor if not father. The art of putting a few ideas on passing topics into racy and idiomatic English, as far removed from vulgarity of style as from elevation of soul, to cause the greatest amount of pain with the least suggestion of truth, to discharge the widest censures and to sketch the most shadowy theory of improvement, so characteristic of modern journalism, owes its origin to the mental and moral peculiarities of this great unknown.

One thing must strike every reader of this first

though not most brilliant decade of George III.'s reign, as well as of the disastrous contest that followed it, which is the remarkable want of ability brought to the service of the state in any department. A want that was felt in the important arm of national defence down to the rise of that great man, whose loss we even yet deplore; but which in civil life was relieved by the constellation of statesmen called out by the long American struggle, and disciplined by the experience of the French Revolution. But at the time we are considering, the folly of statesmen and blunders of lawyers were patent, not only in the abortive and absurd prosecution of Wilkes, but on a larger scale in the narrow views, offensive pretensions, and feeble preparations, that ushered in and determined the American contest. While in the war itself scarcely a general served, who would not have been sent back by Wellington from the Peninsula for inefficiency, and scarce an army fought, that would have formed a brigade or division in any encounter of the last continental war. This want of public talent in civil life may have been partly owing to the long and undisputed ascendancy of one class of political opinion, which, though found to be safe and useful in its limited application to a particular epoch of our country, neither rested on severe logical demonstration, nor relied on any loyal or religious enthusiasm, which often lends even to an erroneous idea the disinterestedness of virtue and the force of conviction. The Whig or Parliamentary theory of

politics, though practically true, because practically possible under the circumstances of its application, had peculiarly the tendency to dwarf the political mind by accustoming it to dwell in conventionals, and not to seek principles, or to be prepared for those, who had or fancied they had found them. It was this idolatry of parliamentary form, apart from that virtual representation, that is its only authority, that led no inconsiderable portion of statesmen to assume an empire for it, when it had but the moral claim of a parent in reference to the colonies; and again, maddened by faction, led them to invest the centralized despotism of the assemblies or dictators of Paris with the national character of a regular representation. In this latter case there was probably more faction than folly. But far down into the revolutionary epoch there seemed but one man, and he separated at last from a party not worthy of him, who looked into first principles, and could analyse the causes of disease, while Pitt combated the outward symptoms, and Fox was ravished at the hectic flush and wild effusions of the patient. Nor in fairness is it to be forgotten that George III. was neither a man of talent himself, nor, as is generally the case with firm wills and uncultivated minds, was he very partial to mental superiority in others. He cannot reasonably be accused of any want of respect or confidence for Chatham, however short it may have been of what that exacting minister considered his due. But in the various posts, where the preference of a sovereign would be naturally

freer, and where young men might have been both encouraged and fitted for public service, there seems to have been no endeavour to select and officialize the ability even displayed by the Court party. Nor till Thurlow arose from the ranks of the bar, and by the unfettered discrimination of public opinion, did any of those masculine minds, at once popular and wise, appear in the places of power; where they have not failed to find their way even in more arbitrary as well as in more liberal times. It may appear only the same idea in another form to remark, that the dislike of employing men of literary talent, that had grown with the settlement of our constitution under the Georges, prevailed still to a great, though perhaps not equal extent. The historian Gibbon and philosopher Ferguson, were employed as writers of state papers or secretaries to commissions, but never rose to more prominent or commanding stations. It is perhaps a more delicate matter to estimate the moral character of parties, and of the legislature and administration generally at this time. It would appear that the opposition generally comprised the best and the worst members of either House; and the decorum of the Court gradually worked a change in favour of at least external respectability in the party that supported it. The example and reputation of Chatham does not appear to have been very successful, in infusing his noble and disinterested spirit into the pecuniary departments of administration. For when our

weak points were tried in the progress of the colonial war, not only were generals found inefficient and admirals throwing up commands from personal or party pique, but all the lesser fry of contractors and commissaries seemed to vie with each other in corruption and neglect.

One incident in the very lowest life marked the year 1770, which, however humble the dramatis personæ and destitute of influence on public affairs, yet almost deserves notice in this place, as exhibiting in one hideous picture the faults of the age, as exemplified in the misconduct alike of King, statesman and demagogue, of law, judges and public opinion. An incident, scarcely noticed in the struggle of parties and din of warlike preparation, but which silently stands recorded against that awful day when King, statesman and demagogue, must alike give account of the power misused, talents ill applied, and popularity ill earned, without rag or tatter of usage or prejudice to dim the sense of perfect conscience and entire responsibility. The simple but tragic tale is too well known to lawyers, and too painful as a record of shame to them and their profession, to be often alluded to in general society; but an anecdote that should not be forgotten in forming an estimate of former times to the disadvantage of our own. For sickened as we may justly be at the profligate mendacity of Journalism, at the deep hypocrisy of a Peace Party, and the almost infinite infamy of Irish Patriotism, we may still thank God and take

courage, that no such case as that of Mary Jones's* execution could at this day stain our history. The letter of the law itself has felt the weight of a better public opinion, and Judges have exchanged the cold-blooded pedantry of their predecessors for the more harmless weakness of humanity. No statesman now would urge press warrants to break the domestic peace and welfare of humble homes to recover a storm-scathed isle at the antipodes. No dull and stubborn Sovereign would now refuse to exercise the glorious discrimination of the prerogative that tempers the rigour of law. And even the vile and malignant demagogue is obliged at least to simulate a virtue, and use his popularity for other purposes, than paying his debts and avenging his own quarrels.

The other domestic transactions up to 1774, when all other interests and questions merged in the disastrous and long-pending struggle with the colonies, may be briefly discussed. They were on the whole favourable to the Government of Lord North, who now ruled with decided majorities in both Houses, and the unquestioned favour of his Royal Master.

Junius had written and was silent. Wilkes no longer prosecuted was shunned as an ally or leader, as soon as he ceased to be a victim. The retirement and ultimately the death of Chatham relieved

* The case alluded to is that of a young woman actually hung for a trifling theft committed under the pressure of want, when her husband had been pressed on an alarm about the Falkland Islands.

the ministry from the terror of his opposition, or the noxious shade of his patronage. Fox was still a junior Lord of the Treasury or Admiralty, nor showed any independence of the Court, or any disgust at its measures till the Royal Marriage Bill of 1772, to which he seems to have had a singular aversion. He however took office again for nearly two years, and was finally dismissed by Lord North in 1774, with an abruptness not to be justified in the case of a far less considerable official; and which was most impolitic treatment of the greatest orator in the Lower House, who was fitted in every thing but character for a secretaryship in the Tory ministry of the day.

While Lord North still could command the great but scarcely appreciated talents of Fox, he also had strengthened his Government by the advocacy of two most able lawyers, Thurlow and Wedderburn, who successively held the Great Seal in the Tory administration of his great successor, the younger Pitt, now a boy at school.

The session of 1772 was marked not only by the Royal Marriage Act, that was the real or pretended cause of the first rupture of Fox with the Tory ministry; but also by the first attempt at what would I suppose be called University Reform, by relief from the subscription to the Thirty-nine Articles, and by the effort of the Dissenters to obtain the repeal of the Test Act. The first measure fell to the ground in the House of Commons, where it was opposed by the ministry including Fox, and even though on broader

grounds by Burke, the deepest political thinker, though not most influential debater on the opposition benches. The Dissenters' measure passed the Commons with less notice than its importance, at least in principle deserved, but fell in the Lords, though supported by Lord Chatham and opposed by the Bishops.

It is not a little significant, that the new and active sect of Methodists, not only kept aloof from this agitation, but actually petitioned against the relaxation. Great heat was shewn in debate, and language common enough since, but not heard since the Long Parliament, was employed against the liturgy, articles and ministers of the Establishment. So much importance was justly attached to the *principle* of exclusion, for as we have seen before, little practical inconvenience or injustice was felt from the restriction, as non-qualified persons were annually protected in their offices and functions by the Indemnity Act.

The Royal Marriage Act, which remains the law to this day, prohibits the marriage of any member of the family of George II. in this country before the age of twenty-five without the King's leave. After that age, if the King refused permission, it was open to the party to signify his or her intention to the Privy Council; and if within a year from such notice the Houses of Parliament did not address the King in opposition to the projected union, it might lawfully take place. There seems no reason to blame this enactment, which recognises

the Royal Family as liable to both domestic and national ties, and subjecting their marriage in very early life to the will of the head of the family; guards in after years against any arbitrary control of a maturer judgment, by shifting to the national legislature a decision, in which the nation itself may be deeply interested.

It now becomes our painful duty to examine the constitutional merits of the great question at issue, between England and her American Colonies. While the details of that languid and yet disastrous contest, which the sullen obstinacy of George Grenville had first provoked, and the boisterous incapacity of Lord North so grossly mismanaged, must be dismissed with a few passing remarks, on the causes of failure and the result of separation.

The influence, less than would be the case in these days of rapid communication and free emigration, but yet considerable withal, that this great and growing colony exercised on the mother country, may be cursorily alluded to in the chapter on the collateral relations of the Empire. But the consequences of the separation effected by its successful resistance, and the ultimate recognition of its independence, opens a vast and yet unfinished chapter of the History of the World. The effect of the war of independence in sapping the loyalty of the French army that served in it, and in suggesting republican ideas to the French generally, is sufficiently obvious, and rendered the conduct of

Louis XVI. and his advisers as preposterons on the ground of policy, as it was ungenerous and wanton, even had not such results naturally flowed from it. But the effect of this colonial revolt and republican establishment, on the constitution and progress of the mother country, has not been either so distinct or uniform. The impolicy that provoked the struggle, and the incapacity that characterised its whole management, naturally produced a deep dissatisfaction in the public mind of England with their own Government; extending in some cases to the very constitution of Parliament, that had lent itself to measures at once so arbitrary and so feeble. But against this might be set the natural feeling of antagonism, that rises in man against a principle to which he has been opposed, and not the less so has he been worsted in the struggle. There was therefore in the English army and navy, in the Tory party generally, and in young men also pretty extensively, a dislike to republicans and republican institutions, as associated with this war and its inglorious termination. Again, there was the political Eden of a republic peaceful and prosperous, of our own race and tongue, exhibited on the other side of the Atlantic, as an example and possible ally in the course she had herself pursued. But here again there was another side to the picture; and this republic flourishing but peaceable, offered rather a refuge for the exile, than an ally to the rebel, and formed for many years rather a safe

drain for the disaffection of Europe, than a propaganda of active republicanism. Had the connexion continued to our own days of constant and rapid intercourse, there is not the slightest reason to doubt that the colonies would have advanced to at least the same degree of wealth and population, and had Kings and ministers, who swayed this mighty section of the human race, that would then have bestridden the Atlantic, had the moderation to resist the temptation to universal Empire, such power would have suggested; the two great divisions would have mutually influenced each other to our common advantage. The mother country would have been the centre of education and refinement, would have given the tone to the arts and letters and prepared for the liberal professions; while America would have been the great field of enterprise, not only for the needy and fugitive, but for the best and noblest of our land, while Americans would have filled the ranks, and risen to the highest commands in the active service of an Empire, that would have ruled the globe. But such was not to be, and Divine Wisdom decreed that Britain should preserve in Europe the sacred fire of liberty enshrined in aristocratic institutions, and tempered by many medieval powers. While a young democracy should spread over the vast regions of the new world, with institutions fitter for the growth of a nation, than for the perfection of the individual.

The thirteen American colonies, which at the

time of their revolt contained nearly three millions of inhabitants, spread thinly along two thousand miles of coast, and thinner still as they receded into the wooded regions of the West, might be distributed into three groups in reference to their relations to the mother country, and her jurisdiction over them. The New England group was in the north, founded by the Puritans, inheriting their love of liberty, love of money, narrow intelligence, and grave morality, a people of towns and of the sea, enjoying great commercial prosperity, and a ready-made republican organization. To the south there were the great colonies of Virginia, Pennsylvania, and Maryland, with their later offshoots, the Carolinas and Georgia. These fertile and vast territories had been colonized by various parties and classes of Englishmen, and on that account formed a correcter mirror of the mother country than the northern settlements. Landed properties were large, families ancient and powerful, towns few, labour largely performed by the servile race of Africa, and even some feeble attempt at an established church, promised a people at least inert in revolt if not zealous in loyalty. Yet in the ensuing struggle, the Virginian squirearchy showed themselves but little behind the mob of Boston in revolt. And the ambition of a *quasi* aristocracy united with the sordid passions of a seaport mob in precipitating the separation. From causes never clearly explained the English connexion was deeper rooted in New York and the adjoining

lesser States, than in either the older colonies, or those more analogous in their constitutions to the mother country. In England there were three different views taken of the American difficulty. The Tory Grenville theory that Parliament might tax as well as exercise all other jurisdiction over the colonies, limited only by the letter of their charters from the Crown. The Rockingham Whigs maintained that the colonies were free and independent, and that Parliament had no right to tax them, or to control their laws or commerce in any way. Chatham and his adherents made a distinction that the Crown had full jurisdiction over the colonies, and Parliament full right to legislate for them in everything but taxation, which could alone be laid by their own assemblies, and taken as a free gift if tendered to the Crown. This distinction, illogical and impracticable as it seems, was not without a precedent of early constitutional opinion in this country, and, oddly enough, was the theory of the Americans themselves, at least at the beginning of the troubles. Franklin, indeed, drew a distinction between different kinds of taxes, when it suited his purpose to be temporizing and mediating. He considered custom-dues as imperial taxes, and justly laid on merchandise protected on the seas, and entering any portion of the Empire; but objected to anything of inland revenue, as we now term taxes and excise, unless levied by assemblies representing the persons paying.

The mother country had certainly a strong moral claim on her thriving colonies, to secure and aggrandise which, she had maintained expensive armaments, and incurred many millions of debt. And one must wonder at the Americans choosing so base and sordid an issue for their cause, and to glory in the successful decision of such an issue, even more than in their remaining triumphs of Slavery and Repudiation.

One blushes for such a people far more than for the mother country, whose efforts, feeble as they were, might yet have been spared to retain so unworthy a child in her allegiance.

The restrictions on the trade of the colonies, though contrary to the soundest principles of economy as at present understood, were hardly to be reckoned a grievance, nor were they indeed considered as such by the Americans, since the same preferential advantage was secured to them in British ports as to British traders in theirs, to the mutual advantage, as was supposed, of both.

The legislature and magistracy in each state was completely under the control of the colonists by free election, and a varied though far more extensive franchise than in this country. There were municipal rights in the large towns, and, more than all, there was a well organised militia in each state, raised and temporarily paid by it, accustomed to serve with the royal regiments against the Canadian French and the Indian tribes of the interior. The

governors appointed by the Crown in each colony could dissolve the assemblies, and nominate to some judicial and all financial posts, but they were supported by a slender force, and were placed face to face with assemblies returned directly from the people, and which they had small means of influencing by either patronage or aristocratic connexion.

Walpole, in the plenitude of his power, had declined the project of taxing America, though it was naturally suggested to him, as a means of at least dividing the unpopularity of taxing England.

It is to George Grenville, in 1765, that the credit is due, of first alarming the colonies by his financial resolutions, for their contribution to the public burdens. The sum to be raised was so small, that it is equally disgraceful to have incurred the loss or guilt of separation for such an object. But it was, perhaps, this very circumstance, that blinded the too aristocratic government and legislature of the mother country to the consequence of their measures. Accustomed to the lavish votes of princely Houses in a luxurious age, they could hardly fancy the sordid heroism America would display in defence of her idol dollar, in spite of the feelings of amity and allegiance, that were still on the tongues and possibly in the hearts of most. The excitement in America, and more particularly the disgraceful riots in Boston, and insults to the English garrison as anticipated enemies, are well known. And some alarmists noted the ominous coincidence of these

rebellious movements with the death of the fierce and dreaded Duke of Cumberland, and felt that the grave had closed over a great champion of Parliament in the war of 1745, and executions of 1746. Yet, though this respectable individual would, no doubt, have brought to bear on the colonies a vigour in the field and scaffold, such as they never had the advantage of experiencing, it is not likely, that with the divided councils and feeble armaments of the day, the result would have differed much from what actually occurred. By the close of 1765 a temporary General Congress, representing the representative assemblies of the several States, met at New York, rather as a central than favourable place, and thus obtained the immense advantage of union in their own councils, and a broad face of resistance to the claims of the mother country. How far this resistance of the several assemblies, and union in Congress was legal, according to their own constitutional precedents, will be considered in another place, and indeed hardly admits of a decided answer. But the practical consequences were a resistance to the Stamp Act, and certain voluntary agreements as to imports, much affecting the trade of the mother country, and which were forced by zealots and mobs very much to the inconvenience of the colonies themselves. This active and obstinate resistance perplexed the home government. The Stamp Act was repealed, and a declaratory Act framed, that was to put the relations of the colonies to Parliament on

a clearer and more satisfactory footing. This Act, the great effort of the feeble though well meaning Rockingham administration, renounced all intention of taxation, but did not raise the distinction held by Pitt and Camden, between the right of government and that of taxation. It asserted the authority of Parliament, without reserve of any case, but specifically renounced and repealed the financial resolutions, that had given so much more umbrage than any claim of supremacy on the other side of the Atlantic. These healing measures were received with more joy probably by the American people, than by those far-sighted leaders, who already meditated separation, and would have much preferred what would have aggravated feelings and kept up hostility. The commercial restrictions too of 1764 were repealed, and the West India trade thrown open to the Northern Colonies. The State legislature of New York, however, wanted some trifling additions to the Mutiny Act as applicable to America, and even ventured to alter it of their own authority. This step of independence was connived at wisely, as I think, though I cannot equally approve the spirit that overlooked the riots at Boston, in which blood had been already spilt. So strict a distinction should every government draw between a palpable moral violation of law, and any attempt by legal means to affect a modification of law.

The calm, however, was short indeed; for the following year, under Chatham's nominal adminis-

tration, but pending his mysterious and disabling malady, fresh offence was given to the Colonies, by the finance measures of Townshend, the brilliant but reckless Chancellor of the Exchequer. The sum to be realized was again ludicrously small, though alarming from the indefiniteness of the principle. Chatham could not be consulted, and without his participation his colleagues neither dared to resist, or dispense with their only orator and last professor of the old Whig school. Camden the Chancellor did indeed dissent, but did not resign. And both he, and possibly the other ministers, seemed to rely on that old distinction known to the early constitution, and of late recognized by Franklin himself, the advocate of American claims, between import duties as a matter of imperial policy, decreed for the common good by the supreme authority of the empire; and internal revenue, that could only be raised by the representatives of those who paid. But not to mention that the distinction was far too nice, to be long maintained by a reluctant people who could resist, and a wily negotiator who would rise by that resistance, there yet remained the point, whether that was a supreme authority, according even to the earliest idea of our constitution, which did not affect to represent the people it taxed. The Tudors might have laid on certain duties by proclamation, while they got talliages by the votes of Parliament. But there was this check, that the Parliament that voted the one represented those who

paid both, and shared itself the burden of both. It was therefore competent to it to proportion its own votes to the demands it could not resist; and naturally to watch a taxation, in which not only its constituents' interests were deeply involved, but which must necessarily press heavily on members themselves as the great consumers or traders of the country. It was obvious America had no such resource against the financial policy of the British Parliament, which so far from representing it, represented communities and interests alien or adverse to their own. Neither King nor Parliament of Britain could be conceived so deeply interested in the welfare of an unseen and remote colony, as in that of the mighty people of whom they were, and with whom they dwelt, and whose weal and woe were their own by intimate connection, if not by a perfect representation.

Nor were there wanting other causes of offence far graver to any other nation of ancient or modern times, but which gained a sullen but general acquiescence in America. Massachusetts had reluctantly voted compensation to the sufferers by the riots at Boston, but had coupled this vote with a clause of pardon to the rioters. This was justly viewed as an encroachment on the prerogative vested in the Crown for such purposes, and the bill was therefore summarily annulled by the King in Council. The New York Assembly, which had dared to alter the English Mutiny Act, as applied to America, was prohibited from passing any other act, till they had

restored the terms of that which they had altered. This bold and wise measure of the Duke of Grafton perfectly succeeded, and the State legislature yielded, probably to the pressure of private interests and the necessity of public business.

The resistance to the import duties was, however, stoutly maintained, particularly in the Northern colonies, where riots again occurred through 1767, and unions were formed against consuming the different articles Parliament had subjected to import duties. The Assembly constituted itself a convention, but again allowed itself to be dissolved; it screened the rioters, justified the resistance, and complained of the custom-house regulations, which, after years of profitable smuggling, in defiance even of their local acts, were now strictly enforced. In the mean while British regiments were arriving, and British fleets ominously gathering on the American shore. Though as yet indeed the movement seemed principally confined to the commercial population of Boston, and the high-spirited gentry of Virginia. Now also with significant adroitness, Franklin renounced his heretical distinction between the right to raise import duties and an inland revenue, by the authority of the Home Parliament.

At the close of 1768, Lord Shelburne, a liberal statesman, but not popular minister, had been dismissed, apparently at the King's instance. And this dismissal led to the resignation of Chatham also, who perhaps felt inclined to use his restored

faculties in at least an unembarrassed opposition, rather than risk his reputation or popularity in the struggle, he now saw must be disastrous either to our colonial empire, or to principles of still higher value.

His friend Lord Camden continued Chancellor, and a liberal though not consistent statesman, till 1770. When his dismissal was shortly followed, though from a different cause, probably the increasing difficulty of his situation, by the resignation of the Duke of Grafton. Lord North, with a reluctance that did credit to his good sense, became Prime Minister, of what must be now considered on the whole a high Tory Government. And as a proof how little necessary, not only great talents but even moderate success, are to a lengthened tenure of office, this minister, by good temper and parliamentary tact, managed to ride out a most disastrous storm, and to maintain his position at the helm, though with little satisfaction or credit to himself, for about thirteen years. During the progress of the American troubles, the Grenville and Chatham parties for the most part fell into, what was now a well-defined Whig opposition. Though indeed, Grenville had first provoked the struggle, and Chatham had failed, or at least neglected to avert it. Later on the Bedford party too retired into opposition, as despairing of the American contest; and the old duality of party would have been pretty clearly restored, with defined principles analogous to those of earlier times. But by that

time the younger Pitt, and those who watched his wondrous dawn, with the Grenvilles and others, had again formed somewhat of an independent or third party, destined to a great career and an immense aggregation of support.

But to return to 1770. The disturbances continued and increased at Boston; lives were now lost in the natural collision between the soldiers and the populace. The latter of course displaying a virtuous indignation at those, who resisted their violence or resented their insults, worthy of a Peace party or of Irish priests. Then came the hypocrisy of legal proceedings, and the affected lamentation of the press over the inevitable result of the movement, and the realised object of its leaders.

But a measure of Lord North's in 1773, which though involving a light customs duty, was in reality an indulgence as far as consumers were concerned, caused the great and final outbreak that led to the war and separation. The India Company was allowed a drawback of the whole of the English duty on the exportation of their teas to the American colonies, where indeed the article was subjected to the trifling duty of threepence a pound, under the resolutions of 1767. But considering the heavy English duty that was allowed, and consequently deducted from its selling price, it seems indeed a boon to the public rather than the grievance it was represented. To the Searcher of hearts it is known whether the very indulgent form of the duty was

not its worst feature in the eyes of the leaders of disaffection, and projectors of revolt. For not only would the lowered price and large scale of the importation ruin a great deal of spirited smuggling, but it was to be feared that such bland and insidious approaches of taxation might be even too palatable to the public, and therefore were to be misrepresented and resisted by an organized effort. The obnoxious Chinese herb, sacred to the feasts of the temperate and the home of the poor, was thrown overboard in Boston harbour by disguised but well organized parties. All commercial intercourse was suspended, and a royal schooner destroyed. The local legislatures took a very effectual, but not to the sufferers very satisfactory way of treating their case, by ignoring their existence. Arguing that as all British taxation of the colonies was illegal, no official of the revenue department, nor any military or naval aid called out to support him, had any legal existence either. Another mode of strengthening their party, too common with those who exclusively assume the tone of popular feeling, was to persecute and expel those of their countrymen disposed to support the mother-country, or perhaps more accurately, to remain neutral. These false Americans, probably a large though inert majority everywhere but in Massachusets itself, felt all the weight of popular resentment; and with little in the present conduct or future prospects of the Home Government, to encourage them in their perilous and un-

promising loyalty. One would like to know how far the fair forms of trial, the jury, the open hearing, and active if not honest press, availed at this crisis to protect persons and property, and to control the violence of the mob, and the sinister designs of the leaders of disaffection. The leaders at Boston formed a Caucus, or conclave, a term of unknown origin, but since become politically classic in America. This Caucus was a centre of communication to corresponding committees in the other States, and this shadowed forth the mighty idea of Congress, of which it was indeed the parent. Of the thirteen colonies which ultimately formed the confederation of the United States; New York, from loyal feelings and commercial connexion, decidedly leant to England. Pennsylvania was reluctant to revolt from pacific inertness. The new states of Georgia and S. Carolina, on very slender encouragement, actually armed in support of the mother-country. But nothing could save those who laboured to ruin themselves.

The governors of the several colonies, even where resident, which was not always the case, were rarely men of either ability or popularity. They had little patronage to conciliate support, and in most instances no military force to control revolt. The regularly established and popularly elected state legislatures had at their command such taxation, as that pecuniary people would submit to, a very respectable militia and very zealous mob. America

was clearly a cluster of republics in internal organisation and self-dependence. And the whole change to be effected was their union by a Congress, and a resistance to the nominal supremacy of the Crown, and to the slender armament by which it was enforced. A force strong for a garrison, but ridiculous for an army was early assembled at Boston. But after some discreditable encounters at Lexington and Bunker's Hill with the militia of the locality, that hot-bed of republican agitation was abandoned, and the force employed, or at least transferred, elsewhere. The first blood was shed on the field in 1775, but the war might be considered a fact, and an inevitable one, a year earlier. And the war itself that dragged its weary length along till 1783, consisted of little else than the movement from one point of the vast American coast to another of brigades, collectively feebler than the little army that triumphed at Culloden, and whose popularity and efficiency were neither increased by the accession of a large mercenary German force. These expeditions, safe but ineffectual along the coast, became highly dangerous, and generally terminating in surrender, when pushed into the interior of a thinly inhabited country overgrown with primeval forests, intersected by vast rivers, and infested by a nation of marksmen. As colonial connection seems to admit but of two forms, the entire independence and voluntary allegiance on one side, or total dependence and military occupation on the other, so there

should be no medium, in the treatment of a colony, between entire acquiescence and vigorous subjugation. It is hardly necessary to observe that neither of these courses were adopted by the British Government. Their diplomatic proposals always implied subjection, even when renouncing taxation, and their military expeditions were just calculated to give to rebellion the excitement of adventure, without the perils of defeat.

To return from this long digression to the ordinary line of domestic change and combination, we find the dissolution of 1774 considerably strengthened Lord North's government, and confirmed his anti-American policy. A strong feeling existed, not only in the Tory party, against the sordid ingratitude and obstinate rebellion of the colonies. For a large body of Whigs resented this resistance to the sacred traditions of Parliamentary power: economists generally saw the advantages of enlarging the basis of taxation, as lightening its particular pressure: and all appreciated the moral principle of allegiance to the mother-country, and aid in return for the succour their infancy had received. It was remarked that not only the counties, but that large towns not connected with America, returned members to support Ministers, and enforce the authority of Parliament on the Colonies. This natural though not usually remembered fact suggests the idea, that had our representation been placed on its present footing before the colonial troubles began, the result

might still have been the same, as the representatives of large and needy bodies of taxpayers would have caught at the idea, of making new and thriving millions share their burdens with them. It is too certain that throughout this unhappy contest the King went all lengths with his Tory ministry and the popular feeling against America. But though his mistake was great in policy, and perhaps not small in temper, yet they had little right to blame his warlike obstinacy, who had so severely censured him for terminating a wanton and aggressive war at the commencement of his reign; a circumstance which no doubt influenced his mind to press hostilities on subsequent occasions.

Before quitting this painful subject of the American troubles, to watch the progress of causes at home, which in truth operated, as usual in time of war, quietly enough, we may advantageously remark on one defect of representative government, that has not been hitherto noticed, but which, as inherent in its very nature, can scarcely be averted.

Representatives may fairly enough represent the religious, the financial, and all other principles of their constituents, except those particular qualities which actually make them representatives at all, and in which they are no fair average of their countrymen, but rather exceptional instances. The very fact of assuming the office of representatives implies, particularly in a country of great uniformity of station, and expansion of employment; a very

strongly defined character of political ambition; useful, no doubt, in its way, but which cannot, without great error and violence, be construed as the general bias of the country. It was, therefore, quite natural that the State legislatures, and national Congress emanating from them, should entertain views, and assume a position, very far in advance of the wishes and intentions of those who had delegated them. It was almost equally natural, that when such views had triumphed without any great sacrifice on the part of the conquering party, and a just and regular administration was kept up in a prosperous people, that these advanced views would become popular as allied to national pride, and not associated with any great individual loss or hazard. And thus we see a very decidedly anti-British Republicanism the national characteristic of modern America. Where, at the beginning of the contest, there were indeed republics, but without republicans; and where the hostile feeling was more against the custom-house than the palace of English sovereignty—rather against the acts of her Parliament than against the supremacy of the mother country herself.

That a great and hostile change in the feelings of the Americans to this country took place in the course of 1776, is true; owing partly to the exasperating continuance of hostilities, and partly to the writings of Paine; a man who, in some respects before his age, and in others behind any age, will require

further consideration at a subsequent and still more important crisis. The political sermons, in which somewhat of the vein of the ancient Puritans was rather unsuccessfully attempted, had also their effect in the northern States. But, though the language of the Cromwellians was sometimes assumed, partly perhaps from Puritan tradition, and partly from the force lent by the magniloquence of Scripture to the expressions of half-educated men, yet the religious principles of the leaders of the American movement appear to have been of the cool and negative order of our Unitarians and political Dissenters, equally removed from the random scepticism and reckless depravity of the French savans, and the earnest spirituality and severe morals of the old Puritan school. Certain it is that some American loyalists, in despair of maintaining the connexion with the British monarchy, as personified by Lord North's administration, seriously opened communication with the second Pretender, the Charles Edward of 1745, offering him the independent Crown of Transatlantic Britain. How strange a chapter of history would have been opened, had this scheme been realized or even attempted. The principal domestic incident affecting party combinations at home was the important relapse, or secession of the Bedford Whig section into the ranks of general opposition. After having been the most strenuous advocates of the war, and discouraging Lord North's approach to conciliation in 1775, strong in their

parliamentary boroughs, official experience, and control of the active services of the Navy and colonies, their retirement from the disastrous and unpromising contest, was deeply significant of the state of affairs, and of great weight in future combinations. As from this date of 1779 the house of Russell and its wide-spread connexions, have ever been in the van of popular concession and removal of restrictions. A very insignificant man, the Rev. John Horne, about this time afforded occasion for the determination of two not insignificant points of constitutional law. He had been an ordained, and indeed beneficed clergyman, but, having a decided taste for the most turbulent form of secular life, he sought, by election, a seat in the Commons. His holy orders were, however, deemed indelible, and as such a disqualification for that assembly. He was also convicted of a libel in reference to the action between the Royal forces and American insurgents at Lexington, where he had justified the conduct and cause of the latter. This description of literary treason, of writing or speaking in favour of any cause opposed to our own, and that is dyed with our blood, has been a very safe and base form of modern patriotism. But, whether exercised in favour of Chinese, Caffres, or Borneo pirates, has never in these later times found a Thurlow to bring it under the lash of the law. It is true Horne's case was, in one sense worse, as the contest was a more serious and national one, than that with the savages of

South Africa, or the professional murderers of the Indian Ocean; but, at the same time there was more constitutional sanction for his clients, and of doubt as to their guilt, than in the case of the protegées of the modern peace party.

In 1777, a decided though fruitless opposition had been offered to the ministerial policy in the American war. But though Fox had now taken the position, his talents and character most fitted him for, and to which he adhered with indiscriminating consistency for the rest of his life, the largest minorities opposition could muster were 87 in the Commons, and 26 in the Lords. A result that seems much to have discouraged them, and promoted the continuance, though not the vigorous prosecution, of the war. The costs of the Army and Navy amounting this year to the then unprecedented sum of eight millions. The time was ill chosen for an application in aid of the Civil List. Debts had been incurred on this department to above half a million; principally, as was alleged, and probably with truth, in compensating the American loyalists, who had been exposed to the loss of property and employment, in consequence of their political opinions. But an idea had likewise got abroad, that this civil expenditure was wastefully employed nearer home, and that extravagance and even corruption had had a share in causing this deficit. The House, however, voted a liquidation of the debt, and a permanent augmentation of the income itself. The

Speaker, Sir Fletcher Norton, took occasion, in tendering the grant officially to the King, to remind him, with great bitterness of expression, of the sacrifice exercised at such a time for his honour and comfort. A remarkable instance of the will of the majority being expressed officially by an individual, whose tone gave a totally different character to the vote. So great, indeed, was the pressure on the existing resources of the country this year, that not only were five millions borrowed, but a tax was laid on men-servants, an additional stamp on deeds, and also a duty on sales by auction.

A partial suspension of the Habeas Corpus Act was carried, not with a view to internal movements, but to dispose of the anomalous case of British subjects found with arms in their hands against their country, either in America or on the seas. These parties were far too dangerous to be set at large, but could scarcely be treated as prisoners of war; while actually to convict them of the treason or piracy, of which they were suspected, would have been difficult or tedious.

It may be observed that these persons were not native Americans, who from the first were treated with a lenity when taken, more creditable to the temper than policy of the Goverment.

But the opposition raised the usual cry of faction against the measure, as capable of being directed against any subjects in this country, and who had never gone out of it, who might be obnoxious to the

Government. This was an absurd imagination, totally unjustified by the lax and careless character of Lord North's Administration. And in reference to the real objects of the measure, it was difficult to suggest any other course, than this humane compromise between the release of dangerous men, and their military execution on capture, which would have been inflicted, as a matter of course, by the Whig Government in 1746, and the French Government of 1793.

The ill success of the war, which became apparent towards the close of this year 1777, though it stimulated the exertions of opposition in Parliament, had no anti-ministerial effect on the country generally. The military spirit of the nation was roused at the urgent and ungrateful resistance, as it seemed of their colonies, and much of the old national feeling of rivalry to France, that had been for nearly a century so powerful an element of Whig agitation, was once more excited by the infatuated alliance of the tottering Court of Versailles with the sturdy republic of the West.

In 1778, when war was actually declared with France, in consequence of its intimate alliance with the revolted colonies, increased preparations were made for hostilities, now not to be confined to the other side of the Atlantic. Lord North lowered his tone, and would have been truly glad of the assistance of Chatham, whose name as a great war and colonial minister was still kept up by the public

discontent, and his own occasional and highly dramatic appearances. But Chatham and his friends still differed too much from Lord Rockingham and his now compact Whig opposition, on the relations to be restored with America, to unite cordially even in opposing the actual course pursued, which they both condemned. Chatham going all lengths in conciliation would still not hear of separation, that seemed a national disgrace, and the annihilation of the great colonial empire he had been instrumental in raising.

Lord Rockingham's simpler alternative was, I think, more logical, though neither the King nor the country were yet sufficiently humbled to accept it. The King, indeed, at this time, steadily supported Lord North in the midst of general disaster, increasing opposition, and his own wish to retire from a place of such difficulty and thankless responsibility. As the result of this pertinacity was highly disastrous, and as it was in some degree occasioned by the King's natural disgust at the pride and implacable conduct of Lord Chatham ; and at the rebellious spirit of the Americans, writers have generally condemned the obstinacy of the Royal Will on this occasion, as having alienated the colonies, and protracted the war from personal feelings of pride and resentment.

Yet, though perhaps the Sovereign was to blame in this matter, it was a fault of pride and firmness his people largely shared with him. Indeed, so feeble, numerically, was the Rockingham opposition,

that even had Chatham laid aside his impracticable pride and affectation of singularity, it is doubtful how they could have closed hostilities with such sacrifices, as would have propitiated the colonies and compensated France, without deeply offending their own country, and indeed compromising its safety.

Not only was North ready to resign to Chatham or Rockingham, had his master willed it, and the nation been prepared to sanction a change of policy; but even Bute, from his deep retirement, urged accession to the terms of his great rival and of late almost assailant. But party combinations were to be for a time simplified, and the death of Chatham in the course of 1778, after one of his singular and effective appearances in the House of Lords, relieved Lord North from a contingent rival, and Rockingham from an incongruous ally.

North continued Minister, and while war was prosecuted with rather increased vigour and ability in America, the first attempt was made to amend the penal laws against the Roman Catholics in England. So peculiar had been the position for the last century of this body, so quiet and so loyal, weak in numbers and still weaker in their unpopularity, labouring under the odium of their religious profession and the historical traditions attaching to them. They appear in the elections and party combinations of the eighteenth century, to have generally thrown in their feeble and unwelcome aid to the Tory party. With this conduct and relation it was natural,

that they were recommended to the patronage of the party at present in power. And so completely had all feelings of religious intolerance, or perhaps more strictly, religious discrimination, ceased in the upper circles of society, that this great and proper measure, repealing Acts of needless severity at any time, and quite out of place under existing circumstances, passed with little or no opposition. A repeal of the similar Acts affecting Scotland, promised for the next session, by the great excitement it caused among that fierce and earnestly Protestant people, gave some foretaste of the disturbances, which the lawless spirit and wretched police of the English capital were to occasion on this subject shortly afterwards. One must suppose, in the want of proof to the contrary, that these cruel statutes of William III., interfering not only with the celebration of worship, but with the enjoyment of property, and the ties of kindred were never enforced, except on such occasions as the cupidity of informers, lent means to the dormant fanaticism or suspicion of the law. The repeal, therefore, of these penal laws, would be more in the nature of security than of relief, and conferring no direct political power, was quite satisfactory to the peaceful and unambitious profession of a creed, which experience has shewn to have tendencies fatal to personal and national freedom. The violent outcry and tumultuary outrages on the Catholics, that followed the subsequent year, were totally destitute of any religious feeling beyond the

current tradition of popular hate; and were rather to be attributed to the lawless and unpoliced state of the metropolis, and the growing unpopularity of the Tory administration and party, with whose earlier history were associated many Popish connexions or suspicions.

In 1779 the No-Popery riots broke out in Scotland, not unsanctioned by many of those, whose station and character should have kept them aloof from such proceedings. While in England the Protestant Associations, though zealously extended to guard against the imaginary dangers, did not participate in the wild outbreak of the populace, that gave a portion of the capital to some days of fire and pillage. Spain and Holland had now joined France and America against us. And while our Generals were stationary or surrendering in America, our Admirals were quarrelling on the sea, and even resigning commands at a very critical moment from personal pique or party faction. The consequence was, that the allied fleet rode triumphant in the Channel, and an obscure pirate even insulted the eastern coast and northern capital of our island. The Ministry, however, exerted themselves under their unparalleled difficulties, not only in the active branches of the public service, but in obtaining some accession of parliamentary or official strength. Overtures were made to the now headless Chatham party, but it was found firmly united with, or subordinate to, Lord Rockingham's views and opposi-

tion; so that it appearing, that not only Lord North's resignation was required, but a reversal of all his policy, the negotiation went off. And the opposition, now strengthened by both the Bedford secession and Chatham union, presented a very formidable and compact basis of parliamentary power, and official capability.

The Irish troubles connected with the volunteer association, which became prominent at this time, did not resemble other factious movements in that country, either in the class in which the agitation originated, or the object to which it was directed.

We have already seen the significant commencement of agrarian disturbance, and an absurd panic at an imaginary union with England, which bore a somewhat family likeness to the criminal outrages and professional agitation of our own day. But this association of the armed volunteers was one, in which all classes and creeds pretty equally participated; or if there was any where a priority of zeal, it was in the middle and commercial classes, and the Protestant population of the north; and it was directed to the just and fitting objects of commercial and legal equality with England. The repeal of harassing and injurious restrictions on trade and manufacture —the free intercourse with England and the Colonies, without any preference in favour of English goods, was sought and yielded too much under the pressure of circumstances, to have much grace or dignity. The independent action of Irish Courts, the general

freedom from appeal to England was likewise an object just and natural in itself, ardently pressed by patriotic lawyers and judges; but not perhaps very conducive to the public interest, in a country where the practice of the law was still very much behind, what the public opinion of England had formed in her tribunals.

The association itself was originally a volunteer militia, encouraged by the Government, and organised by the natural leaders of society in that country, for its defence in the untoward progress of the American war. But the military taste of the people, and the real injustice and humiliation which was felt by all classes, carried the national armament much further than had been intended, and it is said that 80,000 volunteers were at one time enrolled and disciplined, and obeying a national impulse independent of England; at a time when our own regular army, scattered over the globe, from India to America, was not 50,000 men. It is curious that, consisting so largely as this force must have done, of the totally unenfranchised and politically degraded Romanists, no movement could be detected particularly aimed at the Church Establishment and Orange ascendancy in that country. Probably the whole magistracy and wealth of the country, the professions, corporations, and officers of the corps themselves, were so entirely Protestant, that no demonstration appears either

attempted or even apprehended in favour of still prostrate Romanism.

Burke's celebrated economical resolutions were the great parliamentary exercise of 1780, and as directed with rather invidious minuteness to the expenditure of the Court and influence of the Crown, afforded in later days abundant materials for charges of inconsistency against the veteran and loyal statesman. Yet, making allowance for the difference of language, which an honest man might legitimately employ, in urging the reduction of expensive establishments, which pressed on the taxation, and corrupted the independence of the nation; and the same man defending establishments generally against bloodthirsty levellers, who were substituting for them a tyranny far more atrocious, and imposts infinitely more burdensome; I do not see that Burke expressed himself wrongly on either occasion, and am indeed sure he was right in opinion on both. The fault, if any, was in the fervour of the rhetorician, not in the wisdom of the statesman, or the conscience of the man. It is needless to say that the fine measures for economical reform and reduction of Court extravagance and influence were rejected by a Parliament, where the union of the old country Tory party with the specific retainers of the Court, and members influenced by the patronage of the Executive, still constituted a steady though decreasing majority. It is more remarkable that Dunning's cele-

brated motion, based on a mass of petitions praying for economical reform, and for a check on the influence of the Crown, was actually carried in the fullest House of the age, by 233 to 215. Yet this majority did not continue, so as to unseat the Ministry, or to carry any specific measure. So much easier is it to pack a majority for some special vote, than to command their support on the details of reform. This celebrated resolution of 6th April, 1780, was, that the influence of the Crown had increased, was increasing, and ought to be diminished. In one sense it was a truism, as the increase of patronage, revenue, and centralised authority generally must have that tendency. Though, as it must be, and clearly was exercised through Parliament by Ministers, and in conjunction at least with one of the great parties, that divided public opinion, it seemed on the whole an augmentation of the influence of Parliament itself, and rather a weight thrown into the scale of one party, than a paramount authority over all. The real want of the age was a judicious parliamentary reform. But this great fact was not generally recognised, even by the most advanced men of the popular party, who looked on the actual constitution of Parliament, as if not perfect, at least beyond the competency of itself to reconstruct, and involving perils to liberty in the very idea of tampering. Such was the thought, quivering between a sneer and a panic, that breathes through so many pages of Junius. And such was the principle, though tested in an extreme case, that

had supported Wilkes in his long struggle with the majority of the Commons House. The fear that in any reconstruction of the House, in the inertness of public opinion, the popularity and influence of the Crown would so modify the representation, as to increase its own power, by at least the extinction of those convenient close boroughs of the Liberal grandees, that were the great nursery of political talent, and the safe refuge of so many distinguished and talented members of opposition. The only plan that found extensive favour was Lord Chatham's idea of enlarging the county representation, by adding one hundred knights of the shires, and buying up an equal number of the least representative borough seats.

The riots, termed from their author the Lord George Gordon riots, disgraced and damaged the metropolis in the summer of 1780. It was another cause, but the same class of partisans, that had rallied round Wilkes twelve years before. Police, on our present excellent system, that combines the temper and discretion of an educated citizen, with the discipline and physical force of a military corps, there was none. The soldiery themselves, called out too late to stop mischief, were soon enough to destroy many lives. Wedderburn, the Solicitor-General, advised that the troops might fire at the discretion of their officers, without the actual sanction of a magistrate. The ministers were blamed for this, as an excess of violence in repression; and

both ministry and opposition, with equal injustice, accused each other of having directly or indirectly caused the lamentable occurrences, they alike deplored. The effect was, no doubt, adverse to opposition associations, and therefore favourable to ministers. Lord George Gordon was subsequently tried for treason but convicted of sedition, and expiated his mischievous madness by a long term of imprisonment. Executions of the rioters on the liberal scale usual in that age followed, but, considering the magnitude of the offence and amount of damage, the rioters had little cause to complain of any undue severity, as compared to that shown to ordinary criminals.

The curious and refined question of the legality of Romanists conducting the education of Protestants, was discussed in the House of Lords immediately after the disturbances were quelled. And notwithstanding some qualifications introduced, the decision of their Lordships was more liberal than that of the Lower House, that prohibited such instruction altogether.

The commercial jealousy, that led Holland to join the general alliance of Western Europe against England, was inflamed by the domestic factions of that peculiar republic. Family connexions, and perhaps the analogy of position, had always drawn the Stadtholder, or hereditary chief of the republic, towards the English Royal family, and consequently the English alliance. The French Court, with its

usual suicidal treachery, allied itself with the more decidedly republican party in the States, and thus gave it an advantage, which precipitated the republic into a war with their mighty maritime neighbour, in which they could gain nothing, but risked everything, that had given an historic and European interest to their swampy Delta. This foreign embarrassment is only alluded to, as in the peculiarity of their institutions, and the faults of their national character, the Dutch may be considered an instructive caricature of ourselves. The same bitter and balanced opposition of parties—the same wise love of independence and self-government rather than aggression and equality—the same unwise pursuit of wealth, without respect to what alone makes wealth secure and honourable.

The movement of Holland was followed by an armed neutrality of the Northern Powers, for the protection of neutral trade from belligerents, in a sense that would materially have altered the law of nations, and rendered any effective blockade impossible.

The new Parliament, that arose from the general election of 1780 was not so zealous for the prosecution of the war, as that which preceded it. A large majority in the Lords, and a slenderer in the Commons, still however supported ministers in continuing hostilities. Three bills were also rejected by the influence of the Court. Two of them for excluding contractors from the House, and revenne officers from voting generally, were of obvious application,

though based on rather an obsolete view of the abuse of the franchise. The third, which embraced most of Mr. Burke's practical and economical reforms, for the regulation of the Court expences, the limitation of pensions, and the suppression of superfluous places, was a far more important measure, and had at least the merit in some eyes of bringing out the younger Pitt, the future champion of the monarchy and ancient institutions of the country, as an economist and a reformer. The same remark applies here as to the former instance, of the still greater Burke. It did not follow, that no reform or retrenchment was needed, because a bloody revolution was to be deprecated. Nor was the discussion itself without advantage, though not accompanied by success, as public opinion was brought to bear on those establishments; and ministers were led to reform much without compulsion. The opposition too were both gratified at their indirect influence, and learned by practical acquaintance, that establishments on this scale, if conducive to the pride and power of a few, are deeply rooted in the comfort and existence of a wide circle of the humbler classes of the community.

Through 1780 the war dragged its weary length along, and a second surrender of a British division on the Continent of America, justly raised the hopes of the revolted States, and gave additional force to their opposition allies in this country. But on the ocean, the usual success of the English flag, though not so conspicuous or unbroken as in other

wars, was yet sufficiently marked, and in that respect unfortunately so, to keep up the spirits of the nation, and give a show of confidence to the ministry and their adherents. Writers, according to their own political bias, have represented this unfortunate contest as both popular and unpopular. In fact, it was both at particular stages of the conflict. In the first instance, there is no doubt the American pretensions offended alike the Court and the economists, jarring as they did both with the claims of Royal authority, the constitutional rights of Parliament, and the natural wish to lessen the burdens of colonial wars by the contribution of those, for whose benefit they had been waged. This feeling, strong in Parliament, and not confined to its walls, was enhanced by the scandal of the Gallic-American alliance, and some of the objects to which the republicans rather inconsistently lent themselves. But this feeling yielded to the depressing influence of continual disaster and increased taxation. And in 1781 the ministerial majorities crumbled before the progress of events; till early in 1782 a majority of nineteen in a for that time very full House, sanctioned a decisive vote against the war. This was not the first, nor by any means the most inconvenient instance of such interference of Parliament with the Executive Government. But it was open to the constitutional objection of embarrassing the State, and encouraging its adversaries, at a moment when the Crown had at last, though

reluctantly, intimated at the close of the last Session an earnest wish for peace. The opposition had some reason for doubting the sincerity of this wish, for with the usual firmness of his character, and strong sense of prerogative, the King had undoubtedly lent to the war party all the weight and support of his station; not possibly without some painful recollection of the odium and contempt incurred, by his abrupt termination of the successful but objectless seven years' war on his accession twenty years before. The debates that followed this important division, which tended, with some rather too personal insinuation, more specifically to a change of policy and immediate peace, led to the dissolution of Lord North's administration.

The Rockingham Whigs naturally came into office, under the powerful impulse if not leadership of Fox, and with the accession of Lord Chatham's old friends or colleagues, Lord Camden, the Duke of Grafton, and Lord Shelburne, but without enlisting the services of the brilliant young orator, the heir of his name and reputation. Whether jealousy or the stronger claims of more tried partisans occasioned this exclusion, it was fraught with no ordinary consequences to the history of the country or its parties. Pitt might at this time have freely united with the Whigs in common hostility to Lord North's ultra Tory party, and in common desire for peace with America and the recognition of its independence. And had his pure and elevated

mind been allowed to follow a Whig development, and to rise in the natural order of things to the leadership of that party, it might have saved it from the criminal associations and unconstitutional errors, into which it fell, from the blind faction and want of moral principle in Charles Fox.

The new ministry had acquired reputation in opposition, as the advocates not only of peace with the revolted colonies, but of reform and retrenchment in our domestic institutions and general expenditure. And though no doubt equally sincere on both questions, the delay and difficulty that attended their negotiations for peace, show that the mere wish to cease hostilities, unless that wish is reciprocal, forms but a very feeble step towards a pacific consummation.

In their home reforms they were more successful. They granted legislative freedom to the Irish Parliament without the directing control of the English Houses. This concession, though demanded by the organization of the armed volunteers, and just of that nature calculated for a theme of patriot oratory, was neither wise with reference to imperial interests, nor indulgent to the interests of Ireland itself, considering the exclusively Aristocratic and Orange character of its native Parliament. But then, as ever since, all party and sectarian feelings merged in hostility to England, and gratitude for past concessions was only shewn by the truculence of consequent demands.

Contractors were excluded from the House of Commons, and revenue officers from the constituent bodies. In redemption of much opposition pledging and invective, Mr. Burke's Bill also passed, for the reform of the Civil list, and extinction of various offices and sinecures. A move no doubt in a right direction, as the evil of the system combated might be demonstrated by an extreme case, but naturally disappointing the public in its result, as an infinitely small gain to the revenue seemed purchased, by the ruin of many persons and families in private life. Fox whose earliest associations had been Tory, and specially anti-Wilkite, opposed a new motion of that now effete agitator, for expunging from the Journals the Resolutions concerning the Middlesex election. The motion was however carried by a larger majority, than one can well account for under the circumstances. And thus the prosecution of the demagogue became a part of history, and his triumph a point of law. The corrupt little borough of Cricklade was also partially disfranchised, and its suffrage, according to the idea of parliamentary reform then in vogue, extended to the freeholders of the hundred. This brings us to the first substantial proposition of Parliamentary Reform, that was ever brought before the House of Commons, in the form of a resolution to go into Committee, with a view to disfranchise the corrupt and reform by enlargement the smaller boroughs, and augment the representation of counties. Pitt appeared on this occasion as

an independent member, and advocate of the proposed reform. But so just and obvious were his arguments, and so moderate the reforms proposed, that the taunt against him in later days of having changed his opinions with his position, was more plausible than real. For to any but the jaundiced eye of faction, it must have been a very different matter, to theorise tamely on possible improvements of the representation in the quiet days of 1782, and to advocate a measure on the principle and model of the French Revolution, when the fleet was in mutiny at the Nore, and corresponding societies were ready to light the torch of Jacobinism among all our more inflammable constituencies. Yet though Pitt may be fully acquitted of tergiversation in this particular, from the altered circumstances of the times, and still more the new objects more or less openly avowed by the advocates of Reform; we cannot altogether excuse his neglect of this important subject during the entire interval. Those irreparable and precious years of peace and security, from 1784 to 1789, might have been improved to the amelioration of our institutions, as an opportunity so favourable has not returned again. His ministry was so strong, his opponents so weak, unpopular, and divided on this very subject. The spirit of the people was so attached to the ideal of their Constitution. The struggle of classes was scarcely felt, and all sectarian questions simplified by the uniformity of exclusion. Had so golden an

opportunity been worthily improved by a liberal and wise reform of our representative system, in as comprehensive a spirit as the measure of 1832, and more in analogy to the genius of our early constitution, and the representation of all interests in judicious and safe proportion, not only a half century would have been gained in practical improvement among ourselves; but an example of change and model of representation would have been held up to our great Continental neighbour, which could not have been without effect on its own Revolution. For while the practical working of our actual constitution attracted attention and admiration, the composition of the representative Chamber did not bear scrutiny, and indeed must have appeared unintelligible and incongruous to any foreigner. Whether it was the apprehensions of the Court, and of his own aristocratic phalanx, or as is more probable, the conservative instinct of office, Pitt certainly earned blame by his evasion of this golden opportunity of ministerial power and national peace, never perhaps to return; a neglect only partially repaired by the feeble introduction of the Reform measures of 1785, which were in themselves good as regarded constituencies if not constituents. But as for the factious declamation on his government prosecutions of 1793 and 1794, as directed against former partisans, whose principles he had once shared and now deserted and persecuted; it was about as reasonable as to censure Lord John Russell, or any other moderate and consistent friend

of constitutional liberty for prosecuting the rioters and conspirators of 1839 and 1848.

Negotiations for peace had been opened before the death of Lord Rockingham, but there was a natural difficulty in closing, what to some of the belligerents had much of the acrimony of a civil war. While the gratuitous interference of France had been justly punished by continual naval disaster, a growing embarrassment in her finances, and a new spirit of disaffection in her people and armies. There is no reason to doubt the sincerity of the Rockingham Ministry in pursuit of peace, which was only delayed by the inevitable difficulties of closing at all satisfactorily to the numerous parties concerned, a contest so embittered in its incidents as well as origin, and in which the results had been so chequered and disaster so reciprocated. This unhappy war was at length concluded under the Shelburne administration that succeeded to office. But the terms of peace were almost equally, though not with equal justice, condemned by the North Tories, whose incapacity had mismanaged the war, and the Fox Whigs, who had always been clamorous for peace at any price and on any concessions. But the party intrigues that followed the dissolution of the Rockingham government are a more instructive episode of our political history, and bearing more directly on the subject of these pages, both as illustrating the practical oligarchy of the age, and indicating at the same time the dawn of those popular

principles, which had been rather in abeyance than actually abrogated. The facts of the case are well known, but give occasion to some remarks. On Lord Rockingham's death the ostensible or aristocratic leadership of the Whig party naturally devolved on Lord Shelburne. But Fox, from personal predilection, or from feeling that a still more shadowy leader would afford a scope for his own ambition and real agency, favoured the pretensions of the Duke of Portland. The King however, his friends, and the bulk apparently of the old Rockingham opposition preferred Lord Shelburne, who was installed Prime Minister, and was fortunate enough to secure the services of young William Pitt as his Chancellor of the Exchequer. Fox, his friends, and certainly the more talented if not consistent portion of the Whigs seceded from the Government.

The young Chancellor of the Exchequer was undoubtedly a Whig, in its ancient sense and its modern anti-North application. But his early opposition had been on general principles and for practical objects. He was not offensive to the Sovereign from personal faction, nor odious to the public from interested combinations and unexplained secessions. The heir of the name and popularity of his overrated father, his youth had saved him from participation in the factions and prosecutions of the early part of this reign; while his opposition to the American war had neither been sullied by the vindictive

asperity on the Government, that had characterised the general tone of the Whigs, nor by an earlier participation in the corrupt and arbitrary policy, that both Fox and the Bedford section might certainly be charged with. The high-minded and eloquent young man was therefore indeed a heaven-born minister for a constitutional State, on whom the King could lean and the nation trust.

The Shelburne administration had the merit but not the credit of terminating this disastrous colonial war, with all the complicated relations and varied losses and acquisitions, that had been entailed by it with the European Powers. With respect to the revolted colonists themselves matters admitted of a much speedier settlement. For with them the land contest had been so uniformly disastrous, that there was scarcely any point of honour to be reserved to the British arms. While the oaks of the forest, or the thunder of Niagara could not have been more deaf, than the successful Congress to any claims of their countrymen on their pity or justice, who had retained their early allegiance.

It was perhaps naturally on the terms of peace concluded, that the Foxite Whigs and the North Tories first indicated that combined action, that was ultimately developed in the notorious Coalition. The combined opposition condemned the terms of the treaty as too favourable to France, considering her losses and growing financial embarrassment, and as too neglectful of the American loyalists. Neither

objection seemed in itself unfounded, but they came with a very bad grace from parties, who either by their misconduct of the war had led to its calamitous result; or by their factious virulence had damaged the cause, and disparaged the principles of the British party in the States.

The Coalition now formed, and avowed in 1783, of the two extreme and unprincipled sections of the two great parties, censured the principle and some details of the peace by majorities of 16 and 17. Though the leaders of the new movement had either made the war disastrous, or asserted any peace to be desirable.

These majorities, which were avowedly for place not principle, and directed against no particular policy, except the personal predilections and coterie government of the King, constitutionally closed the Shelburne administration. But the King held out against a combination he detested, till an actual address of the Commons necessitated the unwelcome step. Fox and North came into office under the nominal leadership of the Duke of Portland. The new ministry concluded peace with France, Spain, and the United States, much on the terms they had been just censuring in opposition. The independence of the colonies having been fully ratified, their commercial intercourse became the next important consideration; and this was gradually and indirectly restored by the repeal of the prohibitory enactments, and the authorisation of the Privy Council, to regu-

late the mercantile transactions of the two nations. This was wise, and indicates the almost prophetic commercial liberalism of Burke, and indeed led to a free and increasing commerce founded on mutual wants and cognate tastes, and which, even in spite of the hostile tariffs of later days, has been a valuable compensation to the mother country for the precarious dominion she had resigned.

The Bill, or rather Bills, for the regulation of the India Company and the Government of its vast and increasing territory, were intended to be the great effort of the Coalition to establish their credit and confirm their power, but were destined to be their stumbling block and ruin. The well known plan of this celebrated measure was to transfer all political power, military control and official patronage, from the Directory and Proprietary of the Company to seven political commissioners, connected with the ruling faction in Parliament, and not liable to dismissal but by the joint address of both Houses. A catastrophe which, of course, the leaders of the majority might avert as long as their majority or power lasted.

There is no doubt, that at this period great corruption and tyranny prevailed in the Company's territories, though not to an extent to cause much disaffection, or even sensation in an Asiatic people, accustomed to centuries of subjection: to far less a degree indeed, than prevailed in any other territories subject to native Princes, particularly those of

Mahometan origin. It is likewise doubtful whether the total change in the principle of administration and patronage proposed by Fox would have tended beneficially, at least in the first instance. Substituting for the independent municipality of the Company a board of Government, connected with a powerful party at home, and strong in aristocratic or popular relations, it would have probably only substituted one class of evils for another; and made the interests, and even the religions of India, as of Ireland, the battle field of political parties. While the slow improvement in the details of administration, and the character of officials, would have only been evolved as public opinion, itself gradually improving, was brought to bear on the distant subject; public opinion which operates, indeed, stronger on a privileged body on its good behaviour, than on a powerful party, who have other claims to public support, and who may be interested to screen a highly connected official, or to perpetuate a profitable abuse. But the point of view, from which this famous measure was chiefly considered at the time, and by which it was judged, was its effect on our own Constitution, by the creation of a new power armed with immense patronage, and wielding a civil and military organisation, that experience showed was always on the increase. Fears were justly entertained of the effects of such an influence on the integrity of Parliament, and the independence of the Crown. To us, who have seen the progressive

influence of public opinion, at last fully developed in the supremacy of the middle class, a good deal of this apprehension may seem overrated or simulated. But we should remember, both that the development of public opinion has pursued its course since, free from this permanent and increasing influence; that the press has written, orators have declaimed, and electors voted, free from the colossal bribe of Indian patronage, wielded by the parliamentary majority for the time being. And also, that at this particular crisis a parliamentary majority had been formed by the coalition of extreme parties, obnoxious respectively to the King and people, and to both by their union.

The entanglement too of Indian questions with the tenets and objects of party warfare at home, would have been injurious to national interests, and added, if possible, disgrace to the liberal party. For there can be little doubt, that the analogy of the questions would have led the advocates of improper suffrage, and the levelling of religious distinctions, to urge similar absurdities of enfranchisement to the crouching castes of Bengal, and philosophic liberality to the absurd and impure superstitions of the East.

It is hardly the place here, as the subject deserves a collateral examination, to discuss or comment on the anomalous, and yet marvellously successful constitution of the East India Company, as it existed at the time alluded to, and has continued with some

modification to the present day. The idea of the Directory of a mercantile company conquering and ruling an Eastern Empire is so monstrous, that if it had not actually happened, no seer would have ventured to predict such an event, no theorist to justify such a system. Yet, divested of the original and non-essential character of a mercantile object, there seems less to wonder at and censure in a board of English gentlemen, drawn principally from the upper business class of the metropolis, bringing to their important office the ordinary intelligence and integrity of an English magistrate, or member of Parliament, and devoting themselves to their duties with the certainty of a permanent position, and exercising a political and administrative power, whether in joint council, or in subordinate committees. They are elected to their office, irrespectively of English party, and are expected to conduct the affairs of India without reference to the fluctuations of party at home. The great and opulent constituency, of which they are at once the representatives and managing committee, is itself raised above the ignorance and passions of the populace, and sordid narrowness of the Reform franchise; and, at the same time, is not affected by the personal ambition of aristocratic coteries. Viewed in this light, as the delegation of a great national duty and privilege to a particular class, most competent to exercise, and least likely to abuse it, one must be struck by the analogy to the peculiar mode, in which the genius of

Augustus connected the provincial administration of Egypt with the fabric of the Roman Empire. Considering the importance of the possession, the difficulty of access, and the peculiar character of the people, he gave its original provincial administration to the entire management of the Roman knights or gentry; who probably exercised the government and patronage, through a select corporation or Balia, as the medieval Italians would have termed it, of their own body. The idea was a remarkable one, more curious than a similar constitution in our own days, as the ancients were far more jealous of municipal and corporate independence, in derogation of the assumed national will, and of any permanent delegation of authority, than the best and wisest of modern nations have been.

It is easy to imagine how, if patrician pride and tribunitian virulence had not been alike prostrated and silenced before the commander of thirty legions, what indignation would have been felt, at the exclusion of so tempting a prize from the raffle of aristocratic jobbery, at the retirement of a large province from the activity of democratic mischief. Read by the light afforded by the traditions of party, and the natural impulse of classes, it was pretty much this feeling, that united a parliamentary majority of extreme parties in their celebrated attack on the India Company, and its administration of its Eastern Empire.

The position taken up by the two great parties in the State, in reference to this question was, not-

withstanding the defections and coalitions that had directly influenced them, not without analogy to their early traditions and principles. The Liberals aiming at an organic change to a theoretic perfection, in disregard of experience and vested rights. The Conservatives clinging to the existing organisation, respecting chartered interests, and only professing a practical reformation in details, and a more active control on the part of the Government.

The history of these rival measures, and their effect on the ill-starred coalition, is well known. The Lords, not uninfluenced by the solicitation of the Crown, conveyed to many waverers or neutrals in an unusual, if not unconstitutional way, rejected the India Bill of the Coalition, and thus gave the King the wished-for opportunity of dismissing his Ministry, though still supported by a majority in the Commons. Mr. Pitt was installed as Prime Minister, with the full favour of his Sovereign and the upper House, and with a majority in posse, from the well known feeling of the nation whenever a dissolution could send up a new House of Commons. Through the remainder of 1783, and the first session of the following year, the Ministry of the King's choice and people's hope, was harassed by a series of adverse votes in the Commons, where their adversaries still wielded a fading majority.

The votes were directed against the mode, in which the change of Ministry had been brought about, in apprehension of an intended dissolution, which was in the first instance disclaimed. Later

on Mr. Pitt's own India Bill was rejected, and his continuance in office after such affronts censured, but by crumbling majorities. Addresses and remonstrances then followed, with decreasing numerical strength, which shewed at once the folly of the faction, that so repeatedly exhibited its increasing weakness in a struggle, where even success would have only led to, what they knew from the feeling of the country, was to them a political extinction for years—a dissolution. This great event at length took place in March 1784, after the opposition majority had been reduced to a unit, and at once gave the Minister a majority of nearly 150. This broad basis of power, though subject to the fluctuation of public opinion, the defections of personal disappointment, and the gradual tendency to opposition of the fractions of a ministerial majority, still presented for many years a mighty support, that carried the Ministry and the constitution, safe through the awful crisis about to open, and whose lineal representation is seen in the Conservative party of our own times.

The Indian Bill, by which Mr. Pitt now commenced his ministerial career, and carried by vast majorities, was in substance pretty much what has governed India to the present time. The mass of patronage and commercial arrangements were reserved to the Directory, as well as the judicial and financial administration of their territory in India, through the medium of their own officials in that country; but the sovereign rights of peace and war,

and general control or right of suggestion, and the appointment of the highest functionaries, was vested in the Board of Control, which was constituted for this purpose as a new department of the Executive at Home.

The changes, that have since taken place, have been all in derogation of the powers and privileges of the Company, and so far in the sense of Mr. Fox's measure. The trade, first of India and later of China, has been thrown open to British capital and enterprise generally. The latter indeed at the moral, if not pecuniary cost, of a somewhat doubtful war. While the influence of the Board of Control, or at least of its President, has been used, either by direct application, or through the instrumentality of warlike Governors-General, to extend the sphere of hostility beyond the necessary protection of English or Anglo-Indian interests, and even beyond the natural boundaries of India itself. As before these pages can hope to see the light, a considerable change in the constitution, and powers of the Company's Government will have been effected, though not, it is to be hoped, to the extent, or in the sense so mischievously urged by a portion of the press, it seems superfluous to comment either on existing arrangements that may be annulled, or to suggest another scheme that may never be adopted.*

* The measure ultimately enacted in 1853, was perhaps the safest compromise between the senseless appetite for change and the experience of what had been really beneficial and successful.

But it would seem that the Directory itself admitted of an appropriate and useful division, both as to its duties and its mode of election.

If there was one select Committee of three or five members chosen by the Directors themselves from the most distinguished of their Indian servants returned to this country, or from eminent political characters at home, who had devoted their attention to Indian subjects. This eminent board, elected for life, with large salaries and no patronage, would be a natural object of ambition to politicians at home, and an inducement to eminent men to return from India, in the full possession of their health and talents. It would be an efficient and responsible Cabinet, more independent of the Board of Control, and the party interests of the Ministry of the day, than the respectable and numerous mediocrity of the existing Directory, which should still exist for the investigation and arrangement of details, and for the wide and impartial dissemination of their vast patronage.

The country appears to have decided the Indian question in 1784 on a ground collateral to the main point, and from the unpopularity of the Coalition, and the strong conviction of Fox's ambition and want of principle. But a good and wise man may fairly hesitate to pronounce on a question, where not only Pitt and Fox were opposed, but Lord Camden and Burke took opposite views. The weight of this latter statesman's name is so deservedly great on all broad questions of constitutional construc-

tion, that it may well balance a large majority on the other side.

Mr. Pitt has been censured, at the time and since, for remaining in office against the torrent of adverse votes, with which the parliamentary majority of the Coalition met his advent to power. But as the Crown had the resource of dissolution in its own hands, and no one doubted what the result of that appeal would be, it seemed rather respectful and conciliatory in the Minister to the old Parliament, to bear with its bad temper instead of closing its existence; and continuing to appeal, and not on the whole in vain, to its own prudence and cool judgment, than to a new assembly convoked under his own ministerial auspices.

There was no doubt every wish in both the King and Pitt to get on if possible with the old Parliament, as the adverse majority was evidently melting, and a dissolution is never welcome to the friends of ministers any more than to their opponents.

Yet though the vast majority given by the general Election of 1784, established Mr. Pitt and his friends in power, it by no means ensured the success of many measures, they were solicitous and in some degree pledged to carry.

Thus Mr. Pitt's wise and just measure of parliamentary reform, by buying up the small boroughs and giving their seats to the larger towns, and at the same time adding to the county members, failed so signally as not to be renewed.

A reduction of certain duties was only obtained by laying on for the first time a window tax. A wise and comprehensive measure that would have given Free Trade to Ireland, as far as complete commercial equality with England was concerned, after escaping the interested opposition of the English manufacturers, characteristically failed from the reckless faction of the Irish patriots, who resented a clause implying some legislative sequence rather than subjection, so far as to throw up a bill, and throw back their country a half century in civilization.

The activity of opposition or the indifference of the age to social questions, led to the failure of an admirable scheme for the police of the Metropolis, on the plan since adopted by Sir R. Peel, and extended by other ministers. To statesmen like Fox, and patriots like Wilkes, the judicial massacres of Newgate, and the general demoralisation of the lower classes was less odious, than the vigilance and organization of a preventive system.

We must however refer to this period the origin of our modern system of transportation; which in its original success formed the basis of Australian colonization; but pursued on a still larger scale, and with a deepening tint of infamy on the convict band, has done much to alienate the affections and disturb the harmony of those rising settlements. The real cause of the original success and later failure of the system of transportation is to be attributed, not to

the despotism of the colonial secretary, or the capricious resistance of the colonists, but to the preposterous folly and wickedness of our own philo-felon party at home. A party who never interfered to save a sheepstealer or shoplifter from a fate, which was undoubtedly a national sin in His eyes, who inspired the Pentateuch; but who now interpose between the murderer, the ravisher, and other hideous offenders, and the just consequences of their crimes; and insist on sending out miscreants, who should not live in any country under heaven, with the common thieves and prostitutes, who inspire no abhorrence or fear, and who, under favourable circumstances and another clime, might become useful members of society. As long as trifling offenders only were sent out, they were welcomed as accessories in the labour market, and emancipation had no alarm or disgust. But the case is widely different now with the concentrated sin, which instead of terminating its career on an English scaffold, is sent out to devastate a colony and contaminate even the ordinary tone of felony imported there. If some classification were attempted, and trifling offenders, women and the young only sent to the colonies; while old and grave criminals, whose lives are too valuable to be taken on the scaffold, were sent out to Greenland or the Falkland Islands, where their presence would not offend honest emigrants, or corrupt reclaimable convicts; transportation and its consequence, emancipation, would be divested of its terror to the colonists.

About this time too, the mismanagement of the Crown lands attracted some attention. They were estimated at above £100,000 a year; some reforms were projected, and inquiries instituted. But the best course that of a gradual sale of all those estates, except those actually attached to the Royal residences, or essential to the public enjoyment, was not adopted. And the abuse has continued to our own times, one of the few in this country, that has never been overstated and not yet reformed.

The national debt, which now amounted to two hundred and ninety-six millions, naturally became a subject of great apprehension to financial patriots. And though the system was at a later time extended and somewhat altered by Mr. Pitt, yet it is to this period, 1786, that we may refer the first establishment of the celebrated Sinking Fund. A measure whose singular fate it has been within the life of man, to have been inaugurated with unanimous assent, maintained at vast cost, and with proportional effect, and at last as universally abandoned as a splendid delusion and wasteful prudence.

It would be out of place to give here more than the principle of this famous scheme without commenting on its wisdom or success. A surplus first, and afterwards a per centage of every loan contracted, was vested in certain commissioners, with the view of constantly applying the accumulating principle and interest to the purchase and repurchase of stock; and so constantly to reduce the national debt, which it was calculated even at its highest

figure in 1815, would have been thus extinguished by the present time. The arithmetic of this plan was sounder than the commercial sense. For it was forgotten, what an effect on the money market this regular and increasing purchase would have, in raising the value of stock, and embarrassing its own progress to the desired object of extinguishing the debt. It probably supported public credit through the war, and kept up both the funds and the hope of a final settlement; but with the peace came other views of finance, and it seemed, if not wiser, at any rate pleasanter, to leave the money in the tax-payers' pockets, than to extract it for the remote extinction of a burden on their posterity.

But the great feature of this peaceful epoch, from 1784 to 1792, was the celebrated impeachment of Warren Hastings. Posterity has pretty clearly absolved this unfortunate but not blameless official, from the graver charges adduced by his accusers, on the very obvious though not quite satisfactory ground, that he had neither been worse than other European rulers in the East, and that an Eastern empire could not be maintained or administered, with the regard to personal liberty and the public good, that centuries of struggle and progress had established in England. But it was his fault to have been unscrupulous in the acquisition of revenue and territory; and his ill luck to return home, when there was a redundance of political and rhetorical talent vested in a hopeless opposition.

And the Minister, himself punctilious and severe on the delinquencies of others, was not averse to turn out a chace for the eloquent opposition to run down, and to divert comment and attack from his own administration, at the expense of a colonial offender unconnected with himself or party. The proceedings themselves were regular enough, and form perhaps the more valuable study to the lawyer and politician, that they were the acts of an avowed minority, permitted only and controlled by the majority; and thus the vote on each article was more discriminating, and on the merits, than when a popular assembly, with no guide but its own passions and ambition, votes on every point rather as it wishes and hates, than as has been proved to conviction. Thus, some of the charges were voted as articles of the impeachment to be preferred, and others were rejected. And the impeachment was opened before the Lords in 1788, with an amount of eloquence and impassioned earnestness, that would have rather surprised the swarthy victims of the denounced Proconsul, and not a little of that scenic effect and prolonged excitement, that spoke rather the display of talent than love of justice, and the amusement of an idle capital than the avenging of an injured people. The progress, technical points, and inane result of this celebrated and superfluous effort of parliamentary power belong to the next chapter. But before concluding this stormy moiety of George the Third's long reign, with some account of

the Regency Question that was agitated in 1789, it may be mentioned that the Slave Trade now for the first time attracted public attention. The Quakers and other sects gained great credit by agitating the subject. And Wilberforce, an independent member of Parliament, but attached to Pitt, and representing the great county of York, devoted his zealous heart and eloquent voice to expose the iniquities of the traffic, and prepare the public mind for the great legislative changes he lived to effect. It was not yet the time to emancipate the negroes, or even to arrest the trade. But both Houses agreed to a bill for the better accommodation of the negroes on their passage to America. This, though it seems now a lamentable and almost ludicrous connivance at crime, was really a great improvement. And the moral question of connivance apart, it may be questioned, whether effectually enforced, it would not have more abated human suffering, both by improving accommodation and limiting the traffic, than our present total prohibition, enforced by a sickly squadron, and evaded by every art of naval architecture and daring ruffianism.

It is some satisfaction to be able to conclude this long and difficult chapter, in which more than on any former occasion, the author has felt his own inadequacy to the task, and been alone supported by the consciousness of an honest purpose and useful design, with the compendious and philosophical remarks of one, who, if not a great his-

torian, was himself the soul and principle of historical disquisition.

In speaking of the Regency question, that was raised by the King's access of mental malady in 1789, clearing the subject of the personal ambition and party projects, that were involved in the plenary or limited assumption of power by the Heir Apparent; Mackintosh says,* the point was whether the analogy of inheritance on the *death* of the King conferred a similar right on the heir, when the King became *incapable:* the two Houses being the tribunal to decide the incapacity and declare the right. Or whether, there being no legal right whatever, quite a *casus omissus* in law, necessity vested in the two Houses the right of providing for the event.

On this occasion the Tories took the parliamentary, the Whigs the monarchical side; from no principle, but merely from their respective relations to the Regent elect, and the actual majority in the Houses. The Whig leaders being the intimate friends of the Prince, and the Tories commanding a large majority of both Houses.

Such were the legal merits of the point at issue, but the motives and passions that were displayed in the discussion are a very disgraceful, though perhaps too natural page of our constitutional history. The want of filial duty and family feeling evinced by the young Prince, in lending himself to the cabals of the Whig factionists, who only

* Vol. ii. p. 99.

valued his position as a pick-lock to place, and were ready to censure his sloth, extravagance, and luxury, as soon as they ceased to share his expenditure or have hopes from his patronage. Then, on the graver and more respectable side of Pitt, the Court, and the Tory party, there was much of disgraceful intrigue and tergiversation, with not perhaps a little hypocrisy and affected loyalty in those, who, if they loved the good old King very tenderly, had a still warmer affection for their good old places, that were compromised by his abdication. The case did not however actually occur, as the King recovered and renewed his functions for another long and stormy period, in which his firmness and knowledge of the public men of his country was of the most vital importance to the public safety. Nor indeed did the discredit of the intrigues descend below the higher sphere of public life. For while Peers ratted, and Placemen provided for contingencies, the great party of the gentry and middle class remained unshaken in their loyalty to their venerated though not faultless sovereign, and shared, with possibly a purer feeling, the joy of courtiers at his recovery. From the necessity of the case, the Great Seal was used on this occasion with some irregularity, being affixed to several documents, more particularly the commission for opening Parliament, without the sanction of the sign manual, or real direction of the Sovereign. The Irish Parliament, with the ill-timed impetuosity of the national character, and the osten-

tatious independence of a new liberty, passed the Regency Bill without restrictions, at the moment that the King's recovery made the measure superfluous and its tone somewhat offensive. It may be observed, that at this period, and till the decided advocacy by the Whigs of the Roman Catholic claims, the great opposition party of England was from tradition rather more closely connected with the Protestant oligarchy, that ruled in Ireland, than with the rising spirit of disaffection in that country, which, though Protestant in its persons and professions, still received its momentum and effect from the vast disfranchised sect of that irritable community. These movements, which scarcely indicated their originating principle and ultimate tendency, we have seen successfully enlisting the support of the people and Parliament of Ireland, for the really national objects of commercial and legislative independence, but had never yet breathed a word of hostility to the faith and endowments of the Established Church, nor ventured to advocate the cause of the prostrate but deeply rooted faith of the majority.

CHAPTER VIII.

GEORGE III. FRENCH REVOLUTIONARY WAR AND ITS CONSEQUENCES.

View of the French Revolution in what it prevented as well as effected—Origiual bad principle of the movement—Discussion of Paine's aphorism—Feelings in England of the Court and nation—and of the two opposition parties—Whig ex-placemen and real republicans—Impossibility of Peace—Impolicy of War—Consequences of the War—Financial and Legislative measures—Reaction against liberal opinions in England—Compulsory military centralization of the Continent.

All great causes may be viewed, not only in their actual, but their negative results, not only in what they effected or originated, but in what they arrested, retarded, or nullified. And on a topic which has been long a bitter, though little understood party battle-field, and calculated in no small degree to excite the passions and disturb the judgment of those who discuss it, the latter course presents some obvious advantages. One is transferred for a while, as it were, into the enemy's camp; we view the question from another point, and with another object. Not to mention that when great crimes and great sufferings are to come under our view, it is calmer and more improving to fancy them erased from the page of history, and from the analogy of the past to conceive what the future

development of civilisation and liberty might have been, had the great misfortune of 1789-1793 never blotted the fair prospect of European progress. But as the effects of the French Revolution fell with a direct weight on a great part of the European continent, it will be necessary, in some degree, to view it in its direct action, though, on the main subject of this treatise, the progress of the English constitution, its effect was mostly and very perceptibly negative.

It was too much the age of party combinations and traditional maxims among men of power and genius, and too easy and prosperous a time with the more numerous classes, to admit of a very great degree of attention to the reform of social evils, and the development of the inert or decayed portions of the constitution. But yet what movement there was had been for some time in that direction. The Government of India had been reformed on a plan, respective both of the chartered rights of the Company and of the claims of its native subjects. The commercial relations with Ireland and America had been put on a footing of reciprocal freedom and advantage, that shames the tariffs of later years. Prerogative had been defined, and the liberty of the press advanced by the inglorious result of the Wilkes prosecutions. Corruption and expenditure had been reduced, mainly owing to the moderate and consistent exertions of Burke. The Commutation of Tithes, and the gradual disposal of the Crown lands

were in a fair way of accomplishment to the advantage of the Church and State, no less than to all other interests connected with the land or desirous of investment. The Slave Trade, and to my mind far more abominable Criminal Code, had attracted some attention and a movement of reprobation. While the state of the Representation, we have seen, had been actually the subject of a substantial and practical measure of reform, that would have anticipated by half a century the blessing or disappointment of the great measure of 1832. It is needless to say, how this fair prospect of progress was affected by the grotesque and horrible caricature exhibited in a neighbouring country. All organic change became reasonably suspected and greatly deprecated, while with less justice practical reforms either fell into contempt, as emanations of the same foul principle, or were lost in the din of arms and the excitement of hostilities. The only point, in which I conceive the effect of the French Revolution to have been favourable to our constitutional progress, was in the altered sentiments, whether for good or evil, it undoubtedly inspired towards our Roman Catholic fellow countrymen, and the long suspected creed they professed. It was natural, that the organized assault of Atheism, should unite for the time the several branches of the Christian Church in the sympathy of a general resistance to a common foe. And the loyalty and sufferings of the French clergy, and Catholic peasantry of many parts of France

acted powerfully on public opinion, and not least on the Tory party, in favour of the analogous circumstances of the Catholic party in Ireland. Thus for the first time since the restoration, the elective suffrage was extended to that numerous but not very intelligent or independent body, and that at a time when repression and exclusion had become principles of our general policy. It is needless to point out the effect of the introduction of this new element of parliamentary power on the progress of the Catholic question, and other subjects of party differences.

On the Continent the effects of the French Revolution, though in some degree modified by the conquests and administrative reforms of the great hero of the Republic, were on the whole unfavourable, not only to liberty, but to the progressive improvement, that in a greater or less degree had been perceptible everywhere except perhaps in the Spanish peninsula. It is true that in all the larger European countries parliamentary institutions had either never taken root, or been choked by the incumbrance of provincial distinctions, or withered before the centralising influence of the executive. But a considerable amount of provincial and municipal independence had descended from the feudal system, together with personal and professional privileges of certain classes and orders. These waning traces of a by-gone system had of course their evil as well as their favourable tendency. But while often mischievous to the progress of civilization, their peculiarities

were all more or less conducive to liberty. Arbitrary taxation was checked or mitigated by provincial privilege and municipal self-government. While the severance of jurisdiction and variety in process was often a protection, not only to the liberty of the press, but to that of individuals also. Yet while these relics of an effete feudality were on the whole more favourable to liberty than to civilization, the general tendency of the executive governments was conducive to civilization rather than liberty. It was the age of philosophic sovereigns, and active if not profound ministers. And in Russia, Austria, Prussia and Tuscany, all sorts of improvements were in progress, not indeed in the sense of political liberty, nor always with reference to the public good, but yet all tending to the material progress of society by the abatement of abuses, and the introduction of more enlightened systems in Police, Finance, and Jurisprudence.

In France itself, where the average of Royal and ministerial talent had been certainly lower than in many other countries, less progress had been attempted in social welfare, and little or nothing in the direction of political advance. But even here the mild spirit of the age, and the common instinct of Government in favour of national prosperity, had been felt. The Protestants were tolerated, the press was practically free, personal liberty was rarely infringed, the Bastille was empty at its very heroic though rather superfluous destruction. And the

only political tyranny ever exercised by Louis XVI. was with reference to the rising opposition of his Parliaments, and did not extend beyond a banishment from one part of France to another. There can be indeed little doubt, that had the States General which met in 1789, from a happier constitution of their body and a juster sense of their position, confined themselves to carry out the singularly moderate instructions contained in the cahiers of their constituents, France would have realized less change but more liberty, and a social progress, untarnished by crime, and unchequered by mob rule and military despotism, invasion, and revolution. In 1789, France had the alternative of a monarchy exercised in deference to public opinion, and with a view to the public good, or a virtual republic, masked under the form of a royalty, which only irritated the discontented classes, and disgusted theorists, by an appearance of splendour and distinction, with no reality of power. And the great moral fault, that the unhappy Louis XVI. committed against the duty of his position, was in lending himself to this sham. There are no doubt occasions, when constitutional sovereigns have properly yielded their own convictions and tastes to the expressed will of the nation, as was the case with William III. in the reduction of his army, and with George IV. in the Catholic Relief measure. But these were questions, involving no palpable moral guilt in either their concession or refusal, but were

large political topics admitting of argument, *pro* and *con*, on their merits and consequences. But the outrages of 1789, which determined the character and course of the Revolution, far more than the crude theories in vogue at the same time, admitted of no extenuation, or difference of opinion. They were simply crimes of the deepest enormity; and, as such, should have been simply met by capital punishment, as extensive as the participation in the offence. These outrages of 1789, though less noticed than the organized anarchy of 1793, which was on a larger scale, and directed against the scrupulous and sluggish portion of liberalism, were to my mind far more symptomatic of the spirit of the movement and character of the nation, than the terrorism of four years later. A system which, to use an ominous modern phrase of some notoriety, was galvanized from a centre, for the advantage and safety of a knot of desperadoes, whose want of character and ability had no other resource, than the guillotine to support their authority, and save them from the just consequences of their crimes. While the mutiny of regiments was rioting in the blood of loyal officers, and the excesses of the peasantry were precipitating the emigration of those proprietary classes, from which France would naturally have sought the elements of a free government and provincial administration; the still wilder ferocity of the mob in the capital was intimidating the Assembly, and coercing the middle class, the natural depository of a constitu-

tional opposition. And amid this general wreck and anarchy, there was still a King with twenty millions of francs and a brilliant Court. His duty was not to lend himself for a moment, to what his moral sense knew was crime, and which he only existed to prevent or punish. If at that early stage he had had the manliness and penetrating sense of right, to loose himself from the epicurean charms of his position, and the influence of his unfortunate wife, who clung to the splendour and name of a position, which power and dignity were fast deserting. Had he gone to the Assembly, and insisted on abdicating at once, unless vested with the necessary powers for punishing and restraining the crimes, that were desolating France, it is probable that the Assembly, not prepared for so great a change, involving the certainty of a more stringent succession, and the probability of civil war, would have attended to his request, and repressed the growing disorders with that summary and unsparing severity, which every central power in France has exercised when it chose. Or, supposing his abdication accepted, how much of sorrow and shame would he have spared himself and those he loved, the humiliating indignity of the red cap, the horrors of the Tuilleries, the crushing disappointment at Varennes, and the long agony of the Temple. While, whether it had been the Assembly itself, that succeeded to administer the State on a republican model, or any other Prince or President that descent or war had raised in the

place of Louis, there would have been the same necessity, and the same means for arresting the social disorganisation and moral crimes of the Revolution. One can hardly understand those, who affect at least to despair of the cause of freedom in France, had her excesses been checked, and the crimes committed in her name been punished. Liberty is certainly not identical with crime, though too often associated with it. Such persons always seem to argue in a circle; that the Revolution was in itself so great a good, that it justified all the means for accomplishing it, and that the violence of the means themselves showed that the result was inevitable. Though before subscribing to these two conclusions, one would like to know what was the great good accomplished by the Revolution, and would call for some further proof than assertion, that such a result was inevitable under the circumstances. In fact, though a humiliating admission to human nature in general, and to the French in particular, one is obliged to own, that after all the crimes and sufferings of their Revolution and Revolutionary war, the only real improvement they were indebted for to the code Napoleon, the gift of the genius and power of one remarkable man, born in an island of the Mediterranean, more connected physically and geographically with Italy than France. While their only experience of constitutional and parliamentary government was the fruit of the Restoration and foreign invasions of 1814

and 1815. Taking an estimate of the Revolutionary period, not only under the anarchical ferocity of the Committees and Convention, or under the stern hypocrisy of the Directory, but even under the comparatively mild and regular government of Napoleon, it would not be possible to trace any real improvement in social or political institutions. Throughout the whole of this period political prisons were fuller than the day the empty Bastille was rased; armies had been tripled and taxes doubled, foreign trade more shackled than ever, internal traffic still harassed by the passport system and municipal restrictions; no provision for the indigent poor such as England had even from Tudor times, the press silent, parliamentary opposition met by imprisonment or exile. The Church, shorn indeed of its endowments but not altered in spirit, restored with all the prestige of persecution and poverty, to an influence more penetrating and less invidious than before. While the abolition of feudal burdens were scarce appreciated by a peasantry ground down by taxation, decimated by conscription, and sinking ever lower by the continual subdivision of their freeholds. In all these respects, unless we admit the last as a doubtful exception, the condition of the French nation was decidedly the worse for the Revolution, and their political privileges impaired by it. Louis XVI. had invited the freest discussion of public questions, and widest communication of political opinion, and had even tolerated the vilest

libels on himself and family. While the States General, whether in National or Provincial Synod, and whether united or not with the older parliamentary councils, would have supplied a firmer opposition, and more independent adviser to the old regime, than the Directory ever permitted, or Bonaparte conceived, in their servile Senates and Assemblies.

It is not too much to say, that had not the Revolution by its levelling and exterminating spirit in the first instance, and by the reaction since in favour of military government and superstitious influence, not only destroyed freedom for the present, but all prospect of it for the future, there was every hope in the pre-revolutionary movement in France; that it would have resulted in great material prosperity, and in such development of freedom as suited a people who had to commence their political education, and who should have been trained by municipal rights and provincial assemblies, the discussion of a free press, and above all, by the pure circulation of that unknown Book, which, with the principles of moral truth, conveys the unerring dogmas of political wisdom.

We may therefore briefly recapitulate the successes of the Revolution in the direction its leaders and admirers professed to tend, as having destroyed both the will and the power of spontaneous reform in the soil that gave it birth, as having arrested for a time the tendency of public opinion in England in the same direction, and as having throughout the

Continent, wherever its influence extended, thrown back Princes for support on their armies and centralised authority, driven the Catholic clergy into closer intrenchments of bigotry and fiercer fanaticism, and by the increase of taxation and the jealousy of race, deeply weighed upon the progress and happiness of the great mass of the community. These results, none of them very favourable to freedom or civilization, are quite independent of the rather important consideration of the moral guilt of the events, that were passing in France, and which, though it can hardly be over-rated, has been still purposely kept out of view, as calculated to disturb reasonings on consequences, and also as belonging rather to the simply historical department. Although, in the course of our next inquiry, what should have been the line of conduct of England, with reference to that mighty contest kindled over land and sea, it will be hardly possible to keep out of view the atrocious policy of the Republic and its founders, as an essential element in our consideration. So naturally does war become the national expression of individual hatred and apprehension.

The question of the reciprocal duties of allies, is in itself one of the most difficult and unsatisfactory branches of national law, and will receive a different interpretation, according to the more or less warlike spirit of the age, or the concurrent and traditional sympathies of the ruling party. There will be obviously a greater inclination

in a spirited and martial people to assist allies of any description. And should that spirit be, at the time, at the disposal of a party, whose principles and traditions are involved in the quarrel, and whose domestic interests and influence are involved in their championship, it is obvious that hostilities will ensue. But, though all gratuitous warfare is to be deprecated, it is not so easy to determine whether in such a case, involving territorial and commercial consequences, it can be considered gratuitous. The Berlin and Milan decrees, which in design and to a great degree in effect, closed the Continent to British commerce, were a natural consequence of French conquests, and that brought home the evils of Napoleon's ambition to hearts, that never throbbed for the sufferings of another, and minds too little elevated, to appreciate the danger of universal empire.

It seems therefore hardly possible to lay down any general rule in this respect, with any hope of its meeting with general acceptance in moments of national excitement and party emergency. The decision should depend on the merits of each case, the conduct of the parties engaged, their motives of action, and the danger both to ourselves and others of the result of the contest, as tending either to universal dominion or general anarchy. In reference to English party spirit, it must never be forgotten, that up to this moment the Whigs or liberals had ever been the great advocates for continental war and foreign interference. They laid the foundation

of our national debt in the perhaps necessary but disastrous warfare of William III. and the brilliant campaigns of Anne, and continually augmented it in the German and colonial contests of the two first Georges. While the Tories, representing the more inert and untalented property of the country, rather stood aloof from a system that seemed to increase taxation, in a still greater degree than the national glory or security. Indeed, George III. and his supposed advisers incurred strong censure at the beginning of his reign, for their abandonment of the cause of our allies, and for the termination of hostilities, aggressive on our part. So that it ill became the Whigs to censure the principle of aid to allies, against a power far more formidable than that of Louis XIV., even had it recognised the ordinary maxims of the law of nations, and the obligation of a common Christianity, instead of the fanatical atheism, that had overturned the altar and throne of France, and the ferocious barbarism, that had carried the havock of the Palatinate through its own fairest departments. It was the monstrous figment of a desperate party at the time, that the war of 1793 was a gratuitous attack on the liberty and reform of others, from a hatred of liberty and reform in ourselves. This notable discovery, which the evidence of the Revolutionists themselves, and the ascendancy of Napoleon silenced for a time, has been latterly revived under the auspices of the Economist and Peace parties, and therefore demands

a little examination in a work, whose object is to trace the present in the history of the past.

It is hardly necessary to repeat to the reader of these pages, that the grisly phantom raised in Paris for the worship of France and admiration of mankind, was not liberty; nor indeed that any practical reform was elicited from the chaos of the Revolution, till the Code Napoleon of the gifted Corsican chief introduced into France the systematic jurisprudence and orderly despotism of the Antonines or Byzantine emperors, as the legislation for a people, that had shown themselves sensitive of abuses, but incapable of self-government. Nor indeed to do Fox and his friends justice, had this been their own idea of liberty and reform, till the unfortunate opportunity was presented of annoying their Sovereign, and embarrassing his government by simulating a worship, as new to themselves as foreign to the principles of the constitution.

But waving the difficult question of the duty and policy of supporting allies, however clear at such a crisis; and even putting out of sight the mingled fear and antipathy that demanded the quarantine of war, as a barrier against so infected a people, it is quite open to proof that the war, however vast in its combinations and grave in its consequences, was an inevitable evil, an evil indeed, but one from which we had no escape.

To dispose in the first place of the influence, Royalty is supposed to have exercised on the minis-

terial or national course; it is hardly necessary to remark that no king out of a fairy tale ever hated another king more cordially than did George III. Louis XVI. As it was in consequence of his support of the American revolt that the most serious and humiliating reverses ever experienced by this country from France had occurred. And though we have no ground to believe, that this enmity extended to any encouragement or aid to the incipient movement in France, though that has been asserted by the early ultra-Royalist memoirs; yet it is certain that for some time George III. regarded the growing troubles of the French Court, with some complacency, as the natural retribution for the infatuated hypocrisy, that had made it the champion of republican principles and financial revolt.

Then with regard to military preparation, not only was not any adequate organization effected for the impending contest, but armaments were actually reduced. Nothing was to be gained from war by the party in power, whose steady majority placed them above the efforts and necessities of faction. Pitt himself, though a great minister, was not a great war minister as his father had been. Deeply tarnished too as had been the national honour by the result of the last war, there was little hope and less temptation in entering into a new one with the scanty forces allowed by niggardly estimates, and led by the worn-out fugitives or captives of our colonial contest. Had peace been morally proper or

politically possible, the Court and Government had every inducement not to risk their position in an unequal contest.

But the increasing violence of faction in France altered the favourable sentiment, originally entertained by many of the wise and good towards the Revolution, and led many to agree with the original philosophic conclusion of Burke, who never augured a good result, from what was so essentially criminal and absurd in its first principle. But the Ministry, and probably the Sovereign himself, took a less philosophic though equally unfavourable view of the state of France, and rather augured danger to order and tranquillity from the total dissolution of all rule among so powerful and warlike a people, than any organized propagandism and centralized power of conquest.

The dethronement of the King in August, 1792, left the nation without a nominal head or official representative to foreign states. Nor was this a mere technical difficulty, though even that was of some consideration. For it was impossible to predict what party or faction would ultimately prevail, and wield the vast central resources and vindictive spirit of the nation, both against fallen factions and those States, that had recognized or befriended them. Though it might be assumed from external demonstration that Paris was in a more or less sanguine sense republican, and the North-eastern Departments appeared to share its sentiments or to

feel its influence, yet the West was royalist in the simple sense of the old regime; and the wider though less warlike South was zealously Catholic, and strongly anti-Parisian in either a Royalist or Constitutional sense. Peace was therefore reduced to a precarious political quarantine, the mere negative of hostilities. One among the many advantages of Monarchy being, that amid all the vicissitudes of measures and ministers, it presents a paramount individual, or family, as representing the dignity and continuity of the nation to foreign powers. This difficulty which was brought to a climax by the execution of the King in January, 1793, received a peculiar significance from the declared policy of the faction, that now avowedly as well as in effect had assumed the government of France. Throughout the critical year 1792 England showed every reluctance to enter on a contest, which the aggressive and levelling politics in ascendancy in France, or rather Paris, showed to be sooner or later inevitable. On the 15th of May British subjects were forbidden by proclamation to act with the Allies against France. Even after the insurrection of the 10th of August and the destruction of the monarchy, Kersaint assured the Convention on the 18th September that they might count on the neutrality of England. This he said with pacific views, for, as representing Brest, a commercial place, he naturally was desirous of averting hostilities. Kersaint was in the natural course of things guillotined a few days afterwards,

but whether for his pacific speech or general moderation is uncertain. It was, however, not very encouraging for the prospects of peace, to find the prompt mode adopted by the rulers of France to stifle the only voice raised in favour of it in the Convention. And it was with such a government as this, that England was expected to maintain friendly relations, and avoid any cause of offence throughout our infinite colonial and maritime relations, and with our complicated domestic polity, that was obnoxious to all the assaults directed at Monarchy and Aristocracy, and afforded at the same time all the constitutional facilities for such attacks, offered by popular institutions. By the King's death, which was known in London on the 24th of January 1793, Chauvelin's credentials terminated according to diplomatic etiquette, and could not in the existing state of affairs in France be renewed, nor indeed were attempted or pretended to be. It is very possible that Chauvelin himself was anxious for peace, which to him was fortune and safety at once; and a ruined and profligate young nobleman of the old regime knew, that in losing his diplomatic position, he was returning to poverty and proscription. But we must observe not what Chauvelin did or wished, but what his new masters, the daring minority, that through the mob of the capital had grasped the mischievously centralized power of France were doing.

The Convention, which in itself and its committees was at once the Parliament and Government of

France, had, by its notorious decree of the 19th of November, 1792, explained and repeated by another of the 19th of December following, asserted its right and intention of interfering in the internal politics of all foreign nations, and of everywhere assisting the insurrection of the people, or what called itself the people, against their rulers. That this infamous and destructive doctrine, which amounted to a declaration of universal war and of all-pervading revolution and confusion, was not, as of late has been ridiculously suggested, an act of momentary excitement, mischievous indeed, but not really intended or to be taken in earnest, is amply disproved, not only by the solemn repetition of the vote after a month's reflection, but still more clearly by the overt acts with which it was followed up.

Blank forms were sent to the armies on the frontiers to be filled up for the accession of communities and the acquisition of territories. Barillon's well meant motion for excepting England, on the ground of her studied neutrality and semi-liberalism from the operation of the decree, was rejected on the 24th of December, five days after its pointed re-enactment. Seditious deputations from England were publicly received, and as if the candid ruffianism of the Convention had sought to throw discredit on their own Envoy, and to leave the English nation without a doubt, and the Whig opposition without an excuse, on the last day of 1792, three days after Chauvelin's pacific and plausible note of the 27th of

December, the Minister of Marine publicly threatened an invasion of England, and stated his preparations for that object. And we had probably to thank our insular situation, that some tumultuary invasion did not anticipate regular warfare, as was actually the case with Savoy and Switzerland, and was attempted on a small scale later on our own South Wales coast.

The practical application of the Convention doctrine of general invasion to the cases of Savoy, Holland, and Switzerland, was eminently instructive. As it showed that no variety of native institution, no amount of internal self-government and prosperity, would be admitted as an exemption from the all-pervading curse of Jacobin interference. Savoy was a simple monarchy, neither better nor worse administered than the neighbouring kingdoms. Switzerland, on the other hand, was a group of pure republics of the severest antique model, whether administered, as in some Cantons, by municipal aristocracies, or, as in others, by the universal suffrage of a peasant democracy. While Holland, with a mixed polity more like our own, presented the dangerous combination of liberal institutions and very unequal conditions, and of almost republican municipal self-government, with a very corrupt and weak executive. But with one and all alike, intervention was enforced in the course of the autumn and winter that preceded our hostilities, and must have opened the eyes of faction itself to the inevitable

nature of the contest; and have shown that ambition, even more than fanaticism, was the ruling spirit of the French Revolution; and that a principle, which had led to the pulling down of all classes in France, rather than the improvement of any, would interfere with other countries rather in reference to the value of their acquisition, than the defects of their institutions. From the very inevitable nature of a contest with a power so aggressive and so unsettled, as the faction that ruled France, no stress should be laid on the possible accident of the first overt act of hostility, even though that, as under the circumstances was to be expected, was from the side of France. The batteries of Brest fired on the Childers, Captain Barlow, on the 11th of January 1793, and killed and wounded some of his men, though war had not been declared nor Chauvelin's departure from London intimated. The unsatisfactory correspondence between Lord Grenville and the French ambassador turned both on the principle involved in the decree of 19th December, and the practical illustration of it offered by the invasion of Holland, an ally of England, and neutral as regarded France. M. le Brun attempted a plausible qualification of the notorious Decree, amounting pretty much to its being left a dead letter, unless it could be carried out with some prospect of success, an explanation not very satisfactory to an unprepared power. As regarded Holland and other minor States, they hardly condescended a reply, but disposed of all existing

treaties, as extorted by cupidity or yielded by despotism, a view of the case that had certainly simplicity to recommend it, but which amounted to a total isolation of France from the system of Europe, and threw every state that regarded its independence on the necessity of vigilance and resistance. It must never be forgotten, that at this acme of the crisis, when the scenes going on in France had raised the public mind to the highest pitch of horror and alarm, and when the organised anarchy had deprived the French Envoy of the proper position of an accredited agent, Lord Grenville disclaimed any wish to interfere with the internal government of France, however preposterous its constitution and criminal its conduct; but simply called upon France to renounce her views of aggression and aggrandisement, and to confine herself within her own territory, without insulting other governments, disturbing their tranquillity, and violating their rights.

Nor was it only to the representative of France that this language was used, for in communicating with the Court of Russia on the arrangements for confederation against France, the basis laid down for the co-operation of the allies was entirely confined to preventing its interference with other States, and extending its conquests or propagandism beyond its frontier, and expressly left the French at full liberty to arrange their government and internal concerns as they chose themselves.

Indeed, when at last the Privy Council, by a

formal order, directed the French Envoy to leave the country, the Government, so far from outrunning public opinion, or anticipating the necessity of the case, seems to have hardly sufficiently expressed the national disgust and alarm, which sought in war the manifestation of its abhorrence, and in warlike measures the only sure protection from imminent evils. As the readers of these pages are supposed to be familiar with the ordinary narratives of the period, and as the view has been rather to direct a just inference from well-known facts, than to detail or exhume those facts themselves, little or no allusion will be made to the preposterous legislation, the sanguinary insurrections, and the awful tyrannies assumed by a succession of obscure individuals, who had little but their violence and crimes to distinguish them, and all belonged to the most extreme section of the minority of the representatives of France.

But the feelings, with which this movement was regarded by different parties in England, is a necessary portion of the history of our Constitution, both as illustrating their views of it, and as forming the basis of later party opinions. There can, I conceive, be no doubt, that the vast majority of the British nation regarded the French Revolution with horror and disappointment, as at once a great crime and a great failure, and looked upon war as a necessary resistance to so monstrous and active an evil.

Two sections, extremely different in their origin and objects, entertained or expressed different opinions. The old aristocratic Whig opposition, weak in numbers and character, but mighty in the eloquence and parliamentary experience of its chiefs, with no traditional bias, or philosophical conviction in favour of this singular ideal of liberty exhibited at Paris, yet rankling under party disappointment and a too severe party exclusion, in the desperation of a minority took up any question, by which they might annoy the Sovereign, who discountenanced them, and embarrass the Minister, who had supplanted them. Mr. Fox was the eloquent tribune, though the very injudicious leader of this party, whose very existence in Parliament depended on the rotten boroughs in the old Whig interest. Far different from these nominal successors of Walpole and Somers was the avowedly Democratic party, which made itself more heard than felt in the capital and some of the northern towns. This party, which might, in some degree, be considered the heir of the principles of the old Puritans of the Commonwealth, could yet scarcely trace their pedigree further than the Wilkite sedition and the American war. The mobs and agitation of the former period, and the successful example of republican revolt and organization held out since, had awakened ideas, to which the people had been strangers for above a century, and which the gross misgovernment, and personal unpopularity of the wo first Georges had never excited. This party,

more numerous, and I conceive more respectable, in character and circumstances in Scotland, than in either the North of England or the metropolis, in their extreme and avowed democracy, and their advocacy of irreligious and anti-social principles, went beyond the flight of modern Radicalism, and were the political ancestors rather of Chartism and Socialism. Paine was the literary representative of this party. A man, whose masculine vigour of political thought has justly failed to save him from the obscurity and neglect, due to his evil character and ignorant impiety. His celebrated expression, in which he contemptuously disposed of Mr. Burke's unfavourable view of the French Revolution was, "Mr. Burke pities the plumage, but forgets the dying bird." This is so epigrammatic and picturesque a concentration of a large political question, that it merits a little examination, both for its convenience as a text and the apparent fairness of its position. Waiving for the moment our inquiry as to the appropriateness of plumage and body, as describing those who suffered and those who gained by the Revolution, we may justly demur to the assumption that the bird was dying. Or even if so, could it not be saved otherwise, than by a painful operation, that exhibited it in a hideous and unnatural nudity? Was it the ornamental part of society alone that suffered from the Revolution? Was it not the highest order of pity to warn from a course, that brought confusion and calamity on nations, and still more lasting consequences on individual

guilt?—are all questions that may be naturally raised even on Paine's own assumption of the point at issue, and all admitting a very satisfactory solution adverse to his inference.

In all that constitutes the life of a nation, more particularly the liveliest portion of it, in the wealth, intelligence and activity of the middle class; France was more decidedly the first nation on the Continent before the Revolution than since. The wealth the Revolution confiscated had been realized under the Monarchy. The talent that led the Revolution and the science that directed its armies, were alike educated under the Monarchy. The fleets and colonies the Revolution lost had been all formed under the Monarchy. The warlike youth the Conscription decimated had been born under the Monarchy.

The Revolution gave birth to no principle of life, unless the military talent for slaughter can be considered as such. The Revolution in short found the dying bird of 1789 a great nation, and left it in 1815 a wasted army.

Again, admitting the bird to have been really dying of a sort of Plica Polonica, or disease of its plumage, was such a rude and sanguinary plucking necessary. Admitting that there were corruptions in the Court and Church, and in the privileges of the noblesse, what were they that they required the destruction of the orders to remove them. Nor should we omit in such an inquiry the very important fact, which left the Revolutionists without

the usual excuse for proscription, that they met with little or no resistance from the privileged orders. But that rank, privileges and emoluments were surrendered with a disinterestedness one would admire, had it not exhibited somewhat of the national fickleness and a pitiable credulity. The Roman Catholic Church as established in France was not more corrupt, and certainly far less intolerant than it had been in former ages, and secularized rather than isolated by its ample endowments and Court patronage, was far less fanatical and inimical to civil liberty and social happiness, than the revived Romanism since the Revolution in its aggressive poverty and organized enthusiasm. Then as to the noblesse, the long prescriptive abuses, that caused their destruction were mainly the feudal rights, odious to a rural population, the exemption from taxation more unwise than unjust, and the monopoly of the Court and higher grades of the honourable professions. Yet it may reasonably be doubted, were a balance possible of such ill-defined advantages, that this monopoly, though unwise and invidious as are all artificial restraints, was scarcely a compensation for the social etiquette that prohibited *roturier* marriages, and excluded from profitable employments open to other classes. The exemption from taxation, according to our own enlarged views of finance, was far more a political error than injustice, as the increased expenditure and employment in consequence of it enabled other classes to

bear their fiscal burdens, and was an addition to the wealth of the country.

The feudal grievances, which are not without their mild and modernized representatives in this country, borrowed an additional bitterness in France from the depressed state, still unimproved, of the rural population, and from the fact that these seigniorial rights attached to the person, and were often unconnected with any proprietary interest. This is a fact that has escaped the knowledge or research of historians, but was of the highest importance as an element of mischief and hostile feeling among the peasantry. The want of any permanent legislative machine, no matter how defective in its organization and languid in its operation, was lamentably shown by the relation of seigniorial to proprietary rights in France. The long line of English statutes, from the venerable *Quia Emptores* of the mailed barons and burgesses of the old Plantagenet Parliament, down to the Fines and Recoveries Act of our own day, which forms the complicated science of English conveyancing, transmitting, adapting and explaining feudal principles for the need of a commercial and free people, were all wanting in France. Thus while a dangerous facility for alienating and frittering away the valuable essentials of property was permitted, which long before the Revolution had filled France with pauper seigneurs, and her Court with noble pensioners; an absurd difficulty existed in most of

the provinces in alienating the right of chase, of fishing, and other feudal incidents. They could only be alienated to some other noble, and then only with some provisional qualifications, and the royal licence. The joint effect of these two great errors was, that seigniorial rights were exercised by the grasping intendants or greedy lessees of a ruined or absentee lord over a tract of country, and to the damage of a thousand petty freeholders, in whom neither they nor he had any interest. Proprietors could not acquire seigniorial rights or extinguish them over their own property, unless noble themselves. And landed property itself suffered from being held subject to such a galling and inextinguishable burden. Had these rights been annexed to the proprietorship of the soil in consideration of a small fixed quit rent to the lord, and the personal services altogether abolished at an earlier period, the condition and temper of the peasantry would have been improved, men of wealth and independence would have purchased land on a more honourable footing, and the pension list been relieved from some of its noble applicants. It may have seemed the prejudice of an English lawyer in favour of the complicated system of his own law of Real Property, to attribute to it great merit as a political regulation. But to any political inquirer, who would expect the law of landed property while it maintained the interests and position of an aristocracy, to do so in the way least invidious to the spirit, and injurious to the

interests of the commonalty, it must appear that the French law combined stringency of entail and laxity of alienation, in a manner equally damaging to the dignity and popularity of the aristocratic order.

Again, it might reasonably be inquired, whether the plumage was a mere ornamental appendage, which might be plucked without any further loss than that of lustre and appearance; though even mere lustre and appearance are not wantonly to be sacrificed in constituting a great nation. The wiser founders of the Swiss and Italian republics in the middle ages thought otherwise; and the instinct of moderation and restraining influence of Christian temper and forgiveness formed surer guides in political organization, than the philosophy and learning of the eighteenth century. The patriots of the twelfth and thirteenth centuries not only recognised a frequently hostile aristocracy where it already existed, but even occasionally engrafted it on their urban democracies. They altered indeed its character from a feudal to a senatorial position, but they saw the value of the institution they modified, and recognised the rights of the individuals they restrained. The urban militias that sallied out of Berne and Zurich, Milan and Florence, levelled the castle of the feudal oppressor and expelled his lawless followers, but they admitted the rural chiefs themselves to the privilege and the duties of senator citizens. They were compelled to abandon the ancient fastness, where the phantom

of hereditary power and lawless violence still haunted the ancestral moat or mountain pass, and occupied the palace in the forum, and the seat in the city council. The wise and modest patriots of those early ages felt justly, that without these rural chiefs the natural leaders of the peasantry, and members of the great ruling caste of Europe, they might be a democracy, but with them they would be a nation. They felt, that though their new senators had much to learn in duties, and much to forget in privilege, they still had natural and instinctive advantages it was a pity to lose to the state; they had the easy and natural access to the courts and castles of Europe, which peaceably introduced the republic into the great European system. All this was done, if not understood by the Swiss and Lombard patriots of the middle ages, and was left undone, even if understood, by the patriots of revolutionary France. It may be very true that the insignificance into which the French noblesse had sunk, as mere courtiers with no feudal hold on the provinces, nor senatorial experience in the State, rendered them a less valuable channel of reconstruction, than had their character and position been more fortunate. But even here, in their fickleness of purpose, their frivolity and neglect of duty, they were but too closely representative of the less odious part of the national character, and at least might have claimed forbearance rather than proscription.

The progress of the Revolution also showed, what

ordinary penetration might have divined from the first, that the envious spirit that began with persecuting the great would not limit itself to the great. And the malignant demons, whose first victims were king and nobles, required at a subsequent period the destruction of commercial towns in the south, the havoc of departments in the west, and the extinction of a loyal peasantry, wherever it resisted the domination of the Parisian mob and its leaders. If there was a little party exaggeration in sympathizing with the miseries of the Royal family and nobility of France, there was at least equal dissimulation in depreciating their sufferings, as essential to the regeneration of their country, with this important distinction too, that the one was on the side of moral right, and the other of a mere assumed political expediency. It is well put by Wilde, in a letter of this period to Mackintosh, which makes us wish he had lived to write more and be better known.* He says, to regret *general* miseries, which we do not witness, is an effort of the head not a feeling of the heart. If we are not moved by the contemplation of individual suffering, especially in high rank, which enhances the suffering in proportion. If the sufferings of eminent persons do not move us we shall never feel *really*, though we may pretend, for the sufferings of a whole people.

Indeed, so valuable is it, not only as a moral but political principle, never to merge the rights and suffer-

* Life of Mackintosh, vol. i. p. 77.

ings of individuals in any plausible scheme of public good; that, were it allowable to enter on so extensive an inquiry, there is little doubt but it might be shown that personal freedom, though it may survive, has never arisen without the shade of aristocratic institutions, that have accustomed public opinion to regard with, so to say, a preferential eye, certain eminent individuals and classes. For if we examine the origin of all the tyrannies, that have oppressed the human race, except mere Asiatic despotism, we shall find they have all originated in a zeal, fanatical or hypocritical, for the public good. They have, in short, been corrupt forms of the patriot type, professing an extravagant activity for the national good, or apprehension for national safety. This has been particularly the case with the Romish and Jacobin tyrannies, the one pretending an anxious care for the purity of religion and the salvation of the community; the other masking ambition and fear of punishment, by a ferocious zeal for the success of the Revolution, as in itself a great blessing to the community. Now against such a tyranny as this, purporting to be the will of the nation, and exercised for the nation's good, no individual in humble or middle life can hope to stand for a moment. The gale of superstition, or political fanaticism, may blow from one point of the compass or another, but blow it will, with change of direction rather than violence; unless some eminent citizen or class has strength enough in themselves or public opinion to

arrest the current. And the protection of the law, and arrest of popular violence, that has been obtained by the wealth, the influence, or ancestry of the few, becomes by a natural termination the ordinary practice of the Courts, and the universal inheritance of the many. No people were ever more scrupulously careful of shedding the blood of citizens for public offences than aristocratic Rome, no people so unsparing as democratic France. Even to apply the test to our own usurped dominion in India, there can be no doubt, that had not Hastings once hung a wealthy Brahmin, there would have many more Hindoos of every rank been summarily disposed of since. So that, to conclude our critique of Paine's remarkable expression, we may say that the bird that gratuitously divests itself of the plumage nature gave it, not only deprives itself of a comely and useful garb, and suffers in the operation, but also exposes itself, to all future time, to the inclemency of the seasons and the gales of heaven, from whatever quarter they blow

It is hardly necessary to say, that in fully justifying the revolutionary war it is not necessary to admire the way in which it was carried on. The state of our armaments was symptomatic of the growing corruption of our constitution : and their employment indicated the radical misconception of the nature of the struggle, in which we were embarked.

The army presented, both in the slenderness of its force, and the incompetency of its leaders, the penurious economy enforced by the national spirit of

the democracy, and the nepotism and favouritism engendered by a ruling aristocracy. The opposition had always succeeded in keeping down the regular force, to a level scarcely adequate for its colonial and garrison duties, and totally unfit to cope with the immense masses that were wielded by the Continental Powers; but had paid little attention to the qualification and formation of officers, which was too much regulated by Court favour or parliamentary interest. Thus we embarked in a contest with the smallest army and the most inefficient staff, and that against a nation, that had added to all the training of the monarchy, the fervour of the republican mania, and the unscrupulous efforts of the revolutionary desperadoes.—It was not to be wondered at, that the early years of the war were ineffective, rather than disastrous, and that it was the growing necessity of the war, that at last opened the national purse strings to adequate liberality; and that it was in the rugged school of adversity, that the brilliant corps of Peninsular and Waterloo chiefs was formed, and He their greatest arose that successfully closed the war and gave peace to Europe.

Again, the statesmen of England, who took an unfavourable view of the French Revolution, seem to have regarded it too much as a general frenzy of the whole nation, and therefore only looked to foreign powers for support against it. And at the same time, to have been so impressed by the aspect of dissolution and disorder presented by France, as to underrate the

efficiency of that centralised system of government, by the Capital, long organized by the Monarchy, and now wielded by the desperate energy of the demagogues of Paris. Our statesmen in short overrated the extent of the delusion in France itself, and yet underrated the efficiency of centralisation, as wielded by the minority. The odious and inconsiderable Jacobin party, that has in our own days been at last brought to the test of numerical computation, ruling Paris and the Convention by the mob, grasped or rapidly subdued the departments, by the agencies the capital put into their hands—the Convention, the War office, the Post, Press, and Telegraph. And the way a master mind would have coped with the curse, that was to ruin France and ravage Europe, would have been to have recognised an anti-Revolutionary France in the millions of Frenchmen in the south and west, who felt only alarm and disgust at the progress of the Convention and ascendancy of Paris. All our force, and favour, and subsidies should have been directed to support, encourage, and centralise the resistance of France itself to the Revolution, instead of leaguing with foreign Powers, and wasting time before the iron barrier of the north-eastern frontier, and in collision with the most revolutionary departments.

Another question, that in the progress of events came to be mixed up with party opinion, or at least votes, was the possibility or propriety of making peace with such a government as that of the Com-

mittees of the Convention, and of the Directory, after war had been carried on under no very favourable auspices. Even had not the repugnance expressed by Burke, and widely felt by the public, been quite as much the suggestion of prudence, as of passion; considering the common position of every successive ruling faction in France, and the total want of principle, that would either have abused the rights of peace or repudiated its obligations, according as the occasion tempted either to recognise or reject the acts of their predecessors.

Indeed, at the vigorous close of Robespierre's dominion in 1794, it appears that Austria was disposed secretly to treat for peace; and that Metternich and Trautmansdorf were at Brussels for that purpose; but that they were dissuaded from the attempt and convinced of its impossibility by a communication from Barrere, that the existing Dictatorship would not last six weeks, but that Robespierre would be guillotined and his acts disavowed. It is needless to add, that unlike most political predictions, the event actually occurred within the period named, and scarcely necessary to point out the obvious inference from such a state of affairs, even had a cordial and intimate connection with such a neighbour been an object of attraction. In concluding this view of the French Revolution, more decidedly unfavourable, both in the evil of its motive, and the failure of its result, than that of other writers of far more ardent zeal for Royalty than I profess, and of far greater

suspicion of popular movements than I have ever entertained, I only trust to be unsuspected of any want of sympathy for the humbler classes, who were successively the clients, the agents, and the victims of this ill-starred movement.

The writer may truly say, that in this historico-political work, he has spent more tears and more ink on the unjust fate of the obscure Mary Jones of 1770, than of the brilliant Marie Antoinette of 1793. And that generally any policy, that protects the interests, the persons, and feelings of the humbler classes, that elevates their minds, purifies their hearts, and fits them for the path of innocent prosperity and legitimate elevation, will always enjoy his sympathy and support; but that he has yet to learn in what way the French Revolution conduced to any one of these objects.

After regarding this hideous caricature of our own ten centuries of constitutional progress, concentrated in the crimes and failures of four or five years, we must now resume the thread of our own political developement, which was not unaffected by the reaction of public opinion from the events witnessed in France.

The reform of institutions which certainly had advanced with no very rapid strides since the Revolution of 1688, and still less under the two first Georges, was now for a time altogether arrested, and gave place to a policy of repression, and to a financial and military system of a stringency not uncalled

for by the emergencies of the times, but far from conducive to the national prosperity. While the improvement in the details of administration and the character of public men, due in some degree to the revival of religious feeling in the nation, which had been worthily maintained by the pure and pious life of the King, and the lofty integrity of the elder and younger Pitt, was not advanced by the enormous and often injudicious expenditure of the war and the growing military taste of the country.

The task of Constitutional History will therefore be light for many years subsequent to the breaking out of the Revolutionary war, and will be principally confined to the character and justification of those measures, by which Government and Parliament sought to repress the propagation of revolutionary principles, and to call out the military and financial resources of the country, for the great struggle in which she was engaged.

It has been a favourite suggestion rather than argument with opposition writers, since the event, that the general military resistance offered by Europe to the Revolution added to its virulence. But not to mention that some of its worst excesses, particularly the spontaneous outrages of 1789 and 1790, were committed before any foreign hostilities were even apprehended; it would seem natural that what gave the public mind another direction, and drew it from massacre and execution to the less hideous field of open and honourable warfare, would have tended

to allay internal passions and calm political excitement. But it must be apparent to all, that the ascendancy of the army, resulting from the war, really and alone closed the anarchy of 1792-94. As soon as the Directory leant on the regular troops for support, alike against the revival of Royalty and the perpetuation of Jacobinism, the effect was shown both in the increased stability and comparative moderation of their government. And a few years later Royalty was really restored, though under a new name and dynasty, by the will and ascendancy of the army.

To return to more strictly constitutional movements, it was at the very crisis of 1793, that the Whig leaders of opposition thought fit to raise the important and too-long dormant question of Parliamentary Reform. The moment was so singularly ill-chosen for the organic change proposed, that it is difficult to excuse the mover from the suspicion of a factious motive. The House rejected it by an overwhelming majority of about seven to one, the numbers being 284 to 41. The arguments, however, of Mr. Grey and his friends, so far as they exposed the anomalies and inadequacy of the existing franchise, were weighty and conclusive, and sank into the public mind for future growth at a more favourable season. The ministry supported the existing constitution of Parliament on the usual ground, that its practice was better than its theory; and that a virtual representation of the people was achieved through a portion of the system, while other portions,

anomalous in themselves, were yet the means of representing and protecting property, and of securing the stability of our institutions. But the dangerous excitement in the public mind, and the example of political change in France, lent a conclusive weight to these arguments, which decided the question on this and on many future occasions.

The opposition availed themselves of the advantage in debate offered by the forms of Parliament to a movement party. As in moving for leave to bring in a bill, or in moving for a committee on any subject, one is at liberty to expose all the evils and errors of the existing system, and need only sketch out, or hint the remedial measure one is about to propose. It was therefore open to Mr. Grey, who lived to carry as prime minister, a very extensive, though not very satisfactory measure of parliamentary reform, to review with great severity and truth the defects of our system as it existed in 1793. So numerous were the small boroughs, and of such limited constitution, that 15,000 electors returned a majority of the House of Commons. So unequally too was this franchise distributed through the kingdom, that Cornwall returned almost as many members as Scotland. That two hundred and ninety-four members were returned by English boroughs, having small or merely nominal constituencies, and by the Scotch counties and boroughs, where the franchise was avowedly confined to manorial rights and close corporations. Then, as to the anomalous grounds of exclusion even from this limited franchise, both for

religious opinion, and the peculiar tenure of property: all Papists were excluded, in many boroughs Protestant Dissenters also, by the test and corporation laws—copyholders, however large their estate, had no county vote; and, in fact, nearly a million householders in England, including a large part of the metropolis, had no share in the representation. It was easy enough to ridicule and censure such a system as this, but not so easy to suggest a substitute, nor to deny that practically it had represented the people, and secured public liberty and prosperity.

The subject will naturally come again for consideration, at the close of this treatise and the enactment of the Reform Bill. But at the time alluded to, and on many subsequent occasions, it was the defect of the old system, and that principally in theory, that formed the staple of discussion, rather than the merits of any new scheme, or the extravagance and class legislation, to which the oligarchical constitution of Parliament has since been thought to have ministered. The readers of these chapters do not require to be told, that in the opinion of the writer the constitution of Parliament was too aristocratic, and that in the most invidious form; as favouring the few great territorial families, who inherited not the popular ascendancy, but the actual possession of boroughs and parliamentary seats, as part of their ancestral estates; and also the great masses of money-power that could buy up any of those powerful organs as they came into the market. The educated and unlanded

gentry had as little of their just weight in the representation, as the great middle class, that has been installed by the Reform Bill, alike to the swamping of the gentry and the exclusion of the working class. Indeed the old system, though clumsily and unequally, was a closer approximation to a national representation than the unmitigated ascendancy of a class, which however entitled to a share of power, is neither qualified by wealth, intelligence, or numbers, to monopolise a majority of seats, or to assume the character of a national constituency. In breaking up the oligarchy of the rotten boroughs, all the advantages, and many they were, of the nomination system, might have been attained, by annexing some of these seats avowedly to the Government offices, by allotting others to institutions like the Bank, the India Company, the Inns of Court, the new Universities, and other public bodies, whose importance and value cannot be estimated by a poll, and should not be lost in a householding mass. Some such arrangement as this, combined with a reserved or added seat, in all boroughs for a select body of high-rated voters, or the restriction of the vote to one candidate, would have secured the presence in Parliament of those whose presence is really valuable—the representatives of the wealthy and intelligent minority, and would have admitted with safety, not only the vast middle class constituency, and new and expanding boroughs, but have justly called out a selection of the working

class to enjoy the privileges so abused by the old freemen. But 1793 was not the occasion to introduce an organic change in the parliamentary system; nor did the projectors of the movement, in soliciting an inevitable defeat, appear to have valued their principle except as a keen instrument of party warfare, from the little pains they had been at in giving it a practicable shape.

A much smaller question was involved, though still greater passion excited by the movement of the Government in an opposite direction, by their Bill against traitorous correspondence. The propriety or necessity of this measure was warmly impugned by the opposition, who affected to contemn as weak and absurd, the agitation they could not justify, which was filling our large towns with clubs, in actual or threatened correspondence with the Jacobin Club at Paris. The danger on this and other occasions was perhaps overrated, but the agitation was at the least mischievous as injurious to the public peace, and calculated to draw the ignorant and excitable into crime, if not actual treason. The Demagogues had little cause to complain in being believed as the traitors, they professed themselves *in posse*, nor at being credited in the amount of popular support they assumed, and consequently in the danger of their movement. The fear and disgust excited not only in the upper and middle classes, but wherever moral and religious feeling prevailed even in the humblest ranks, by these societies, was the great

national inducement to War, as the surest severance of those unhallowed ties, though it was not the motive ostensibly urged by Government. The real cause, which on this and other occasions has obliged Parliament to meet political dangers with some special enactment, lay in two great errors of the criminal law, in affixing such awful penalties to treason, that no Government since the Whig ministry of George II. had ventured to enforce them; and on the other hand the total inadequacy of the punishment of sedition, both arising from the high monarchical principles, and at the same time rude independence of the age when they originated. Public opinion shrunk from assigning the character of treason with its awful result and diabolical enhancements, which the advisers of George II. had freely dispensed to the simple Highlanders, and Lancashire Catholics, who had abided the issue of a fair and open field, and even to enthusiastic printers that had published in favour of an exiled race; when its objects were even almost too despicable to be odious, and who advocated principles almost too indefinite to be construed as hostile. At the same time the light penalty of fine to be raised by subscription, and of imprisonment without hard labour, was altogether inadequate for the criminality of miscreants, who were only withheld by their cowardice from overturning the very framework of society itself; though it might have been the appropriate check for the mere libel or harangue, that led to some local breach

of the peace, or resistance to some particular measure. To meet the altered circumstances of this case, which was a dangerous political movement of a novel character, and in a comparatively humane age, it was necessary to create a new description of treason, more comprehensive in its character, less hedged with technicalities as a refuge for cowardice, and not revolting public feeling by such scenes as those of 1716 or 1746. The wish to effect this was the motive and justification of the several Acts passed at this period, for the protection of the King's person and government, and which certainly tended to maintain the existing constitution, by the check to agitation, public meetings, and exciting speeches, and writing against it. That this latter object, however naturally following from the protective enactments, and under the circumstances desirable, was rather in restraint of the free action of a self regulating constitution, can not be denied. Experience, rather than any change of opinion, has led the modern Whigs on the similar, though not identical occasion of 1848, to frame bills that meet the criminal and dangerous designs defended by their ancestors, without any interference with the play of a free constitution, and the just demands for progressive improvement. It is not necessary to dwell on the other defensive measures of this period, as they were all limited in operation to the temporary emergencies that justified them, and formed no permanent addition to or reduction of the Constitution.

As the object of all these measures was rather the prevention of evil, than the punishment of evil-doers, and was on the whole beneficial to those it arrested in the course of crime and danger; it would have been wiser to have been contented with the temporary suspension of the Habeus Corpus Act, which enabled the Government to detain or remove a great number of dangerous and suspicious characters, whose liberty was incompatible with the public peace, and the safety of themselves and adherents, and yet whose actual trial might, from the technicalities of procedure or the temper of juries, have resulted either in a noxious impunity, or invidious punishment. The opposition however resisted the preventive as much as the punitive measure, and throughout this perilous crisis presented themselves as the advocates of an extreme party, whose principles they repudiated, and whose designs they affected to despise. Later experience has shown that, where no factious opposition is raised, as was the case in 1848, it is possible to meet the special form of political crime by a specific enactment. But so perilous is it to all order and morality, to mix up the procedure and results of criminal law with party politics, that under the circumstances of 1793, a fearful crisis, embittered by a false and factious opposition; it would have been better by a general power of imprisonment and expulsion to have cleared this country of what disturbed and disgraced it, without hazarding the risk of political trials, that could only result to the

detriment of either the law or the criminal. The suspension of the Habeus Corpus Act was passed by a majority of 261 to 42 in the Commons, so low had the suicidal and factious policy of Fox sunk the great Whig and Liberal party, whose decay was really a national loss, in depriving the country of the service of an effective and discriminating opposition. Had not Fox's personal feelings against the King and his Minister, led him into a personally offensive course, justifying principles he had never recognised, advocating men his conscience loathed, and resisting measures he would have originated if in office, how different would have been the fortunes of this opposition, and how different the history of this period. If the opposition had lent a disinterested and independent support, in maintaining internal peace and national union, how much more effective would have been their counsel and interference in the conduct of the war. Up to this time the Whigs had been the war party in England, and though their wars had been often unjust and always expensive, yet success had as generally attended their military schemes. And representing as they did, though in a very mild and conventional form, the cause of nations rather than of kings, their cordial co-operation would have encouraged the great, but divided anti-Jacobin majority in France, and have enabled our Government to lean rather on the people of France itself, than on the Kings of the strangers. This combating the Revolution with its own weapons

would have had an important effect in shortening and popularising the contest. For factious as was the motive, and mischievous as was the course pursued by the English opposition, there was great truth in many of the exceptions they took to the mode in which hostilities were carried on. The ruinous and ignoble system of subsidising foreign powers, to defend what was their own cause in a still greater degree than our own. The discontent and selfish policy of many of our allies, that scarcely concealed some plan of aggressive acquisition, in what should have been simply a war of defensive principle. The wasting invaluable time before the iron barrier of the north-eastern frontier of France, bristling with all the engineering skill of the monarchy, and galvanized by the frenzy of the capital, when millions of loyal peasants in the west, and the constitutional cities of the south were invoking aid, and presenting a basis of national independence. All these were great errors destined to cost millions of treasure, and torrents of blood before the close of the contest, but rather arising from the general national want of military talent and enterprise, and a misconception of the nature of the contest, than reflecting on the necessity of the contest itself. One fact, was much overlooked at the time, and never sufficiently regarded by politicians and historians, till an ampler experience has brought us back to many exploded ideas, and which no less than its severe centralisation contributed to the temporary triumph of France, and

must be looked on as a law of nature that will operate on future similar occasions. This was the community of race, and almost identity of language of France, and the petty states of the same Romano-Celtic origin that are grouped around her. However we may mete out Europe by dynastic arrangements, supported by military power—the Belgian, the Genevese, the Savoyard, must always feel himself much more French than Dutch, Swiss, or Italian. And on any occurrence that calls out the electric symyathy of peoples, these little communities, unable to secure a separate independence, will more naturally gravitate towards Paris, than towards the Hague, Zurich, or Turin. This is a circumstance, that must never be left out of consideration in estimating the future contingencies of French wars. For so far from abating with the advance of civilization, the spirit of race will exercise a proportionately intense influence, as the lower classes, the great depository of nationality, acquire political power. Though the exceptional case of an able and popular sovereign may for a time arrest this tendency to fusion and absorption, we can never expect long to fetter the instinctive sympathies of a people by the rules of diplomacy, or the theory of balanced power. Nor is it to France alone that this principle is applicable, for at the other end of Europe we see a great military monarchy, at once the head and patron of the Sclavonic race, which whether crouching under the Turkish yoke, or conscious

of a contemptuous annexation to the great German monarchies, has an instinctive appetency for Russian connection, independent of any fierce political feeling or material interest. And never perhaps was there an instance of a more unfortunate political prediction than that of the genial orator, but shallow and factious statesman of the opposition, who saw no symptoms of ambitious aggression in revolutionary France, nor any means of encroachment in imperial Russia. To him the map of Europe looked as it might have done to Clarendon or Somers, and he could only see the dangerous rivalry of the Houses of Bourbon and Austria, and the narrow commercial jealousy of the Dutch.

The financial difficulties that ushered in the gloomy year 1797 are scarcely within the scope of this treatise, except so far as the Order in Council suspending cash payments was a strong illustration of the convenient though limited power, assigned by the Constitution to the Executive, as supplementary or anticipative of the power of Parliament. While the consequences of that measure, necessary at the time but too long enforced, have had an effect on our political and social economy down to our own times.

Lord Grey's project of Reform, not very dissimilar from that, which he lived to carry as prime minister in 1831, but which was forced on the attention of Parliament at no very opportune

moment, when the fleet was in mutiny at the Nore, has more relation to our subject, though, as rejected by the House of Commons, it only requires a passing observation in this place. Its general features in the disfranchisement of nomination seats, the increase of county members, the enlargement of the freehold qualification, and the preponderating influence of the lower middle class by the general enfranchisement of householders, have all been since reflected in the moderate and rational, but on the whole unsatisfactory and ill-working measure of our own day. The arguments on either side were much the same as on the former discussion at an earlier stage of the Revolution. But the respectable minority of 93 to 258 showed some accession of strength to the slender force of the regular opposition, decimated and dispirited by Fox's faction, and indicated the support, that a practical and definite measure in that direction might expect, when advocated by a graver and more consistent leader, under more favourable circumstances, than the dangerous crisis at which it was proposed. The death of Burke, and the rise of Canning, were both constitutional events, pregnant with reflections on the past, and expectations of the future. In my own utter inability to do justice to the talents and influence of two such characters, it must suffice to present their great names in connection, and leave the reader to meditate on the political sage, who wept over the disappointing close of one century, and the young

orator, who, despairing neither of the traditions of the past, nor the spirit of the present, laboured to adapt them mutually for the development of a glorious future. Canning indeed was pre-eminently fitted for the unconscious part he had to play in the great drama of constitutional progress, having to preside over one transition, and prepare minds and circumstances for a still greater. To popularise the tone and objects of an essentially aristocratic government, and so to mitigate the excitement and strain, that must necessarily attend the now not distant change of the balancing authority. His function, at a later period of course, than this his advent to public life, was tenderly and almost playfully to reduce class interests, and remove invidious distinctions, before power was to desert the sects and classes, that had hitherto been its depositories, and in foreign policy to throw the weight of this country, rather as the peacemaker between the antagonist principles of despotism and anarchy, than as the paymaster and recruiter of the losing side. Though his politics were always essentially Tory, and for many years rather obtrusively so, yet he was more the favourite of the many who admired his eloquence, than of the few who, whether as colleagues or rivals, had all in their turn winced under his wit; the only vice that is never pardoned in a statesman. Once seated in Parliament, a man of Canning's genius, at once eloquent in debate and active in business, was sure to rise

into the first rank of statesmanship. But the fact that he got there at all, at the age and under the circumstances in which he was placed, is no inconsiderable argument in favour of the old nomination system, and shows how little progress we have been making in opening the path of poverty and genius. So far from that aristocratic age and borough system opposing any barrier to the advance of such characters, we find the talents and prospects of the young Oxonian, the son of a wine-merchant and actress, actually alluded to in Parliament before his appearance, and his advent thither predicted as soon and certain, as in our own days the return might be anticipated of the projector of a ruinous speculation, or the stipendiary of a thriving sedition.

The year 1796 had been marked by some temporary Acts in limitation of the liberty of the subject, in reference to public meetings and the right of speech and discussion. These Acts, though, as usual, resisted with factious and indiscriminating violence by the opposition, were so necessary, if not for the safety at least for the peace of the country, that they were carried by large majorities of 214 to 42, and of 66 to 7 in the two Houses. The danger arising from these public discussions was perhaps over-rated, as is apt to be the case in times of excitement, where a very inconsiderable minority may, by noise and ubiquity, assume the tone and authority of a majority; as was, indeed, the case in France,

favoured by the organized centralization of the capital. And in politics one must consider the danger arising from erroneous opinion, as much as from actual physical force, which may indeed be set in motion by it. Nor, in the excited state of the public mind, was the danger to peace to be neglected, and meetings powerless for good might have irritated the national feeling to some outrage on the other side, even if the declamations of speakers had not compromised themselves, or, as is often the case, their more sincere and imprudent auditors. These Acts, commonly known by the name of the Grenville Acts, from the minister who brought them in, were, from their temporary character, no element of our permanent and progressive constitution; nor indeed, were they so durable as to influence subsequent progress, like the wintry despotism of the Tudors, but rather acted like a short spring frost in checking a too luxuriant and precocious vegetation, and in preparing public opinion by meditation rather than declamation, for a more robust and healthy maturity. Any check of this kind is clearly a derogation from natural liberty, and adverse to the analogy of the origin and practice of Parliament; yet as long as Parliament itself retained freedom of vote and speech, and the Press knew no restraint but its own conscience and the discretion of a jury, there was no real cause for apprehending danger to liberty. While the peculiar character and state of of our Institutions were exactly such, as least to

bear at that time the rude and dangerous breath of public discussion. Too valuable in principle to be rashly hazarded, they were all, more or less, encrusted with abuses, either the growth of time or the necessary evils of human application; and thus presented just those absurdities in detail, that catch the eye of the multitude, and form the political capital and professional learning of the demagogue. At the present day a more educated people may be trusted with a freer discussion of a slenderer stock of grievances; though it may be open to question, whether the virulence of faction has been propitiated by the reform of abuses, or whether political agitation has, under the most favourable circumstances, really tended to promote practical reform. The fact is, that if men were mentally competent, and morally inclined for the investigation of truth and right, the more discussion the better; truth and justice would always prevail; but unfortunately this is not the case. Even among those competent from natural or acquired powers to judge, moral evil is not always an objection; and many more will connive at it if favourable to their general views. If to do evil that good may come was the maxim of a sect, the opposite principle of doing right, whatever be the consequences, is one of the rarest motives of action among men. In calmer times, when questions lie in a narrower compass, or turn on points capable of clear and pertinent solution, discussion has done good, and real conviction has often

followed, when parties have largely admitted each other's propositions, or evidence has been adducible on the point at issue. But even here public discussion has been valuable only in proportion, as it has ceased to be political agitation, and has shrunk from calling up the baser passions of hate and envy, and appealing to the ignorance and prejudice of the multitude.

The altered state of affairs in France, where the severe government of the Directory, restraining the intolerable excesses of the populace, only retained the cant of Jacobinism in their proclamations, and its spirit in their hatred to Religion and Monarchy, presented that degree of stability and moderation, with which a foreign state might treat, held out some prospect of peace, and altered slightly the arguments of the ministry and the tactics of the opposition. But conquest had now superseded revolution, as the passion of the many and interest of the few in France. Nor was it to be expected, that a board of needy and unprincipled adventurers wielding an imperial power on an hypocritical salary, would give up the career of war and invasion, that enriched them with exactions and contracts. It was not wonderful therefore that proposals of peace, faintly made through the English minister in Switzerland, were not only rejected on the ground of retaining conquests, but that the negotiator himself was expelled by French influence from the Cantons. The conduct of the French

Government during these two years 1796 and 1797, was an instructive comment on the arguments and panegyrics of their opposition advocates in England. Mr. Fox argued, from the peace that Spain and Prussia had succeeded in establishing with the Republic, that there was no danger to the most extreme monarchical institutions from such a connexion, and, *à fortiori*, that our own mixed monarchy had nothing to fear from a similar pacification. But even, had this argument from two poor and warlike kingdoms been applicable to our own ill-protected wealth, the analogy was scarcely an encouraging one. Spain passed through every degradation of an ally, a tributary and a subject state, losing in the cause of her exacting protectress her navy, commerce and colonies, and only emerged from her vassalage the lowest of European powers by the aid of the only State, that had never enjoyed the alliances of the Republic or Empire. The time of Prussia was deferred, but it was not the less certain, and the blows of Jena and Auerstadt were none the less heavy for having been delayed, till the French armies were in their highest efficiency, and every possible ally on the Continent prostrated in the dust. But if the Revolution tolerated with these absolute monarchies an insidious and exhausting peace, as inconsistent with its own principles as their welfare, it kept no such half measures even with sister republics, whose opulence and situation encouraged attacks and favoured invasion. Holland and

Switzerland, as has been already observed, found themselves in this unenviable relation to their colossal and aggressive neighbour, and neither the prosperous and practical freedom of the one, nor the severe and antique republicanism of the other, exempted them from the invasion provoked by their wealth, and the ultimate scarcely disguised annexation suggested by the military system of France. Holland, with its mixed government, its commercial habits and prosperity, its local self-government and practical freedom, presented no unfavourable likeness to our own national state and character. While perhaps there was more corruption, at least pecuniary, in the administration of their laws and government, from the predominance of the citizen element in the absence of the elevating principles of an hereditary or professional aristocracy, and of the simplicity of a rural population. Yet such as she was, with her not inglorious earlier history and great actual prosperity, Holland fell almost without a blow before the arms of the French Republic; and in the successive stages of a conquered province, exposed to the excesses of the vilest of armies, and as an affiliated republic constituted under the vilest of her own citizens, she had to submit to the plunder and conscriptions exacted by her mighty patrons, losing as a necessary consequence her fleets, her colonies and commerce. And at last incorporated as a military appendage of the great Republic, when even the nominal government of her native Directory

had failed to satisfy the exigencies of the French generals and commissaries. The fate of Switzerland was the same in result; though a military people, offered a longer resistance, and placed in the centre of a continent, they had less to lose by their connexion with the fortunes of France. The pure republicanism and simple social state of Switzerland made the aggression of France more glaring on paper and in debate, and consequently gave more trouble to the indiscriminate advocates of revolutionary ambition in this country. Though tested by the amount of mischief done and good destroyed, I am inclined to think, it was a less flagrant crime against the human race than the subjugation of Holland. Faction had been bitter throughout the confederacy, a narrow jealousy and much practical oppression existed in the aristocratic Cantons; while a chronic civil war and a morbid jealousy of strangers, was the curse of the smaller democratic states.

The Cantons too, among other unamiable traditions of the ancient republics, presented the strange and offensive spectacle of free states ruling other states, to the exclusion of any political right on the part of their subjects. And the ascendancy of the Teutonic race was displayed by the subjection of many Gallo-Italian communities to the German Cantons. Even had not the Senate or Treasury of Berne provoked the horror or cupidity of the Republican generals, such an anomaly in government might well have excused their armed interference.

But while a group of nominally affiliated republics, but in reality vassal provinces, were clustering round Revolutionary France, the second of the British islands narrowly escaped, at least for a time, the same fate. The Irish rebellion of 1798, though in itself from its rapid suppression and vulgar incidents an unimportant fact in history, still deserves a place in this work, not only as the immediate cause of the Union; but as indicating in its character both the obvious evils, that then came to a head, and the disposition of the people themselves, the greatest evil of all. The content and discontent each equally ill-founded, the absurd bravado of treason to the government with the latent treason to the cause of rebellion itself; the incongruous compound of infidel Jacobinism in the leaders, and of priestridden superstition in their followers, made the suppression of the rebellion an easier task than the cure of those evils deeply seated, that will render the chronic state of Ireland if not one of rebellion, at least of agitation and anxiety. On the evil influences affecting Ireland and Irish politics, it is difficult to say anything at once true and new. Various as have been the theories propounded and the evils decried, it is much easier to see a degree of truth in all, than to attribute any cardinal discovery to one. The early conquests and repeated confiscations of land, the national character itself so ill adapted to the exercise of British rights, and to the competition with Bri-

tish industry—the abuses of a Provincial administration, and the political ascendancy of a party—the influence of the Popish priesthood, and even the endowment of the Protestant Church, have all been with more or less plausibility adduced as the great central fact of Irish misery and discontent. But as many of these grievances are obviously in the course of removal or oblivion, and the other influences have existed elsewhere without the same result, we must look rather to the combined influence of all, and of some in particular, as the real cause we have to meet and combat.

Viewing therefore these malign influences in their combination, we reduce the number of parallel instances to a very manageable term, and with a very significant result. Nor can we point to a single other case of a Celtic people and a Romish hierarchy, enjoying the machinery of free institutions to revenge their supposed wrongs, and gratify disappointed ambition. In no other country do the citizens come to the exercise of their rights, with the wrongs of poverty inflamed by the passions of bigotry, or an ambitious priesthood employ at once the arts of the hustings and confessional against every Government that does not advance its interests or recognise its supremacy. But, while one is obliged, by the force of evidence, to recognise an unwelcome amount of truth in most of these causes alleged, one is encouraged by seeing something of the mixed result from the constant concessions of the English Go-

vernment, that might be deduced from adverse prognostications.

If, as one party always predicted, every concession has inflamed the ambition and raised the tone of the anti-English faction, so also each successive agitation, however general in its assumptions and violent in its language, seems to beat fainter and fainter on the bulwarks of law and order. The savage rebellion of one generation, and the vast armed organisation of another, melts into a local insurrection or noisy agitation, and these again into mere police affrays, ludicrous from the cowardice and incapacity for action of the frothiest declaimers. The real and undoubted oppression of the native Irish Catholics exploded in the frightful massacres and general rebellion of 1641, and the civil war of 1690. The comparatively mild though corrupt government of the next century, with its English preferences and commercial injustice, produced the great and effective national demonstration of the volunteers of 1780. So far the oppression had been real and the objects national rather than sectarian. The organisation of the United Irishmen, that produced the rebellion of 1798, for the first time admitted the non-national character of their movement by the secresy of a conspiracy, and the sinister nature of their objects by the false pretences alleged. An intrinsically Popish and anti-English movement professed a zeal for parliamentary reform, as a bond of sympathy with the

English opposition, and a Jacobin revolt to engage the aid of the French republic. There were, no doubt, the greatest abuses in Irish administration at this time, the character of public men generally was such as would have been considered profligate in the Court of George II.; and a disregard for the feelings and interests of the lower classes, such as hardly characterised the age of the Tudors was too apparent. Yet it is needless to observe how undesirable and impracticable an escape from these evils, and the English connexion, that was absurdly identified with them, was offered by revolt to the French republic. Even had not geographical position, the moral genius of England, the connexion of many centuries, and the devoted allegiance of a spirited and influential minority of its own population, inevitably linked Ireland with the fortunes of the British Empire; it would have been an unwelcome secession to the theoretical republicans and zealous Catholics of Ireland, to find themselves subjected as a dependence or department of a state, that in 1798 retained little of its republicanism, except its hatred and contempt of Catholicism.

The Legislative Union, that followed in 1801, is generally said to have been brought about by very corrupt appliances. But making every allowance for party calumny and national irritation, the end was certainly worthy of such means, as an English Government would have sanctioned, if not of such as Irish members might have demanded.

Following out the idea of the Union with Scotland in Anne's reign, though with a liberal regard to the large population to be represented, the proportion of Irish members of the United Parliament was fixed at 105. Forty-eight peers elected for life, and four prelates sitting in rotation, composed the contribution of Ireland to the Upper House. Many small and nomination boroughs were extinguished, and a preponderance of representation given to the counties. Both erroneous steps, as the discrimination of patronage and influence of Government were less to be dreaded under the circumstances of the country, than the bitterness of faction, and the evil influences on the rural population.

But the advantages to Ireland were not to be measured by the changes in the constitution of her legislature, nor to be disparaged by the corruption employed in the process. The great point gained, was to bring the whole administration of law and government in Ireland before the bar of English opinion, and to subject every Irish appointment to the scrutiny of an English standard. While the large body of Irish representatives in the British Parliament, effectual for the protection of Irish interests, not split into hostile camps themselves, nor separated by sectarian bigotry from the mass of English members, formed both an influential part of the imperial senate, and an invaluable school for the political instruction of their own countrymen, open-

ing a sphere for their native eloquence, in a purer and higher medium than that of College Green.

But our space reminds us of the necessity of drawing within narrower limits the latter decades of this long and difficult reign. The importance of the principle involved in the American contest, and the gross and dangerous misapprehension of the real principle and character of the French Revolution, must justify the length at which they have been respectively discussed, with reference to the principles and progress of our own constitution.

But subsequent to the Union with Ireland we may compress the leading constitutional features of this nominal reign within narrower limits. The negociations with the military monarchy of the great French Consul are illustrative of the instinctive affinities of governments, and of the constitutional principles involved in the struggle. While the short Peace, or rather Truce of Amiens, would indicate, that, though an accommodation may be arranged with any settled government, yet that it cannot be permanent, but at the price of subjection with an aggressive and revolutionary power. The law of nations must be considered as regards the rights of belligerents, both as against neutrals, and in anticipation of those, who from neutrals may become involuntarily partakers in the contest. The ministerial difficulties of 1806 and 1811 must be briefly considered, both in reference to the constitutional principles they involved, and to the rising

importance of the Catholic question. The growing discontent of the middle and lower classes with the burden of taxation, and the anomalies of representation; the return of peace; and the justice and necessity of the repressive measures adopted, must conclude the chapter. The military glories of the Regency, with the financial difficulties arising from so vast and protracted a contest, belong to another department of history. Though it is scarcely beyond the scope of this treatise to consider, how far the spirit of the war and the reaction since may have both acted on the national character, and through it affected the tone of government and public opinion in our own times.

The French Directory, though in restoring law and order, and the protection of property, essentially Conservative, yet had too great a stake in the Revolution to allow it to subside in a reactive or Royalist sense. Accordingly, they met the returning loyalty of the middle class and National Guards of the capital by the cannon of the young artillery officer, who was destined to be their successor, and the royalist elections and resulting opposition in the Councils, by the iniquitous *coup d'êtat* of Fructidor. This last stroke was the real installation of military government, to the exclusion equally of popular demonstrations and of constitutional order. This summary way of dealing with a nominally representative assembly, banishing a troublesome party, annulling inconvenient returns, and retaining vacant

seats, that would be hostilely occupied, left little indeed of constitutional right for the consular revolution of Brumaire to overthrow. It was the army in either case that acted, either in support or in suppression of the Directory, independent of Democratic or Royalist sympathies. And Brumaire did but raise the chief of the army to the ostensible supremacy, that the army had already secured in practice to itself. The efforts of a Government, which would at once maintain order and the Revolution, deprived them at once of the support of the mob and the favour of the Royalists, and threw them on the only other element of strength that was left in France. This altered state of affairs in France, which had, in some degree, under the Consulate assumed the tone of a popular if not constitutional monarchy, naturally afforded an opening to peace. The most able and interesting State Papers, contributed respectively by the First Consul, Lord Grenville, and Talleyrand to this negotiation, are well worthy of a detached perusal, both as models of political pleading, and as exhibiting the real difficulties of the case, with a more salient truthfulness than is usual in diplomatic correspondence. One is bound to give the palm of logical power to the despatch of Napoleon, and of artful and audacious misrepresentation of the past to his minister. Lord Grenville's able review of actual wrongs and contingent perils, admirable in other respects, was perhaps impoliticly candid, in its reference to a prospective restoration

as the event best calculated to give tranquillity to France, and safety to Europe. For this passing deviation from the wise principle of non-interference with the internal government of France, though natural in the minister of a regular monarchy, and under the circumstances a reasonable view, was scarcely courteous to the existing government of France, nor strictly true as a historical deduction from the past regime of the Bourbons, or the substitution of dynasties on our own throne.

The fact was, the military power of France had increased as her revolutionary spirit had subsided, and she had become more formidable for mischief, as the mischievous tendency had changed. And peace, however for the time safe and advantageous for England, could only be concluded at the sacrifice of allies already subjected or menaced by the colossus of the West.

Yet eventually the step was taken, and the risk incurred; and by the Peace of Amiens England concluded the Revolutionary war, in which her naval successes had insured her insular safety, though the inefficiency and misdirection of her land forces had contributed little to her glory or the protection of her allies. The war, which, as might have been expected, soon recommenced, has no such immediate relation to the subject of these pages as to require a more particular allusion. For, though originating in the Revolutionary convention, that had called out so fiercely the military

spirit of France, and established an essentially aggressive government, yet, in its objects and incidents, it resembled more the ordinary wars of ambition, national or personal, too common in all ages of the world, though fondly thought most to characterise a barbarous period. The criminal aggression of our early Plantagenet kings on the independence of France, and the vaster aims of the House of Austria in the sixteenth, and of Louis XIV. in the eighteenth centuries, were repeated with something of penal retribution on the dynasties or nations, that had originated or supported these attempts. But, considering that the mask was now fairly torn from the Revolution, and no pretext of liberty or improvement employed to disguise the ambition of Napoleon, the conduct of the liberal opposition in England in thwarting the Government, palliating his conduct and extolling his power, was in the highest degree factious and mischievous, increasing the difficulty and hazard of the contest, damping the rising spirit of national independence in Europe, and depriving even their own country of the advantage of a respectable and powerful opposition, to enforce a judicious economy, and to suggest those practical internal reforms, of which we shall soon see the country stood much in need. It is a great error in an opposition to suppose their constitutional function is merely antagonistic. It is far more supplemental. It is scarcely in human nature, when the mind is bent on some

object it deems both just and of permanent necessity, to spare much attention or sympathy for collateral objects of perhaps rather an adverse tendency. It is also obvious, that indiscriminate opposition to the prevailing national feeling is useless and even criminal, in proportion as that feeling, however exaggerated, is just in principle. These two considerations might have both pointed out to the opposition of 1806-1815 their proper sphere of duty; to fill up the omissions of the majority, rather than simply to oppose the war in a manner damaging to their own characters, and useless with reference to their professed object. The ministerial party, resting on the broad basis of Pitt's majorities, reinforced by all the inert Toryism and alarmed nationality of the country, was bent on the prosecution of the war and the external dangers and relations of the country, to the exclusion of many pressing topics of moral and social import, that might have been the legitimate and successful field of an independent liberal party. That Romilly and Brougham soared above the factious flight of their fellows, and won the richest and most unfading laurels in reforming the abominations of our criminal law, and in advancing general education makes us only regret that more of their party did not follow their example, or that they themselves did not bring to their mighty task more of the fixed principle or political neutrality of Wilberforce.

One great civil question that became involved in

the prosecution of the war, the necessary decision of which added to our embarrassments and affected our moral position, was the delicate construction of neutrality under the law of nations as affecting its rights and liabilities. The law, as sanctioned by the practice of maritime nations, and imperatively demanded by the circumstances of England at the time, was, that a blockade effectively enforced must be respected by neutrals, and that a neutral flag did not protect a hostile cargo. This doctrine, essential to give effect to our maritime supremacy, in opposition to the continental system of France, was opposed to the interests of both the Baltic powers and America, who, as carriers or original producers, were largely engaged in the trade with Southern Europe. The armed neutrality of the North intended to maintain the lax view of maritime law, was dissolved by the cannon of Nelson at Copenhagen. But the hostility of America, which involved other points and was embittered by recent recollections, lasted longer, and indeed outlived the great European war, in which it had originated. Denmark again, in 1807, experienced a far more questionable application of the law of nations, in the sudden demand and forcible seizure of her fleet; a stroke unprecedented in English history, admirable in policy, and since fully justified by the discovery of the intended employment of the Danish navy; but open to grave consideration in default of any certain proof of a hostile intention, and in mere

anticipation of a possible event, that scarcely seemed to justify so violent a step, and extensive a carnage.

The ministerial difficulties of 1806 and 1811, require a fuller notice, than the mere oligarchical combinations, that had disputed and divided the prize of power during the earlier portion of our Parliamentary epoch. It is a proof how, ultimately if not promptly, the unreformed Parliament sympathised with the national feeling, that though no abuse had been corrected, no anomaly reformed, yet so increasing was the power of public opinion, that Parliament was much more truly a representative body, than it had been a century before. The growing importance and thrilling interest of the Catholic question penetrated from the squalid cabins of the Irish peasantry, and the modest hearths of the English middle class, to the seats of senators and the closets of statesmen who were startled at the passions they were bound to represent. On this great question Pitt had differed from his Sovereign and the great bulk of his ordinary supporters, and had retired for a time from office in consequence. To office he returned to administer domestic affairs with the same wisdom, and the war with the same unsatisfactory result, as before. His death, and the disastrous state of public affairs, led to a coalition which, under the circumstances, does not appear to have provoked much remark or censure. One only rather wonders, that sunk in numbers and in character as the Whigs

were, that it was thought worth while to propitiate that talented and eloquent faction by a gratuitous share of office. But the name of Fox, the last of the giant brood, who survived his younger rival a few months, was in itself a tower of strength; and his followers showed their usual faithfulness to party, and indifference to principle, in dropping the Catholic claims they had advocated, and prosecuting the war they had denounced in opposition; thus propitiating the Sovereign and agreeing with the majority. But upon Fox's death, a faint movement was made in favour of the Romanists, which the King met by dismissal and a subsequent dissolution; and to which the country responded by a large majority at the general election, adverse to the Catholic claims. This was a new basis of Parliamentary power, which enabled a Tory ministry of very ordinary talents to maintain its position for a longer period, than any constitutional government on record. Weathering the perils of the Regency, concluding the war successfully, and evading rather than resisting the growing demands for reform and change, they left a harvest of unsettled questions and exposed anomalies to their successors. Their scheme of government was, with the above qualifications, just and wise. And the influence of two very remarkable men, who rose amid the not overpowering brilliancy of the Pitt school, was usefully exercised on our foreign relations and domestic institutions. The gradually avowed policy of Mr.

Canning was to relax without actually dissolving the ties, that had naturally grown up between us and the great military monarchies of Europe, who had been our pensioners and allies in the great war; and to restore that independence of action, that best suited our insular situation, commercial activity, and free constitution. This policy, that was hailed by the liberal party, and not expressly condemned by any, was acted upon with reference to the abortive efforts of some European nations to get up a constitution, and the not very enviable success of the Spanish colonies in obtaining emancipation. The principle no doubt was right, though the results were not commensurate with what the liberals expected, or the great orator predicted. Mr. Peel at the same time laboured in the mitigation of our execrable criminal law, and the establishment of sounder principles of finance and political economy than had hitherto prevailed. Though in neither of these praiseworthy tasks did he act with the boldness and decision, that was evinced in his later career; when his pure and teachable spirit had reached a supreme place, through many fruitful years of thought and experience. In fact, the horror of change, as associated with the revolutionary movement, oppressed men's spirits still, as much as the shade of Pitt's errors obscured their financial vision.

These remarks are, however, in anticipation; though no unjust sketch of the merits and shortcomings of the long Tory Government of Percival,

Sidmouth and Liverpool, that was established on the failure of the Whigs and pro-Catholic Tories to form an administration. The staple of government, that is represented with sufficient distinctness by the three names just given was, from time to time, joined or deserted by Canning, and his friends of the liberal Pitt section, who consented to suspend their peculiar views, or carry them out only in a private sense on their union with the Government. In other instances, as has been alluded to, they were enabled to carry out views uncongenial to the traditional policy of their colleagues, who nevertheless were induced to assent from conviction or personal influence. The old Grenville, or pro-Catholic, anti-revolutionary party had withered into a mere name, their unpopular dogmas depriving them of all sympathy with either the representative demands or religious apprehensions of the nation. The opposition formed on the basis of the old Whig party, whose leadership had descended from Fox, through Ponsonby to Lords Grey and Lansdowne, was all this while rising in strength and character. Though yet far removed from office, the average of talent and political knowledge was higher on their benches than on those of the ministerialists. It is perhaps a law of Providence to redress the abuses of power, that talent always seems to have a tendency to the ranks of the existing opposition. This was more particularly the case after the conclusion of the war had thrown

back much genius and enterprise on the paths of civil life. And a heavily-taxed people, relieved from dangers and sated with glory, began to question themselves on the reality and magnitude of the perils they had escaped, while there was no doubt about the costs at which the escape had been achieved. While such was the growing disposition of the country in favour of the ideal of Whiggism, and rather in advance of its dogmas in the way of practical application, the Parliamentary leaders of the party were wise in their generation, and both in the good they identified with themselves, and the evil they suggested to others, they laid the foundation of that prosperous middle party, that seems destined to direct the power of the British Empire, between the mutual prejudice and suspicion of two extremes. This shrewd and firm party, at the close of George III.'s reign numbered among its younger members, in addition to the celebrities of the opening century, the names of Lord Althorp, Lord John Russell, and Sir James Graham, afterwards identified with the Reform Bill, and two of which still adorn our debates and guide our councils. They, professing themselves disciples of Fox, avoided the great error of his life, indiscriminate opposition, and vague and dangerous professions. They yielded a ready though contemptuous support to any liberal movement in finance or law reform of the ministerial benches. While they kept the hopes of Ireland fixed on that point, they knew

must split the hostile camp; and excited the increasing urban communities of England with another question, whose solution would prostrate the Borough power in the dust. It is, perhaps, difficult to decide whether the regular opposition derived more aid or scandal from the extreme party, that now rose under their left wing, and professed some of the doctrines of modern radicalism, with the audacity of Wilkes and the temper of Junius. But I am inclined to think that no party suffers from a bold enunciation of its principles, that does not compromise its leaders nor their future acts, but stimulates a wider range of the community in the same direction, though to a more distant, or all the better, an inaccessible object. Public opinion is excited, adversaries are discomfited, and the more moderate innovator steps in as the arbiter of the situation. Nor was the increase of the liberal party during this period only to be measured by the actual accessions to their ranks. The Tory party was thinning in disgust and disappointment, as class interests were assailed or traditional ideas abandoned, and a large and prominent section of the ministerialists were in that state of semi-conviction, that is the usual precursor of courteous concession.

The long and turbulent reign we have just closed, and with intentional brevity towards its termination, has necessarily raised many troublesome questions, and will excite the party spirit of disappointment or antagonism in many readers, who will have seen the

practice of every faction condemned, though in unequal degrees, when viewed by the light of the Constitution and the principles of moral truth. This was inevitable, and the author in reconciling himself to the general censure the pages may provoke, can only console himself with the consciousness of having in no sentiment deviated from moral right, and in no argument having made use of sophistry, however popular or plausible.

The difficulty was increased both to readers and to the author from the fact, that many of the questions agitated in the course of this reign still divide public opinion, and have but rarely received a satisfactory settlement, from the pride and obstinacy of party spirit rather than from any really lasting doubt. Even on some points where from the real progress in humanity and intelligence there is no difference of opinion, an unfair attempt is made to throw the discredit of exploded doctrines and indefensible abuses on political opponents, as on their sole or most culpable advocates. So one constantly hears the Tory party, not blameless indeed in the cause, taxed with the guilt of our execrable penal code, and the slovenly police, that mutually playing into each other's hands, produced some of the frightful though humble tragedies of this epoch. Yet not to mention that the three infamous acts alluded to in the last chapter but one, that propitiated the national idol of Mammon with the offerings of Moloch, were all enacted either anterior to the rise of party, or when the liberal

party was in the ascendant; the great orator of the Whigs and the ribald demagogue of the day furiously raged together to oppose any improvement of police arrangement; and Lord Ellenborough resisted with pertinacity Sir Samuel Romilly's protracted efforts to humanize in some degree our bloody statute book. Wishing to do justice to all parties, and particularly to spare the fame of our departed celebrities, one can hardly avail oneself of the notable discovery of modern journalism on this subject. The leading organ of the day has lately propounded that the profuse capital punishments of the fourteenth and fifteenth centuries were owing to the difficulty of otherwise bestowing criminals. Whereas the profusion censured was in the more enlightened seventeenth and eighteenth centuries, when colonisation was largely and successfully carried on, and the earlier centuries had neither displayed the same barbarity, but on the other hand offered an asylum and penitentiary for crime in the ranks of the serf population.

Another popular error, it is hoped pretty fully exploded in the above pages, is that which could represent George III. as a bigot in religion, and passionately devoted to war. Whereas his inglorious cessation of hostilities and abandonment of allies was the favourite opposition theme of the first decade of his reign; and his supposed favour to the Catholics, that was rather gratuitously assumed as an essential appendage of Jacobitism, added virulence

to the invectives of Junius, and a pretext to the Puritan factionists of America. In fact so singular was the change of the Whigs, in the course of this reign, from a strong Protestant and war party, to the advocates of peace and patrons of Popery, that one is almost tempted to suppose, that they adopted their principles from the rule of contraries, and took too literally the antagonistic duties of an opposition to the policy of the sovereign. The great question of the War has been discussed, and its necessity or rather inevitability shown with as little disposition to justify the gross incapacity of its early conduct, as to palliate the brilliant faction, that misstated the objects and embarrassed the efforts of their country. No attempt again has been made to deny the stretch of the Prerogative as exercised by the Ministers, or of the Privilege as assumed by the Parliaments of the early part of this reign. The constitutional jurist, though not participating in the violent prejudices or exaggerated fears of faction, must rejoice that in either case the ultimate decision was favourable to personal liberty and the ideal at least of representation. The endeavour at personal government, or rather at a share in ministerial power, likewise followed out with equal steadiness and success throughout the greater part of this reign, is a more delicate question. On general constitutional principles, which do not go to the extent of making the sovereign a mere expensive ceremony, devoid of all personal conscience or predilection, the mere puppet

of prevailing factions, it certainly cannot be denied to a King as to any other public man, to take his share in affairs of state, to have his opinions, to form friendships and advance his friends, and so construct a party, which whether within another o independent, may have a more immediate connexion with himself. In a constitution where the royal functions are so generally delegated or formalised, and where the principle of ministerial responsibility is so fully understood as in this country, no inconvenience is likely to arise from this effort of the sovereign to participate in the cares of office, and to influence the counsels of the legislature by more direct instruments, than those provided to his hand by the discipline of parties. The practical limit of this intervention will be fixed by the good sense shewn in the selection of these instruments, and by the parliamentary tact of the instruments themselves in the adoption of the royal views of policy. George III. erred rather in the ability than the character of this class of ministerial favourites. Neither Bute nor Addington were men of high political talent, nor on the other hand were they men of daring and reckless ambition. Bute early retired from a scene, for which he had mistaken his own fitness as much as his Royal pupil had done. And Addington represented an important principle of policy, on which the Sovereign's convictions were identified with those of a great majority of his people.

On the important questions of parliamentary and financial reform, the reader will see that the noble propositions of Pitt's youth, and the judicious resolutions of Burke's experience, are adopted in their fullest extent, without at the same time derogating in the slightest degree from the honour and consistency of these great men, who, under very altered circumstances, became the rigid supporters of existing institutions, or the florid advocates of monarchy, principles they had never combated, but viewed through another medium. The only blame imputable to Pitt being his neglect of the great representative question during the calm interval, when the need of Reform was as urgent as before, and its agitation safer than at a later period. And Burke's error being that of the rhetorician rather than of the statesman, in overcharging his case on whichever side he pleaded, and making truth itself less true by exaggeration and overcolouring.

It is perhaps hardly worth while to criticise some of the feebler efforts of party malignity or blunder in relation to this eventful reign: or it would be an easy task to point out the inconsistency of charges that mutually refute each other. The libels in different degrees of respectability of Walpole, Wilkes and Junius, throw light rather on the feelings entertained towards the government, than on the conduct of the government itself, and may be taken to represent the sentiments respectively of the old Whig junto, who shuddered at the breaking up of their

political monopoly, of the more profligate demagogue who libelled a society he could not enter, and virtues he scorned to profess; and of the more dangerous literary adventurer who loathed a Court and Ministry, that too cavalierly dispensed with the support of venal intellect.

But to pass from the virtues they ridiculed, and which recommended the Sovereign to the best sympathies of the nation, and the tendencies, real or imaginary, they condemned, and which their successors in opposition would have required. We might review severely enough the gross and absurd misrepresentations of the Revolutionary period, which, not indeed promulgated at the time, have sought the light since in flippant memoirs, and the still baser effusions of journalism. Thus, to instance one and by no means the worst specimen of the class, Bell's Life of Canning, a publication of which it may at least be boasted, that it has not failed to degrade its subject to the extent his biographer designed.

In this choice sample of political biography we are told in the same breath, that under Pitt's anti-revolutionary regime all opposition and even discussion was hushed under the apprehension of spies and prosecutions—that a reign of terror prevailed, and people hurried past with fear and suspicion on their brows, and half-uttered whispers on their lips. And that the opposition clubs and saloons of the Whig aristocracy sparkled with all that was most

brilliant in genius and dashing in fashion. Though wit is not apt to be silent in its martyrdom, nor fashion and gaiety usually the characteristics of an oppressed or suspicious people.

Dissolutions as lamentable as that of Mr. Roscoe's literary coterie at Liverpool have occurred, there and elsewhere, from other causes than political tyranny. The reserve of the liberal journals in treating the progress of events might naturally be attributed to the struggle between conscience and consistency, the one not being able to justify what the other could not humble itself to condemn. The absurdity of speaking of the traitorous agitators and Jacobin correspondents of 1793-95, as being accused for wearing the gala uniform of the Constitutional Society, may be perhaps overlooked as that figure of speech more common than respectable. But the attempt to justify the act of corresponding with the Convention, as if the good principles and inoffensive practice of that assembly sanctioned the homage and affiliation of subjects of another state, involves all the errors in fact and in the highest principles of morality, that have been combated in the preceding pages. It has been a common artifice to divide the Revolution by a line of convenient indefiniteness into an imaginary innocent and an admitted criminal period. That no such division is agreeable to political truth or historical justice, has been already shown, but it argued an unusual degree of audacity or ignorance to choose the actual period of terrorism

as the golden age of republican virtue and national innocence. The King had been murdered, royalty abolished, the nobility proscribed, the Church ruined, God blasphemed, all order destroyed, representation itself trampled on by a minority, and one-third of France desolated by the central authority. But the climax of absurdity seems contained in the remark, which has the additional merit of originality, that Mr. Pitt crushed the people with taxation that they might not have spirit to oppose, or leisure to canvass, his misgovernment; that their noses were, according to the writer's elegant idiom, kept to the grindstone. Supposing the fact to have been as stated, the result would have been, to say the least, unusual; and would dispose very summarily of the ordinary complaints of misgovernment, and afford rulers a means of impunity as welcome as novel.

CHAPTER IX.

Peace—Reform—Retrenchment—Reaction from the war and anti-revolutionary spirit in favour of liberalism—Negative policy and decline of Tory party—Improved leadership of the Whigs—The Economists—Principles of Free Trade—Catholic Emancipation—The Reform Act—Reform of the Poor-law and Corporations—Irish Agitation—Reaction in favour of a Protestant Conservatism—Ascendancy of Sir R. Peel—Corn-Law agitation—Surrender of Sir R. Peel—Schism in his party—Return of Whigs to power—Temporary displacement—Union with Peelite party—Conclusion.

In a concluding chapter, that is intended to embrace the momentous changes and delicate questions, involved in connexion with our subject since the Peace of 1815, or rather since the nominal close of George III.'s reign, one is induced, both for the sake of brevity and convenient generalisation, to adopt the style of an essay in place of that of a continuous narrative. The moving scene of an historic narrative has been the useful channel of our previous inquiry, and was at once the most definite and appropriate mode of viewing a succession of changes that were fully accomplished, though in successive relation to each other, and of commenting on the policy and career of Sovereigns, statesmen, and demagogues, already transferred in public opinion to the repose of history. But, when

changes yet in progress are to be considered, both in reference to each other and to the various unsettled questions arising from them, and auspices for an uncertain future are to be taken from the unsatisfactory data of the present; it seems preferable to adopt the character of an essay on general considerations of these conflicting theories and imperfectly carried out principles, rather than that of a history, where nothing is past and all is unsettled, as much in principle as in fact.

Certain heads of political discussion will naturally be suggested as popularly associated with the great questions agitated since the Peace, and as convenient classifications of a still wider range of topics, that must be briefly noticed in concluding our subject. The six heads under which almost every great constitutional question of the last forty years may be classed, or viewed in relation, are—Toleration, Franchise, Free Trade, Centralisation, Colonial Government, and Law Reform. These are enumerated, not in order of importance or mutual connexion, but rather in relation to the historical sequence of certain great questions, whose solution was the party struggle of the day, or remain still the agitation of the present and the problem of the future.

This historical sequence of some of the great questions involved in at least the three first of these heads, will oblige us still to trace a rapid outline of party and ministerial history through this period,

which, however unsatisfactory as a narrative, will scarcely offend the most rabid partisan by its meagre and colourless sketch.

The restrictions in the first place imposed on the Regency were avowedly only of a temporary nature, and merged in the ample exercise of royal functions many years before the termination of the Regency itself, by the death of the aged and afflicted monarch. Nor, as the views, or more properly the favouritism, of the Regent were now in harmony with the ruling party in Parliament, was there any will or intention in that party to fetter or degrade a power, of which they had now the sympathy or control. Thus George IV. enjoyed by anticipation as Regent pretty much the same royal authority, as he succeeded to in the natural course of events in 1820. The internal policy of this reign was pretty much a continuation of that of the Regency. The same spirited interference in foreign affairs, the same pure and wise internal administration, and the same rigid resistance to all organic or constitutional change. The efforts of Romilly had not, however, been thrown away on one branch of Reform, which, though based on the profoundest principles of morality, and in no small degree influencing the national character, had been strangely neglected by party statesmen. In the mitigation and simplification of the criminal law, more particularly in its atrocious and unwarranted inflictions, the opposition reformers found a guide and ally in Mr. Peel, who

presided over that department of the administration. And in this respect an impartial writer is glad to pay a passing tribute to the memory of a Prince, whose weakness of character and extravagance of habit have been generally unfavourably contrasted with the firmness and simplicity of his father. But, whether from an Epicurean softness of disposition, or some better because less personal motive, George IV. was really the first British Prince, who seemed to awaken to the awful guilt of indiscriminate capital punishment. And this reluctance to inflict the letter of a sanguinary and unchristian law, unnoticed at the time by the moralists, who supported his Government and regretted his character, or by the factionists, who opposed the one and had formed the other, lent a powerful aid to the efforts of real reformers, in overcoming the cold-blooded pedantry of lawyers, and the indifference of ordinary politicians. The trial of the Queen, and the great measure of Catholic Emancipation, were the chief constitutional features of this reign. The Bill of Pains and Penalties brought in against the blameable but unhappy Consort, was a mild and modern form of the old Act of Attainder. If carried, it would have placed its victim at the discretion of the Government, and would have, of course, led to her banishment and the dissolution of the ill-starred marriage. The mere personal character of the contest, the faults that undoubtedly existed on the other side, and the natural disgust at anything

savouring of tyranny and hypocrisy, led to a result not justified by the character of the defendant, and calculated to endanger the public peace by the perpetuation of a scandalous collision, where both parties behaved almost equally ill. The Tories, in supporting the personal object of the Sovereign, to a degree savouring of severity and dangerous to public peace; and the Whigs, in taking up a worthless client for the mere purpose of popular agitation, dangerous to the Constitution and scandalous to morality. It is happy that we can briefly dismiss so unpleasant a subject as involving no important constitutional question, and in the failure of the bill establishing no precedent for the recurrence of so unwelcome a contingency. Far different, in its nature and consequence, was the great measure of 1829. As a constitutional question, it must be again considered, when the large subject of Toleration is viewed with reference to our later difficulties. But as an historical event, its immediate effect was to introduce, even in the existing state of the Parliamentary franchise, about twenty Roman Catholic members for the larger counties and small towns of the south and west of Ireland. While dissatisfaction at the measure itself, and disappointment at the statesmen, by whom it was finally introduced and carried, led to that serious breach in the old Conservative phalanx transmitted from Pitt to Peel, that opened the way for the long ascen-

dancy of the Whigs, and the important organic changes they have since introduced or encouraged.

After the political demise of Lord Liverpool, the high Tory character of the Government had been lowered in the personnel of the administration rather than in its policy, by the formation of the brief Canning and Robinson governments, with some adhesions of liberal names. The installation of the Wellington and Peel government was looked on as a restoration of the Liverpool policy in its rigid conservatism. Yet that government carried the Catholic Emancipation it had so long resisted, and in the consequent dissolution of the Conservative party, led to the Reform of the Representation, and other measures of the Whig school.

The party that came into power with the first Parliament of William IV. was mainly composed of the remains or representatives of the old Foxite party, stronger in eloquence and parliamentary practice than in the labours of administration, or the details of finance. They were, however, reinforced by not a few adhesions from the broken sections of Canning and Huskisson, whom the recent liberalism of Peel had failed to conciliate. Such was the composition of the party that, with one struggling interval, governed the country from the first year of William IV. to 1841, and in that momentous decade introduced measures, which, if not unmixed in their motive and tendency, are of the highest importance, and deserving the most impartial con-

sideration. The immediate party effect of the first mooting the Reform Bill was to restore the cohesion of the Conservative party, reinforced too by some, who deprecated so large a destruction of their political interest vested in the nomination boroughs. But this re-union, though directed by the consummate ability of Sir R. Peel in the Commons, and supported by the great ascendancy of the Duke of Wellington in the Councils of the Lords, was powerless to avert a change, which a dissolution showed clearly to be the will of the nation, indicated even through the unfavourable medium of the unreformed constituencies. So completely indeed had the Tory leaders lost the religious sympathy of the country, that, in standing forwards against the will of the majority on this occasion, they failed to exercise even that modifying power, which an opposition generally obtains, either by force or compromise, on the passage of a great party Act. With therefore one exception, the effect of which has been much over-rated, though not unimportant in its bearing on the great economic question of the last few years, the extension of the County Franchise to tenants-at-will, the merits and demerits of the Reform Bills are to be credited to the Whigs alone. The difficult and scarcely practical question of franchise generally, in its basis of distribution and theoretical principle, may be referred to again hereafter; but it will be sufficient in this place to state briefly the leading features of the great measure of 1831-32.

The most severely contested point was the total extinction of a long list of ancient boroughs, decayed in wealth and population, some of only a nominal constituency, and all subject to the influence, as proprietor or patron of some great family or department of government. The reduction of representative right in another list of somewhat superior claim, was in the same spirit, and together they composed almost the whole of the disfranchising portion of the measure. On the other hand, long lists of places, comprising districts of the modern metropolis, and the great seats of modern industry in the northern and other parts of England, obtained the parliamentary privilege, by a single or double seat. The members for the larger Counties were doubled by a division, or raised from two to three. The County franchise was extended so as to embrace almost every form of landed tenure and substantial proprietorship, and the more respectable grade of mere occupancy. In the towns, while some prospective measures were adopted for the gradual extinction of a few ancient local rights, a mighty constituency was universally introduced, of a respectable but rather low household qualification. This constituency actually returns the House of Commons, containing as it does the whole electorate of the new Boroughs, and the overwhelming power, even where the existing rights of the old freemen have been retained, in the old ones. And as in every class division the lower part of each class is the majority; so the lower middle class, or house-

holders between £10 and £30 are the majority of the new order, that predominates in urban elections, and returns two-thirds of the national representation.

This is not the place to examine the policy of so momentous an innovation, or to arraign the motives of those, who thus conferred an ascendancy on a particular class, neither consonant to the principle of national representation, nor sanctioned by any view of our own earlier system. There is little cause to question the opinion of Alison and Sismondi, the largest collector of historical induction, and the acutest reasoner on it, that a franchise of this kind is about the most democratic that could be devised; being the most removed alike from the influence and association of the aristocracy, and reached by the taxation, though not by the patronage of government. In this opinion I cordially concur, both from *a priori* argument and personal experience. And to a treatise designed for youth, and that may fall into the hands of foreigners, a few considerations will be added of a more specific character, derived from the peculiarities of the English themselves. A low middle class might in any nation be expected to be imperfectly educated; ignorant of or indifferent to foreign relations; impatient of taxation, which however adjusted, must seem at least to press on them more than on the ampler means of the class above them, or the indigent impunity of that below them. Such a class would be instinctively disposed to sacrifice, not only duty and honour to safety and

gain, but even future safety and remote advantage, to immediate saving and retrenchment. Less disposed to alter government than to cripple its resources; and more inclined to grudge pecuniary advantages than to envy distinction: the revolution it will work is less violent and indeed less criminal, than that hideously improvised by a degraded populace and third rate litterateurs, but as sure and fatal to national greatness in its result. If one's experience shows us that vices of this kind stain the moral, industrious, and ambitionless moderation of a middle class in general; it requires no great acquaintance with English society, to perceive that this character so made up of worth and littleness is our prevailing national bias, and that the political faults of the English character will naturally be found most luxuriant in that class, to which the destinies of the country are now entrusted.

When to this general consideration is added, the fact of nearly all religious dissent in England being comprised within this artificial electoral pale; and the no less important circumstance, that from the great advance in education from voluntary exertion or national bounty, at both extremes of the social scale, the electoral class has scarcely any advantages in knowledge over that below it; it is open to doubt whether the circumstances of the class raised to ascendancy by the Reform Act, justified such a departure from precedent, as well as from the theory of representation. Other influences have

certainly existed and continued to exert a counteracting influence, that has modified or mitigated the tendency pointed out. The aristocracy, though pushed into a secondary place, has yet a place of political power. The Church too, though divided and unfitted for a political engine, exerts a higher moral influence than ever. The traditions of a monarchy are still universally admitted, and its personal exercise highly popular. A large minority too of the representation is still returned by the property and intelligence of the nation. Nor is the qualification of members, and the still more imperious public opinion, that seeks as high as possible for the exponent of every party and interest, without effect in neutralizing the absolute ascendancy of the principles alluded to. But the real triumph of those principles is indicated, not only by the perceptible tendency to a short-sighted economy and negative policy, but in the homage and concession to these principles, extorted from those who would advocate a nobler policy, and rest upon higher ground. When the encouragement of a baneful superstition is deprecated on the ground of its expense, and the criminality of domestic sedition and colonial treason is weighed by its cost in the estimates; when the effort of party and the fate of cabinets turn upon the escape or imposition of a small fiscal burden, Mammon may well exult in his triumph over every other principle wont to divide with him the allegiance of mankind.

Corresponding acts were past for Scotland and Ire-

land, suitable to the tenures of land, territorial divisions, and numerical developments of those countries. In Scotland representative reform was justly demanded, as all franchise in that country had shrunk into the most oligarchical dimensions. In the boroughs the franchise being exercised by the narrow close corporations and magistracies; and in the counties being attached only to the manorial tenure of landed property. Two circumstances, which inevitably subjected the representation of Scotland to the ascendancy of a few grandees, or to the influence of government patronage. As the abuse was more flagrant the reaction was the more violent; and a country of very aristocratic institutions and traditions threw its weight forcibly into the democratic scale of the national legislature.

In Ireland the reaction also was strong, and tended largely to increase the Romish party in the legislature, by the increased number of that persuasion brought in by the popular triumph, through the avenue made by the Emancipation Act. But here the Romanist triumph was less complete, than might have been expected from the zealous partisanship of their leaders, from the fact that the enfranchisement, being chiefly in favour of the middle class of the towns, did not reach to the basis of their power in the vast peasant population of the island. Considering the almost dictatorial power wielded by the Whigs in the construction of this measure, it must be admitted, that they deserve much credit for

moderation and disinterestedness. In the division of counties, and the retention of many small boroughs, there was no guilty wish indicated to crush a fallen foe; and even in the great mistake of the predominant uniform ten pound franchise, they sacrificed some popularity at the time, and sowed the seeds of future embarrassment and degradation for themselves, at least as much as for their political rivals. Nor was the conduct of the country, under its new constitutional privileges, unworthy of its extended constitutional experience, and moral and rational character. A vast preponderance of different shades of liberalism, of course, was returned. The old Tory majority—the Anti-Jacobin phalanx, that had maintained the great war, and ruled the country since 1784—that had supported Pitt—that had admired Canning, and followed Peel, shrunk into a hopeless minority, only retained a parliamentary existence on the basis of property and personal attachment in the counties and small boroughs, or from the gratitude of privileged electors still surviving, and influential in a few large cities.—Of the liberal majority, the Whigs, including their protegees and converts, were the leading section. As the creators of a new system, and the actual government of the country, they had great claims on the gratitude and obedience of the new constituencies, and the new men they called into political existence. Some surly demagogues affected an isolated position and independent line of

policy. But the great mass of English liberals returned from the new constituencies, were of half-educated intelligence, local respectability, possessing opinions rather in advance of the Whigs; yet on the whole following their guidance, and as financial and commercial questions were not the topics of the day, took no active or prominent part in debate, nor exerted any inconvenient pressure on the Government they considered a liberal one.—The liberalism from Scotland was more theoretic, and from Ireland polemic. But the shade of an opposition, and the bug-bear of Toryism, was enough to rally these heterogeneous sections round the banner of the Reform Ministry. Resting on this broad basis of general support, and confronted by a compact, though diminutive opposition, the Whigs were enabled to carry many important organic measures, that redeemed pledges given in opposition, and which followed in the wake, as it were, of the great movement of the representative system. The charter of the India Company was renewed, and the blunder of the Whigs of 1784 was not repeated. No ambitious encroachment on the patronage or territorial administration of the Company was attempted. Their commercial privileges were surrendered, and the trade of the East thrown open, but the firm and wise government of the Company was, subject to a certain definite controul as to the highest appointments, and questions of peace and war, still permitted to sway the obedient millions of India.

The new Poor Law was an important reform,

indicative of the change from the lavish system, administered by the magistrate aristocracy for the immediate relief of the poor, rather than the remedy of pauperism, to the shrewder and more frugal supervision of the middle class and its elected guardians. The merits of the old and new system, and the grievous errors of both, will be presently adverted to. But as an historic fact it was a bold and partially successful measure, and shews how far the prestige of a popular party can enable it to carry measures of very real and unpopular severity.

Municipal Corporations too were reformed with little difficulty or damage in Great Britain, but with much opposition not unwarranted by the result in Ireland.

The ancient towns of England had from time immemorial their local affairs managed with an almost republican independence, by corporations for the most part self-elected, or nominated by the great families in the neighbourhood. These corporations, in whom were vested very ample powers of local taxation, police regulations, and the appointment of the magistracy, were curiously indicative of the national bias to self-government and aristocratic forms. So little trace indeed was there of these corporations ever having been elected by the citizens, or any large class of them, that some have supposed them to be the trace of an original municipal noblesse or privileged race.* But not to mention

* See Palgrave on this curious point.

that there is no positive evidence to warrant this, the absence of all hereditary claim to corporate privilege would negative the idea of its being attached to any caste or family connexion, and seems rather to point to a personal origin as a commission, or as the Italian writers would term it a *balia* of citizens in the interest of a prevailing party, and as such intrusted with the Government of their neighbours. In practice these corporations recruited their numbers not exclusively from their own families, but from respectable middle class citizens of their own political opinions. From a sympathy for mediocrity, or to preserve the ascendancy of the generally aristocratic patron of the borough, resident gentlemen of fortune and education were rather excluded than otherwise. In many places, as has been stated in our earliest reference to parliamentary constituencies, the whole electoral right was vested in this narrow and respectable body. In other places the parliamentary right was shared with a very large body of freemen, usually with a strange anomaly, of the lowest class of artisans and labourers. But as the admission to this humble but turbulent body was for the most part in the hands of the corporation, it exercised if united a very powerful sway even on the popular electors of the ancient towns. At the time we are speaking of, the Reform Act had prostrated this power by the general enfranchisement of the middle class, and the restriction on future admissions, so that the legislature were

able to view this important question only as one of local self-government, and with little connexion with more exciting national politics. The principal feature of the Act was the substitution for the old corporations, of councils elected by the householders of the place. The council was renewed every three years by an annual vacancy and election of a third part of it. The municipal franchise was lower in amount than the parliamentary, but required a longer residence. The Mayor was elected by the council annually. This salutary check of double election, and the wise assumption of the appointment of magistrates by the Crown, a right which the Tudors never exercised, has led the new system to work well; and prevented at least the government and tribunals of the towns from being the seats and instruments of unscrupulous partizanship.

But, though the principle of self-government is so good that it is worth undergoing its discipline, even in what were termed by a great authority—normal schools of agitation; it may be questioned whether any real improvement has been achieved, that might not have been expected from the increasing influence of public opinion on the self-elected predecessors of the new powers. Money, formerly lost in jobs and convivialities, is now sunk in the party efforts and litigation of more ambitious and active rulers. And valuable as the great principle of self-government is as a school and fortress of freedom, its external indications are most evident

to the stranger in the tardy improvement and imperfect police of municipalities, as compared with places under the ordinary controul of the county magistrates, or administered by nominated boards of Commissioners.

The measure was not extended to the powerful and wealthy body that governed the ancient metropolis, nor to the numerous important towns called into political existence by the Reform Act. Though to these latter bodies, Royal Charters of municipality have been from time to time granted since, on the principle and organisation of the general Act. The bitter party-spirit of Ireland, ever inflamed by religious antipathies, raised well-founded apprehensions as to the success of the experiment in that country. And the bold centralisation proposed by the Tory opposition for extinguishing the old Orange Corporations, without replacing them by the stormy and seditious bodies that would be generated by election, was at least a plausible experiment.

Reforms of the execrable criminal law, whose often baffled proposal has conferred a nobility higher than any peerage, on the pure name and too brief career of Romilly, were carried out with a consistency and breadth, such as Peel had not been able to command.

Laws affecting the entail, titles and conveyance of property, were modified in a spirit suited to the exigencies of the age, but in strict harmony with

the recognised spirit of the Constitution. That reforms so obvious and harmless should have been left to be gathered by an adverse party, can only be explained by the baneful spirit of finality, generated by the signal failure of Reform in France, and by the sinister influence of Lord Eldon, on questions naturally within his department, during the long ascendancy of his party. In a still nobler spirit was the great sacrifice of the loan for compensation to the colonists, by which the immediate and entire freedom of nearly a million fellow-creatures was purchased, at the cost of twenty millions added to the national burdens.

While the career of the Whigs was thus prosperous and honourable from 1831 to the close of 1834, two causes were at work to undermine their power, and to reduce at the next election their majority to a very precarious balance. Long practised in the advocacy and projection of organic change, the Whigs came to the part of Reformers with much of the preparation of philosophical statesmen, as well as the impetus of popular leaders. But they were not great in administration, their diplomacy was meddling, their finance timid, their Irish government weak to fatuity, their Canadian energetic to severity. It was more particularly the want of financial talent and of a bold and consistent commercial reform, that cooled the attachment of the English liberals; while the infatuated compact with the Romish liberal party of Ireland failed.

to propitiate the implacable hatred of the purchased faction, and alienated a vast mass of friends or neutrals. English liberals even were alarmed and irritated at the growing disorders of Ireland, and the language of the priests and other leaders of sedition, which were as often pointed against the religion and people as the institutions and government of England.

Men who had seen the reforms of a century carried in four years, began to feel it was the time to enjoy what was won rather than labour to win more; and to admit that though a bold party might be the rough and ready instrument to carry a great *coup d'etat*, yet that something of the monarchical authority of a great and experienced administrator and mild partisan, was the best calculated to restore order to Government and prosperity to the revenue. In this tendency to do homage to the rising star of the great but moderate leader of the Conservative opposition, the press and education of the country largely shared. And it is this preference of experience and moderation to a bold and adventurous policy, and the postponing of any organic change, however plausible, to the employment of existing institutions and the improvement of actual administration, that constitutes the principle of Peelism. From this tendency of the public mind, at once Protestant and Peelite, and both rather than anything reactionary in favour of an earlier system; when the Whig government was unseated on a mere Court or per-

sonal difficulty, in 1834, the General Election returned half the House of Commons Conservative. The surprise was great and the indignation natural. Venal freemen and vassal tenants at will bore the blame of adverse returns, in boroughs uninfested by the one, and in suburban counties unknowing of the other.

Though the advance of the Conservatives had been prodigious, Sir R. Peel could not command an actual majority in the Parliament he had summoned. After a brief tenure of office the combined opposition defeated him on a scheme for secularising an indefinite portion of the revenues of the Irish Church, for the purpose of general education. The party spirit and ambition of the Whigs on this occasion was constitutionally justifiable, from the majority of one House still balancing in their favour; and the disappointment was natural in the framers of a new system being so soon deprived of the right to manage it. But the prompt and anticipating opposition was damaging to their character, as showing rather a thirst for place, than any reasonable expectation of carrying out measures in the face of such a minority, with a hostile House of Lords and alienated Court. The Whigs returned to office in the spring of 1835, but scarcely to power. For, though their narrow majority still held out, and was not materially impaired by the General Election of 1837 on the demise of William IV.; yet it was never such as to

enable them to carry any great measure, either of their own conception or suggested by their radical allies, with the exception of the very questionable reconstruction of the Irish municipalities.

They were obliged to give up the principle of the Appropriation clause, on which they had taken office. The scandal of the Irish compact still continued, and damaging as such a connexion must be to any respectable English party, it was peculiarly infatuated in the Whigs, with their traditional history and middle class basis in this country. In gratifying the political Dissenters they reduced their majority to five on the Church-rate question, and to a unit on the Educational vote. It was not till every other topic of agitation was exhausted, and they had even failed in the absurd attempt to lower the Irish County franchise, as has been effected since to a still more priest-ridden class of peasantry; that loth and late in 1841 the Whigs turned their attention to the restrictive commercial system that protected the landed colonial and shipping interests at the expense of consumers generally. This half movement at the eleventh hour of their political career, had too much the air of a death-bed repentance, to give the Whigs much credit with the consistent advocates of entire free trade. Though my conviction was, and is still, that the measure of the Whigs in itself was sounder in principle, than either the sliding scale, intended to give the protection of an artificial price, or the total exemption from duty,

which seems to recognise and favour a mischievous class notion, that certain commodities are *per se* sacred and free as necessaries. The Whigs erred both in the tardiness and feebleness of their movement. Their fixed duty was too high, and it was proposed too late. A vote of want of confidence obliged them to dissolve, and the new Parliament, by the large majority of ninety-one, decided against their financial measures, rather it may be presumed with a view to install Sir R. Peel and restore order to Ireland, than in admiration of the existing system of protection. Yet from the formation of the ministry of 1841 there was this radical division of sentiment among their supporters; official experience and personal confidence, with class interests and rural prejudices, like the iron mingling with the clay without assimilating or combining. The conduct of the great statesman on this occasion, in championing a cause he must have foreseen doomed, and in countenancing a delusion he should have rather dispelled, is, in the opinion of the writer, the most exceptionable point in his great and valuable career. And as it is a question of general importance in ministerial and party morals, it requires a little consideration even in so brief an historical sketch as the present. Were we to believe, that Sir R. Peel in taking office in 1841 was really convinced of the moral justice and sound policy of the system of protection, and that his subsequent change of policy was actually a change of mind and altered con-

version, the question would of course be narrowed in importance, proportioned to our lowered estimate of his fitness for the post he had sought and won. But this supposition is in a great measure precluded both by the sound and experimental character of his own mind, his enlarged sympathy with humility and industry, and the tendency even of his own immediate legislation. It is therefore most probable, that Sir R. Peel took office with the view either of maintaining the class advantage of protection, as long as possible from regard to the interest of his supporters, and disinclination to isolate himself by a surrender of their prevailing opinion; or that seeing the error the Whigs had committed by a scheme, that alarmed powerful interests without satisfying the masses, he assumed the championship of the one with the intention of an ultimate and unconditional surrender. The first of these would be an error and weakness, the latter deserving severer censure, and most, it is to be feared, consonant with his former and subsequent line of conduct. The leader of a party should not only be the public advocate of its interests, but the chamber counsel of its opinions, and while he protects the rights of those classes and interests, who confide in him, from all encroachment and aggression not essential to the general good of the community, he is bound by a sacred responsibility to reflect on them every ray of enlightenment, that may be caught by his superior mind and more extended range of observa-

tion, to dispel prejudice, to elevate selfishness, and thus waken from a fatal security by gradual instruction rather than a startling panic. The principle here inculcated may indeed be carried farther, and the labour of guiding rather than following opinion be shewn to be the duty, not only of a great minister to a national party, but of every Member of Parliament and candidate to his own party in the constituency. And the writer does not regret his own limited contact with practical politics, if the difficulty of acting on this principle in the zealous partisanship and clap-trap appeals of a contested election, has made him indulgent to greater men on more momentous occasions, from a consciousness of his own short-coming. None but those who have experienced can appreciate the trial, when the Minister or candidate, who feels the united enthusiasm of his followers to be the very breath of his political life, has to mark the surprised air, the cold assent, the failing support that awaits novel views and unpalatable truths. Nothing but the highest principle can carry a public man through such an ordeal, and the best qualification for a ruler of this world is to live above it, and for a reward beyond it. But of mere terrestrial grounds of independence and character, one must admit advantages of fortune and station, that form a dignified retirement from office, or the almost personal basis of the Peerage, or a nomination seat, from whence to brave the transient alienation of party, and the isolation from popular

support. It is only in aristocracies that dictators have surrendered their dictatorship, or that Ministers have sacrificed party to principle.

The government of Sir R. Peel was composed of a brilliant constellation of statesmen, consisting of some of the best relics of the old Liverpool administration, other younger men formed in his own school, and some important adhesions from the Whigs of the Reform ministry. This official staff, in which no element of ability, experience, and even popularity, was wanting, rested on the support of a small body of devoted adherents, personally and intellectually attached to what seemed the ablest, the safest, and most feasible combination; and on two other much broader and stronger parties, whose leading principles were respectively Protestantism and Protection, and whose parliamentary position was deeply rooted in the agricultural interest of the counties, and the religious feelings of the middle classes generally. These two respectable and independent bodies gave from the first a cold and jealous, rather than unhesitating support to Sir R. Peel; and on the Maynooth Question he encountered the determined opposition of his Protestant wing; while his ultimate abandonment of Protection in 1846 broke up the still stronger array of his agricultural supporters, and threw him for support on the liberal opposition, his personal adherents, and some independent converts or neutrals. Though there can be little doubt, that Sir R. Peel was as mistaken in

his augmentation of Maynooth, as judicious in his abandonment of protection, yet it must be admitted, that the disappointment and revolt was less justifiable on the former occasion than on the latter. For no pledge, express or implied by former consistency, warranted any very decided Protestant policy in a ministry, that had been borne to power on the shoulders of the rural electors, and was installed as the champions of Protection. As there will be again occasion to revert to the Maynooth question, and that of religious and educational endowments generally, the subject may be dismissed for the present. But two other Irish questions, that embarrassed the government of Sir R. Peel, gave the Whig party again the opportunity of showing how little their official experience had done to cure them of rebellious connections when in opposition.

They annually opposed the Arms Bills, brought in on the responsibility of the Government, as a mere necessary branch of police for thwarting the assassin, and rendering life and property secure in certain districts in Ireland. It was of course easy in the hypocrisy of debate, for the framers of former Coercion Acts to pick out hairbreadth distinctions between their own measure of one session and their opponents' measure of this, and the ultimate opportunity offered for regaining office on this very question, by putting the deserted ministerialists in a minority, was a great place and party temptation. But the baseness of the policy on these occasions,

as well as in the zealous resistance to the richly deserved, and too long deferred prosecution of O'Connell for the Repeal sedition, essentially damaged the reviving reputation of the Whigs, and rendered it impossible to pity the difficulties of their Irish government in 1848. It was perhaps mainly owing to this untaught, unteachable party policy, that recalled the faction of 1835 and the appropriation clause; that the result of the general election of 1847 was so little favourable to the Whigs as a party. They had succeeded to office, but not to power in 1846 by the disunion of the great majority returned in 1841. But the two sections of that majority might again unite, and were not so unequal in numbers as to make such an union humiliating to either, or even their separate hostility a matter of small importance. But the result of the General Election of 1847, however natural, was as unwelcome as in one sense unjust. The Peelite party, as those Conservatives were termed, who had supported their leader against the prevailing opinion of their party, were almost totally annihilated on the hustings of the Empire. And the seats lost by men, valuable for their sound principles and enlightened application of them, were in general forfeited in the counties to the zealous and inflexible supporters of the agricultural interest, and in the towns to the more advanced and unconstitutional sections of Liberalism. The Whigs, with all the advantage of the possession of government, the organisation of

a party, and the prestige of success, gained little positive strength by the dissolution, but continued to hold office as the mediator between two really powerful parties, who only tolerated them as less objectionable than each other. This position of affairs, new in our party history and unsatisfactory to zealous minds on either side, is yet perhaps the best suited to the wants of a country, that demands a government rather than a movement; where there are no great grievances to be redressed, no great effort to be made or danger averted. And whether distasteful or not to the advocates of progress or reaction it seems the inevitable course of government for some time to come, until impatience or pressure shall urge the Whigs into an advance, that shall at once replace them at the head of a movement, and give to their opponents the whole moral force and inert weight of a Conservative resistance. This peculiar position of parties has been little altered by the short episode of Lord Derby's administration, and the combination by which it has been replaced. For the Conservative residuum, that from their numbers and cohesion represented to the eye of the vulgar, what they professed exclusively to be the old powerful and well-defined Tory party, yet only differing from their former chiefs, who, with modified views and skeleton forces, preserved a contemptuous neutrality on some points of finance; they did not dare to act upon as a Government, enjoyed but little enthusiastic support, and seemed but a nega-

tive sort of patrons to those class interests and Protestant principles, they had invoked but not advanced.

Of the various sections of opposition, though some irregulars solicited defeat and embarrassed their leaders, by the advocacy of their own impracticable views of retrenchment and suffrage, yet the combined movement was wisely chosen, against the financial measure of the government, as a point on which alike Peelites, Whigs and Radicals were agreed, and what is more to the purpose, were right.

The chief constitutional features of the session just closed, under the auspices of a very able though scarcely durable combination, have been characterised rather by the sound and comprehensive administrative powers of the school of Sir R. Peel, than by the more specious organic changes generally advocated by the Whigs. A great and just alteration has been made in our financial system, and the last trace of class preference erased. The Charter of the East India Company has been renewed on an improved principle, both as to patronage and administration in neglect of a senseless and ungrateful popular outcry, fomented by the profligate portion of the press, and sanctioned by a Protectionist-Manchester combination as scandalous as fruitless. Large measures of law reform have been effected or marked out, without regard to the loquacious ignorance of disreputable members of the

bar, who seek a parliamentary advertisement for their professional obscurity.

In their stolid iteration of the Jew Bill, ministers have gratuitously incurred for no worthy object the great constitutional embarrassment of a collision between the Houses; and have sanctioned the error of the City on a point, on which turns the whole question of parliamentary qualification. In some eccentricities too of their Irish administration, one can detect the incorrigible error of the Whigs in tampering with an avowedly rebel party, which no practicable concession can ever conciliate, and against which their own embarrassment of 1848 should have warned them.

One hardly knows how far any attention to the wild and abortive movements of that year are admissible in a constitutional sketch like the present. The rise of a Chartist party, holding the same relations in extreme democratic views to the Radicals, that they did to the Whigs, was a natural event in the progress of party. But in England the want of the most ordinary character and judgment in its leaders, and the uncompromising extremity of its dogmas prevented Chartism ever taking hold on the middle classes, or obtaining through them a parliamentary position. It was principally confined to the working classes of certain manufacturing and still more mining districts, whose masses of population had outgrown rather than renounced the influence of religion, and the respect for property and

station. And even then it oftener owed its origin to some real local grievance and social misapprehension, than to any political object or organisation. The natural disgust in violent factions at those, who seemed to admit their principles without fully applying them, rather induced the Chartists to draw towards the Conservatives in election contests, where their own success was hopeless. And in truth the working classes might feel, that the Reform Bill they had aided to carry with its very low electoral qualification, still excluded the masses from parliamentary power more completely than the old and more varied system. In Ireland the party corresponding in extreme measures, though aiming at the different objects of separation from England, Popish ascendancy, and general confiscation, enjoyed advantages in the organised influence of the priesthood, and the misery and religious fanaticism of the peasantry; and on the other hand encountered a far more efficient and pervading military and police organisation for its repression. Nor indeed was the ascendancy of the priesthood, or fanaticism of the peasantry so unmixed an advantage as it was thought to the Irish movement, as it precluded any full confidence or extensive adhesion being given to a Protestant or at least non-Romish leader. While a wary and influential body like the Irish priesthood, were little likely to commit themselves in any overt act of uncertain result, while they enjoyed a full impunity for the safer vices of the tongue and pen.

The consequence of these relations was, that the attempt to introduce the revolutionary movements of 1848 into this country proved a complete failure. An agitation, that had like an absurd travestie of the tragedy of 1789 overturned a government in France, and shaken every military monarchy in Germany, was in England stifled by the almost unanimous and spontaneous expression of all classes. While in Ireland withering in the moment of action from the almost incredible cowardice and falsehood of a faction, which, though bad subjects, are still worse rebels, it was immediately repressed by the prompt exercise of the ample means at the disposal of the executive. It is hardly possible to speak gravely of a movement, which appears to have originated rather in the profligate vanity of demagogues and the interested sedition of the press, than in any deeper guilt of treasonable ambition. Yet while we regret, that it is the price that must be paid for our freedom of speech and printing, that we are constantly exposed to the deception of noise representing itself as number, and type as opinion; it was nevertheless happy that certain organic changes and practical reforms had been previously carried; that the middle class felt no change could add to their political importance, and the working classes had no actual grievance to complain of. An ill-natured writer might enumerate among the felicities of the period the fact, that the Whigs were at the time invested with the advantages and trusts of

office. Yet one should not infer from the analogy of their conduct in 1793, and from the still later proof of their exertion to screen from the slightest restraint and punishment the champion of the Repeal imposture agitation in 1844, that, had that disinterested party been out of office in 1848, the connection between the Reform Club and Kennington Common might have been closer. For in a record of facts and progress, one should avoid an inference as to what *might have been*, however tempting the analogy, and would believe in a late repentance on data however slight. As a favourable indication of a similar change of mind, may be instanced the general and determined resistance offered by the liberal government of the day, to what was popularly termed the Papal Aggression of 1850. While the subtle and illogical view taken of it by the friends of the great Statesman departed to his rest, savoured more of a disingenuous attempt to evade a difficulty and embarrass rivals, than any enlarged comprehension of the principle of religious toleration in the abstract, or any practical notion of the value of the particular form established in their country. It is of course idle to extend the principle of religious toleration, to permit the full development of every sect, according to its own notions of what is essential for its establishment, which would be in reality to subject the State, not indeed to the ascendancy of one Church but to the anarchy of many. Nor is the case made clearer, where the Church, that claims toleration for its

development, is itself intolerant on principle and by nature, and particularly intrusive and exacting in all that numerous class of questions such as Marriage, Education, Charity, of a mixed religious and secular character. But though the competence of the State to censure and restrain this foreign and intrusive development was obvious; it was not so easy to point out the exact application of law to the particular case, that should be the most authoritative, as an expression of the national will, and most effective to check the progress of a mischievous system; and at the same time the least to wound the rights of conscience, or interfere with personal liberty. The special measures enacted in 1851, though well meant and valuable as an expression of the sense of the legislature, and the tone of our national policy, were feeble in coercion, and have been allowed to fall into disuse from the first, as far as any penal infliction was incurred. Having brought down this brief historical sketch to the formation of the Coalition ministry of this year, it is not my intention to offer any remark on a combination, that has certainly no historical precedent or tradition in its favour. Freer indeed from the profligacy implied by the union of extremes, as that of Lord North and Fox in 1784; it was not on the other hand recommended as an act of patriotic self-sacrifice, by any peculiar emergency of the country or change of party opinion. If the followers of Sir R. Peel really feel themselves more in harmony with the Whigs than with their earlier

friends, they are the best judges of the congeniality. Or if they considered the importance of their personal services to their country justified the comment and risk of the combination, their error, if error at all, was too common to deserve censure or even almost remark.

Having now concluded a very brief outline of the civil changes of our own times, as they have assumed the character of historic facts, it will be desirable before closing the chapter and work, to scan some of the still pending questions of the day affecting the constitution, rather with reference to general principles than their historical sequence or party connection. And lest this should open too wide and discursive a field of inquiry at a moment, when the patience of the reader has been already sufficiently tried, all argument and remark must be compressed within the closest limits, and many important topics disposed of by a reference to works of higher merit and more specific object. First in the magnitude of interests and diversity of details involved, though not in really national importance, must be considered the question of colonial government. Our colonial empire, arising partly from settlement and partly from conquest, was at no period a very flattering example of either political wisdom or system of any kind. There were some acquisitions at commanding points in Europe or elsewhere, valuable as naval or military stations, which were held pretty much as such, the natives having no political privi-

leges, and only such law and liberty as the faith or policy of the military government permitted; while even British residents with no political rights enjoyed only those personal privileges, which the Courts and public opinion at home would have secured them. There were others like the North American colonies before their separation, where the great principle of self-government, and all the internal mechanism and rights of an English community were based on a large and flourishing population of British origin, and the interference of the Home Government was only invoked for military protection, jealously scanned in its limited patronage, and stubbornly resisted in any attempt at taxation.

There were other colonies like the West Indian islands, where this high independent spirit had yielded to circumstances less favourable for its indulgence, a scantier European population, the constant presence of royal fleets and garrisons, and above all the fear of the vast slave population, ever ready to avail itself of the disunion of its masters.

The vast and increasing empire of the India Company may be omitted in this summary, as it was avowedly an anomaly and excrescence, *sui generis*, on the Constitution. And though singularly fitted for the firm and wise despotism, by which a vast alien population might be held in dependence through the instrumentality of a commission of private gentlemen, highly honoured and deeply interested in the success of their trust, and amenable to

the public opinion in which they moved: the system itself evidently originated in the astonishing and unlooked-for success of a mercantile company, and in no profound speculation or reference to the political wisdom of Augustus in the settlement of the great Province of Egypt.* But with respect to other colonies still directly administered by the British Government and Parliament, there seem but two forms of connection to adopt with any logical regard for antecedents, or any prospect of peace for the future.

We must make up our minds to consider a dependency either as a simple post, to be held firmly with a reference to imperial objects and for military purposes, without consideration of the adverse interests or opinions of the natives; or as a free settlement of British subjects, entitled to their own laws and self-government, as much as any component but unrepresented portion of the United Kingdom. It is the halting between these two opinions, or rather the applying each in the wrong place, that has been the fruitful source of colonial embarrassment, and will be the perhaps not unwelcome dissolution of colonial empire. It is freely admitted, that the application of these two principles will occasionally be very difficult in extreme cases, and may perhaps determine the policy of maintaining mere garrisons on so broad a basis and subject to such liabilities; or of retaining the nominal adhesion of dependencies

* This curious analogy is adverted to in chap. vii, in reference to Fox's India Bill.

not contributing to our wealth or power; and if dispensing with our garrisons, occasionally legislating against our interests and opinions. It might seem rather an extreme case to treat Malta or Corfu as the mere appendage to its garrison, or to confer practical self-government on the sullen slave-flogging boors of the Cape, or the ex-convicts of some of our penal settlements. But were things left to take their natural course, a safe and inoffensive ascendancy of the mother-country might still be maintained, compatible with more avowed independence, than anything but actual revolt has yet extorted, by the necessity of military protection and the demands for higher and professional education. A perfectly independent colony might, as a mere question of economy and police, arrange for the payment and garrison of one or more of our regiments of the line, in preference to raising a native force, where men were scarce, and a ruder state of society was less conducive to discipline. While the intellectual and central advantages of the mother-country would always attract for social or educational purposes the class of youths, who would be the natural if not the recognised aristocracy of the colony. Two great sources of influence and bonds of connection have been singularly neglected in our colonial system—an established church and a privileged order. The one omission has been remedied though late, and as far as parochial administration goes, by too voluntary a system. The other has not even been attempted. It has been always stated that the

material of birth and fortune did not exist in a colony, from whence to form hereditary legislators or a titled body. And that in a community, where there were no grandees and no rabble, there was neither the opportunity nor necessity for founding an aristocracy. The reader of these pages will not be surprised to find me so deeply impressed with the unpopular conviction of the importance of this element, that, as was said of a higher influence, it should be invented even if it did not exist. And it is submitted, that, as things are great by comparison, had titles of honour coupled with limited inalienable grants of land, been conferred on colonists already respectable in character and connection, the material would have been formed for a second house of legislation, at once attached to the throne and interested in the colony; who, without the odium of a salaried official council, might have moderated the measures of the popular assembly, and been not only an instrument of British influence in the colony, but given an elevating tone to public opinion in it. Another important question long mooted need not detain us long, as the principle of Free Trade has, as far as compatible with national security, been fully recognized, while some zealots would scarcely admit even that qualification; and at the same time its details are far too numerous and minute for discussion in this place. The theory of taxation may however deserve a passing notice in reference to this question as bearing on our main subject. When the

idea of protection either by prohibitive enhancing or differential duties was given up, revenue became the only object aimed at in taxation. And the desideratum is to raise the most copious supply with the least injustice to classes or harshness to the individual. As person, property, and we may add, political privilege, are alike recognized and protected by government, it is just that they should all be called on to contribute to the exigencies of the state. Though the mode and proportion of each must often depend on circumstances, and still oftener involve the struggles of classes and the triumph of parties. Political privilege has rarely been considered as entailing any fiscal liability, though on principle no form of national existence might more justly be called on to contribute. In some countries it has even secured for itself an exemption which no argument could justify. And in England it has only contributed as property, where the possession or occupation of property conferred a political qualification. Nor have there been wanting some recent indications of an attempt of the now governing body of the country, the lower grade of Ten Pound householders, to establish for themselves an immunity from a taxation, they inflict on the upper minority of their own class. When in the course of this chapter the principle and prospects of the electoral franchise are considered, it will be the place for some very obvious suggestions, as to the mode in which the acquisition of political right might be made conducive to the revenue.

Property contributes to English taxation three times over in its treble aspect as capital, income, and the means of enjoyable expenditure. And some perquisition as extensive as this seems necessary to reach the income at its source whose safety is protected, but whose amount would scarcely be appreciated from any visible exhibition of it, and also that amount of expenditure that may possibly exceed the funds that are to support it, but which is the badge of social position or the indulgence of luxury. All stamp duties on alienation or succession, such as Conveyance and Settlement Deed stamps, Probate and Legacy duties may be considered just imposts on property in its accumulated form, whose assignment or transmission is guaranteed by the State. The rule to be observed in each of these cases will be of a mixed, political and moral bearing. In addition to the general principle, that simplicity and moderation in all these imposts should give the least possible excuse for error, or temptation to fraud and evasion, the legislature should be careful to fix the income tax at a very moderate per centage, stopping short of the smallest incomes that are a mere maintenance, and dealing with trading and professional incomes in a liberal spirit of mutual confidence and secresy. All these characters attach to the income tax as imposed in 1842, and might well justify the perpetuity of an impost so equitable in its character and productive in its results. The proportion charged on the value of property conveyed or transmitted may perhaps

be higher than that on annual income. The only limit being not to check the alienation of land or other property, and to bear less heavily on the descent or devise of land than of personalty, both as contributing more to the state in the transactions of the living, and as being of a less immediately convertible nature, and therefore not so ready a fund for fiscal infliction. This seems an equitable modification of the undoubtedly just principle now recognised by the legislature of subjecting land to taxation in its descent. Legacy and succession duties may be considered as the contribution of the parties beneficially interested in the transmission of property, and are justly proportioned to the relationship of the parties recipient, and might be laid still heavier than they are on strangers. After all, land still escapes the primary impost of the probate and administration duties on personalty. But considering the difficulty of raising a large sum at once on land, the taxation of its conveyance, and the large escape of personalty from these liabilities and from its extensive partnership investment, the advantage is not unjust. Though it might be more symmetrical to make the perquisitions of the revenue more penetrating and pervasive on personalty, and of advanced amount on land. The Assessed taxes, which may be considered a property tax, determined by a certain description of luxurious expenditure or social pretension, are not very happily pointed. They have involved almost every vice and error that taxation should avoid. They have militated against

health, travel, manly amusement and the employment of servants, besides the annoyance of their collection, and the singularly arbitrary amount of the items. The householder class have got rid of the window-tax, and the present session has seen an improvement both in reduction and simplification of other charges. But it is curiously illustrative of the folly and falsehood of faction, that this most objectionable tax on establishments was laid by the governing aristocracy of the last century mainly on their own class, and did not extend to injured and oppressed Ireland.

It has been commonly said, that to raise millions you must tax millions. And as protection to person, and the free power of acquiring both property and political rights, is enjoyed by the poor as much as the rich, there is no injustice in calling on them for a contribution to the State, that shall be partly in the nature of a light poll-tax, and partly of a graduated income tax on the excess of their means above their actual necessities of life. This is best done, and indeed can only be done effectually, by indirect taxation. Bearing in mind the double principle we are to have in view, this indirect taxation should be laid lightly on some articles of almost universal consumption, such as tea, coffee, sugar, beer; and with increased weight on articles of less universal demand, and graduated according to their uselessness or possible moral abuse, as on wine, spirits, foreign spices, drugs and luxuries; and most

severely of all on tobacco. A wise legislature will no less from policy than humanity, avoid pressing this form of taxation so heavily on the humbler classes, as from its amount either to cause the rate of living, and therefore of wages to rise much, or of diminishing consumption, to the inconvenience of the poor and the loss of the revenue.

It has not been denied, in a former chapter of this work, that the too oligarchical constitution of Parliament in the last century, the exigencies of constant warfare, and the imperfect state of economical science, led to an excess in the amount of indirect taxation, as well as to many errors in the details of its levy. But at the same time it must not be forgotten, that this indirect taxation, though reaching the poor was not confined to them, but pressed on the wealthy classes too, in proportion to the number and consumption of their families, their servants, and in a more remote degree of their employment of labour generally. Indirect taxation is generally considered, in reference to its collection, as either Customs, or duties on articles imported, or Excise, or duty raised on the growth or manufacture of a domestic production. The general rule to bear in mind with reference to these two classes of taxation, is to subject as few articles as possible to the burden and annoyance of certain dues; to maintain them only on those articles whose consumption will make the revenue arising from them very productive, and even on these to favour consumption and

revenue by moderate duties, and to admit the vast list of petty imports perfectly free. Excise duties, again, should be, if retained at all, retained at a productive rate, for trade and production should not be lightly interfered with for a trivial revenue.

Stamps on licences to trade or practice are much in the nature of indirect taxation, being advanced by the trader, and charged on to the consumer or client in the form of enhanced prices or costs. And if amounting to a check on competition, advancing prices in a disproportionate degree. They seem only suitable for the control or classification of certain employments for police purposes, or for the limitation and elevation of professions, which it is on public grounds desirable to keep select and close. The high postage tax, which has now been as absurdly lowered, was a real impediment to trade and innocent enjoyment. The same may be said of advertisement duties, which in many instances were really a tax on labour, and on labour in its most helpless form, as out of place. The tax on paper, though checking the circulation of the Scriptures, and the dissemination of such writings as those of Bacon and Hallam, would never have been stigmatised as a tax on knowledge, had it not together with the newspaper stamps touched the interest of the Press. Neither as the source of knowledge itself in its highest acceptation, nor even as the sole channel of such knowledge as it is competent to convey, is the Press entitled to any special exemption from what

might, with some severity though equal justice, be termed a tax on ignorance. Whether we view it as a business or a political institution, there can be no reason why a trade, which even the character of its conductors cannot render unprofitable, should be exempted from contribution, nor why a great political power should repudiate financial as completely as it has moral obligation. It is scarcely necessary to discuss the question of newspapers being a necessary of life as a source of knowledge, and it may even be doubted whether, with their party object, shallow inquiry, ephemeral assertion, and anonymous impunity, they are even a channel of knowledge, equal to any other form of publication. Were it allowable in this place to refine on the intellectual part of the case, it would not be very difficult to prove, that there is an actual advantage in raising the standard of journalism above the very low level at which an untaxed press, addressing the lowest class and exclusively depending upon it for support, would probably settle. There is an advantage in the mere respect of knowledge, in a class deriving its instruction from a higher level than itself. Human nature is prone enough to sink in sentiment and conscientiousness, and at any rate no great effort is required to keep man at his actual level, to enlighten him with either personal or class selfishness. If a man only reads in his paper a reflex of the foolish and selfish notions already rife in his mind, the mere echo of the nearest pothouse

he frequents, his errors may become confirmed, his selfishness justified in his own eyes, but no improvement or elevation of mind will be effected.

It is also an error to suppose, that because the Press is, on the whole, the reflex of the public opinion that supports it, and therefore, whether morally right or wrong, entitled to the deep respect attaching to so great a fact; that therefore it has no caste interest, or notions of its own, entitled to no such consideration; or to overlook the fearful power of assault and misrepresentation, wielded by it at the suggestion of these, or even more personal motives. The worst tyrannies that civilized nations have ever been exposed to have been in part imposed or connived at by themselves, and that in consideration of some perhaps actual though often over-rated advantage derived from it. Despots as dissimilar in their title to power and mode of abusing it as Henry VIII. and Robespierre would never have been allowed to inflict the miseries they did on their respective countries; had not England viewed, in the title of her tyrant, the extinction of the curse of civil warfare, and in his policy a bold renunciation of the connection with Rome; as the French saw in the Decemvir the personification of the envious malignity of their own republican principles. So a journal that, on that happily extensive class of subjects where the right view happens to be the popular one, obtains an immense power by advocating a course acceptable at once to the good and the many,

possesses a means that can be hardly over-estimated, to crush an individual, to stigmatise a peculiar opinion, or to ruin a particular class of official or professional men.

No political term has in a given period of time received so large an extension as that of Toleration. At the epoch of the Revolution of 1688, it was understood to imply the right to worship God according to the conscience of each individual, or the forms of any sect, and did not protest against any exclusion from political power attaching to such tolerated forms of religion, nor object to the endowments and imposts of the recognised religion of the State. The movement of the Romanists and Dissenters to obtain Catholic Emancipation, and the repeal of the Test and Corporation Act indicated a considerable advance in the idea of toleration, though no unconstitutional application of it to the subject of privileges as well as penalties. But this class of questions being set at rest with the solitary exception of the Jewish disabilities, we have seen in the last few years a new movement directed against the endowments and privileges of the Established Church, which if yielded to would reduce that great and venerable institution to a merely voluntary position, deprived of all State dignity and recognition, and depending only on the voluntary support of its members. The argument, so natural and so irresistible to the existing ruling power in the state, that there should be nothing without a *Quid pro Quo,* and

that no one should be called on to support an institution from which he derives no advantage, makes this movement a very formidable one. But even were we prepared to sacrifice the existence of an established Church, which quite apart from our own views of its claims and usefulness, seems almost an inseparable adjunct to a monarchical constitution; it is open to question whether a new and far more stringent species of Church influence would not be created by the separating from the State, and all its secular and humiliating associations, that mighty voluntary corporation that would be then thrown back on its divine origin, its spontaneous discipline, and the zeal of its members. It is this very idea that has led to the incongruous combinations sometimes witnessed of Church fanatics, who desire Church ascendancy, and Schismatics who aim at Church extinction, in demanding a dissolution of the ties that connect it with the State.

The question of centralisation, as opposed to local government, is too broad a field of discussion to be entered upon at the close of a concluding chapter; and it has moreover this peculiar disadvantage, that being at once a question of patronage and constitutional discipline, it will be generally disposed of on its merits as regards the former rather than the latter point of view. On all those points where the national existence is presented to foreigners, as in diplomacy, and the military and naval services, a strict centralisation is of course implied. In the

semi-civil services of yeomanry and militia, some intermixture of local and central authority is admitted. The supreme power retaining the right of command and inspection, and a share in the lower organisation of the corps. Police establishments are very anomalous, being when on a large scale, as in the Metropolis and Ireland, dependent on the central executive,—in counties on the magistrates,—and in borough towns on both the local magistrates and a committee of the corporation. Local taxation is almost always subject to local management—in the counties to the magistrates, all directly or indirectly named by the Executive it is true, but independent from the permanence of their positions and private fortunes, and invariably interested in the locality for which they act; and in boroughs to the committees of corporations elected directly from the people.

The national revenue is for the most part collected by functionaries of central origin, even when of permanent local position. The income and assessed taxes are imposed under the nominal authority of local boards of commissioners,—too numerous for real power and responsibility. In the administration of justice the magisterial power may be considered as both central in its origin and yet local in its interests and tendencies. Of the higher Courts, the Equity tribunals over which the Chancellor, Vice-Chancellors, Master of the Rolls, and Lords' Justices of Appeal preside, are all filled by the direct nomination of the Government, of which indeed the Lord

Chancellor is himself a member, with as much scandal to Themis as advantage to the administration. But public opinion, the character of the profession, and the permanence of the other appointments, leave little to be regretted in the way of independence. In the common law Courts a very happy fusion of the two principles takes place, the Judges being appointed by the Crown, and the juries who act under them being returned by the body of the country, both in the Metropolitan Sessions and Circuit Assizes.

Some few anomalies yet remain of peculiar or exempt jurisdictions, where local functionaries are appointed by some individual of hereditary or official right. The Ecclesiastical Courts are the chief and not most popular example of this anomaly. But as it is vain even in one interested in their existence to defend their theory, so a very moderate practical acquaintance with them must disabuse the mind of much, that the ignorant or malignant mendacity of the Press has heaped upon them of calumny and insult. There is positively less of inconvenience, and more of personal attention to the duties of office and interests of the public, than in other more popular or brilliant institutions.

Of the three great County officers, the Lord Lieutenant though the highest in rank is the most modern, not dating farther back than the close of the Tudor period, marking the decay of feudality by the assumption of local military authority on the part of the Crown. In practice the office is con-

ferred by the Crown for life on the most influential nobleman of the county connected with the party in power. Nor have instances been wanting of the suspension of this high and honourable trust, on the ground of factious or irregular partizanship, though such visitations of the usual freedom of thought and speech permitted by the Constitution have been generally condemned. As has been shown before the great offices of Sheriff and Coroner, involving as they did the administrative and financial duties of the shire, were both originally elective by the freeholders, and probably the germ of the earliest county representation. In Anglo-Norman times the Sheriff became in a degree nominated, but the Coroner, safe in his increasing obscurity from the development of new sources of revenue, remained and continues to this day elective by the freeholders of the county. The nomination of the Sheriff, though fully exercised by the Crown, is restrained by certain local and social qualifications, regarded by the Judges of Assize, who prepare the list of candidates for a merely annual and rather expensive honour. The Coronership is for life, and is a place of some emolument, though now greater obscurity.

The new resuscitation of County Courts for both judicial and administrative purposes has been at once a centralising movement as regarded patronage, and also a valuable measure of local government. The only fear is, that a want of harmony and system may prevail from the conflicting decisions of nume-

rous and independent mediocrities, to the scandal of the law and prejudice of the public. And that the very success and popularity of the institution, by diverting the business from the higher Courts and so drying up their practice, may destroy the only forensic school for the education of these minor judges.

It would hardly be permissible to treat of the principles of toleration and centralisation without some passing allusion to the great questions affecting education, whether in reference to religious influence generally, or any specific form of religious belief. The instinct of the English people has repudiated the idea, both of compulsory and of secular education; but, true to the principles of religion and liberty, has authorised the legislature to meet and encourage the efforts of individuals of local bodies, or great national societies in this cause, by grants of aid proportionate to their own exertions. Thus subject to some very mild conditions of inspection and order, the State recognises and aids the vast school system of the Church that affords education, or at least instruction, to the great bulk of the rural population, and to many thousands of the inhabitants of cities; and also aids the exertions of Dissenters in the same direction, and that both in schools of specific tenets, and in those on the broader principle of the British School Society. In the higher walks of education, the two ancient Universities, with their endowments and privileges, appertain to the Established Church; while the State

affords very little aid to them or any sectarian institutions of a similar kind; though of late the Dissenting University of the metropolis and its provincial affiliations, have been in some degree recognised. Under these circumstances it may seem doubtful as to the wisdom or justice of interfering in the internal management of any of those bodies, whose practice can not be construed as injurious to any subject; and whose self-interest and ambition might be relied on, to carry out effectually the important task they have assumed.

In Ireland the case is different. There a large State aid is granted exclusively to a system of open or rather neutral religious instruction. This plan, little calculated to please zealots of either communion, was at first perhaps unwisely condemned as playing into the hands of the Papists, who were the most prompt to avail themselves of a negative system and mutilated Bible. But in the progress of events it has appeared, that the Papacy has more to fear from the increase of knowledge, and from a portion only of Scripture truth, than it has to hope from the direction of thought, or the curtailing of the Bible. And accordingly, this very system is now indignantly condemned by the Ultramontane party of the Romish prelacy. The rich and ancient University of Dublin is connected with the Establishment; and as a pendant to it a large endowment has at length been assigned to the Roman Catholic College of Maynooth for the education of the priests

of that persuasion. The policy and propriety of this step has been already considered in the course of political events, of which it was an important feature. But generally with respect to the higher range of education, were it required to combine a national unity of object with full religious liberty, it would appear that the peculiar combinations of college and university, alone offered in our English institutions, presented the happiest opportunity of meeting the difficulty; representing pretty much as they do at that transition epoch of life the home that is being left, and the world that is being entered on, and yet in mutual co-operation, or harmonious subordination. The college, with its common prayers and common meals, its household order and paternal discipline, might well draw together within its precinct those of the same religious persuasion, and exclude those of a different faith. While the university with its more general aim, its studies, its examinations, degrees, and political essence, might, whether connected or not with the Established Church, embrace a plurality of colleges, or learned houses of different sects; and that without detriment to the faith and endowments of colleges already in existence, and attached to the Establishment.

This chapter, and the subject it concludes, would hardly be complete without some reference to the important and difficult question of the franchise, which is the more worthy to receive a wise and dispassionate consideration now; as it has been most

imprudently started as a gratuitous ministerial movement for next session, and may then have its decision exposed to all the disingenuous arts of faction, or forced on as the condition of ministerial existence. It must be apparent to any reader of these pages that the writer is neither so enamoured of the measure of 1832, as to think it incapable of improvement, nor so devoted to the *status quo* in anything, as to tolerate evils or anomalies that are capable of safe and ready correction.

On the reconstruction of the Constitution in 1832, it was competent for the directors of the movement to inaugurate either a system on the basis, reformed and extended, of the early franchise with the claims of antiquity and the test of experience; or a new system of more perfect theoretic representation. And again in the latter case, which was the one adopted, all classes might have been admitted to representative rights without either swamping or exclusion; or some broad class might have been selected as the main depository of the franchise on the ground of its own qualifications for its exercise, and the degree in which its own average position and ramified relations fitted it as the representative of all other classes. Here again the latter alternative was taken. But it has been already submitted, that a sounder and more truly national representation might have been created, by applying the varied franchise of the old system to classes, professions and institutions, rather than as it marked the anomalous obscurity of petty localities.

The correction of some flagrant abuses of corruption by the extinction of particular constituencies, or the remedy of obvious anomalies in the case of very small or neighbouring boroughs by the reduction or grouping their representative right, would give a considerable number, fifty or a hundred seats; whose distribution either among constituencies existing or to be called into existence, is really too sacred a trust, to be prostituted to the emergencies of a party or the consistency of a theory.

But that this distribution should be attended with much difficulty is not to be wondered at, when we consider how urgent will be the claims asserted, how abundant the ignorance of those the loudest and most vehement in their pretensions.

A remarkable proof of this latter not very gratifying characteristic of the age has been supplied by the eagerness, with which writers and speakers of the democratic party have advocated population as the base of representation, while through half of England the counties or divisions averaging 100,000 inhabitants, have only the same representative power as the towns averaging 20,000 or 30,000. This abuse so superfluously forced on the attention of the aristocratic or territorial party must of course be rectified, and counties receive an augmentation of seats; which however should not be a pure gain to the wielders of territorial influence, as the franchise should of course include the respectable middle class of the small towns of the county, not themselves

enfranchised or grouped in any new borough constituency. These groups however might be made with advantage of the small reduced boroughs and their neighbours in the South and West of England. As the group system has worked well in Wales and Scotland, where it was the only means of forming urban constituencies from the slender and scattered elements presented; and a large amount of independence in the voters and usefulness in the representatives has been thereby achieved. Then to proceed upwards in the scale of towns, a most valuable principle to introduce in the boroughs still endowed with a dual representation, would be to restrict every elector to a single vote. The moral advantage in the simplicity of purpose and moderation of party violence and its necessary concomitants, would be far more valuable than any political gain, which might not be very decisive on either side. An elector would then vote for a man whose character and principles he at least fancied he understood, not for the abstraction of a couple of dissimilars, whose only reason probably for uniting, is the wish to combine in party action the real divergence of opinion; while the desperate struggle of party would be allayed, when instead of the usual double or nothing of these electoral contests, there would be the certainty of a respectable minority having its share of the representation. The larger cities might urge the same claim for an augmentation of their representative strength as the larger counties. And here would be offered the op-

portunity of combining this augmentation with the introduction of new bodies of constituents. To begin with the popular side of extension, it might be doubted whether even universal suffrage could constitute a worse representative body, than that which has been occasionally returned from the new metropolitan boroughs. But without going so far as that, it might be not only popular but politic to form large bodies of freemen, enfranchised either by certain periods and forms of service and residence, or by the payment to a public borough fund of some moderate sum, entitling under certain qualifications of residence and registration to the franchise of the borough. It need scarcely be mentioned what a valuable substitute such a body would be for the old freemen of more ancient cities infected by that cancer and shame.

But after providing by this popular basis for an ample production of the usual metropolitan supply to the Senate, of friends of the Poles and enemies of the Police; of agents of Nabobs and accusers of Bishops; a philosophic lawgiver might pause and reflect that there might be too much even of a good thing; that representative institutions were not in so flourishing a state throughout Europe as to admit any unnecessary risk, and that these distinguished members were but the courtiers or Lords in waiting to the Majesty of the people, and that men of other stuff were needed to represent the commercial and intellectual capital of the world.

Members might be given to the Inns of Court, the London Universities, the Bank of England, India Company, and the two great divisions of the Railway realm, which would secure the representation of important interests, and the presence of valuable persons, whose access to Parliament is now less constitutionally effected through the medium of the little boroughs. A noble constituency too might be formed by a mere high occupying or income tax qualification throughout the metropolis; that might then return a quartett of senators of an European reputation.

Nor is this the time to retain that pedantic horror of the influence of the Crown, that would exclude a limited number of nominations by the great Government Boards themselves. Though novel as a fact it is submitted that a few such nominations might be fully justified, not only on the ground of convenience to the public service, but even in reference to the general principles of representative right. The advantage is so obvious of introducing at once to the deliberations of Parliament, the members themselves of a government, or their military, financial, or diplomatic agents, that no rigid ideal of simple representation should deprive a representative body of so valuable a source of illumination and influence. But when we consider that the Executive of a great country itself heads a large body of citizens, whose political rights are suspended in consequence of this control or the nature of their service,

it would seem fair to allow the expatriated soldier and sailor, or the disqualified revenue officer, a quasi representation of their feelings and interests, through the medium of the Government that employed their services, and was itself their natural exponent.

It is hoped that every one of these suggestions contain some valuable principle, but not one of them can be compared in importance with the rule of the single vote as laid down for elections, where two members are to be returned, and which must in justice be applied also to the case of counties returning three members. It is hardly possible to overrate the moral advance of a measure, that would make every member an actual choice and not half a compromise; and that would by representing a powerful minority, allay the angry passions and criminal resorts, to which the frailty of human nature is prone under desperate risk and total disappointment.

This politico-historical sketch is now closed, and in submitting it to the young reader,— for the author hardly dares to assume a higher place for it than an educational work; he would humbly beg the political student however great superiority of mind he may probably bring to the study of these pages, to exercise the moderate and truth-seeking spirit that dictates them, and constantly to refer every question of right and duty to the unerring standard of the Word of God.

CHAPTER X.

JURISPRUDENCE.

Laws of Property—Primogeniture conveyancing—Fines and Recoveries, Uses and Trusts—Distribution of Personal property—Law of Actions—Special Pleading—Courts of law—Chancery—Circuits—Jury trial—County Courts—Criminal law—Defects of—Change in Public opinion—Transportation—Jurisdiction of magistrates.

That a history of the Rise and Progress of the English Constitution would be imperfect, without some notion of the Law of Property established in the country, must seem evident from the fact, that most of the franchises, privileges and authorities conferred or recognised by the Constitution are based on property. Nor can we forget that the ordinary administration of the law is the practical daily working of the Constitution. And where such administration is based on principles of freedom, fairness and truth, it implies those qualities in the Constitution that has established it, or as jurists* suppose was rather the case in this country, such forms will gradually generate freedom in the Constitution itself. Thus in either point of view we must consider forensic forms as of important indication or bearing on the Constitution. And lastly, as the spirit of a Government and its mode of

* See Palgrave on this curious point.

carrying out an object is largely exemplified in the treatment of public offences, some consideration of the Criminal Law seems indispensable for a full and complete idea of our Constitution. It is proposed therefore in this Chapter to give a sketch of the history and present state of the Law of Real Property in this country, as far as so difficult and technical a subject can be rendered at all intelligible to the non-professional reader. Then to give a brief analysis of the form of action and mode of pleading in Civil causes. And to add a few remarks on the most painful and discouraging subject, the principles, if principles they can be called, of our Criminal Law.

And here we may premise that Primogeniture is an acknowledged principle of the English law of Real Property. Enforced by the settlements of the estates of great families, it is also generally observed in the freer dispositions of persons of smaller means, and is as much the custom of the cottage as it is the law of the castle. Imperative in cases of intestacy and generally followed in dispositions by will, it is as congenial to the habits and feelings of modern Englishmen, as it has been doubtless transmitted as a relic of an obsolete feudality.

Where such appears to be the express will of a free people, it is almost superfluous to argue for or against the wisdom of the law. But there are two or three considerations worth alluding to in relation to this subject, besides the obvious de-

sign of maintaining the permanence and influence of great families in certain districts, by associating them with permanent masses of territory. The first of these was not omitted in the Report of the Real Property Commissioners, and has a most important effect as a stimulus to civilization. This is the high standard of social comfort and respectability in position, which is kept before the eye of every family. Younger brothers have a great stimulus to exert themselves in their respective trades and professions, to attain to something like at any rate the position occupied by their brother, and to which they were accustomed in their father's house. It is difficult to estimate the amount of national prosperity and progressive civilization, that is due to this steady influence, acting for many hundred years on many thousand families. But we may form some idea from the effect produced on France by the abolition of this distinction, intended as was the abolition for political rather than social objects; but where since the breaking up of the great families, the race also of great capitalists, great lawyers, divines, and even first-rate writers has become nearly extinct. The aristocracy of wealth and mind following that of territory, and no eminence arising except such as is directly fostered and employed by the State. But there is another point of a mixed social and political nature, in which the importance of the law of primogeniture has not been sufficiently considered, which is the family tie of brotherhood

with which it connects different classes in the State. The Great Proprietor whose brothers are merchants and lawyers, bankers or clergymen, can have no feeling of caste lifting him above those useful and honourable avocations, and he naturally extends to other members of trades and professions the feeling of friendly equality, that is due to the companions of his boyhood. And so on the other hand the industrious sections of the educated class have no odious feeling of envy and inferiority to an aristocracy, that is in many cases literally, and in all by assumption merely the elder branch of the same great family. And thus that great movement which the philosophic generalization of Burke designated, as an insurrection of the activity against the property of the state is averted. Property does not despise energy, and energy does not revolt from property; but by mutual association and respect, proprietors become more intelligent and professionals more polite. But lest this should seem too optimist and Blackstone-like a view of an established English usage, it may be observed, that it is essential to the result, that the younger branches of the aristocracy do not shrink from the labour and self-denial incident to the really working professions, and that at the same time there is no check to adequate persons seeking to enter those professions from the lower strata of society. Thus the trades and professions become a neutral, instead of an exclusively high or exclusively low class. And all the several strata of society meet and are

represented there. If on the other hand it was customary to divide properties among all the members of a family, there would soon be a numerous caste of proprietors proud indolent and of very moderate circumstances, useless either to support government by their expenditure, or to advance the prosperity and greatness of their country by their exertions, and at once hating and hated by the classes dependent on their own energy.

It is now time to define some of the principles of the law of property and the rules that govern its descent and alienation in England.

We may begin our consideration of the law of Real Property by noticing some of those very remarkable peculiarities of English Law usually termed fictions, which were invented and countenanced by the Courts as a means of indulging the wishes and meeting the arrangements of proprietors without infringing the strict principle of the Law.

These fictions, as affecting landed property, may be generally, though most inartificially classed under two heads, according as they were based upon a feigned action, or as they assumed a feigned interest in property. The most important and notorious of the first class were the forms of aliening, or settling property by *fine* and by *recovery*. The process by fine was a feigned action brought for the recovery of an estate by a person intended to receive from one proposing to convey, and compromised in favour of the plaintiff before being brought

to issue. Its name was derived from the fine due to the Crown in olden times on the compromise of any action, and was proportioned to the value of the property in dispute. There were four kinds of process by fine, more or less extensively applicable to the arrangement of property, and distinguished by Norman French names not remarkably appropriate and burdensome to the memory. The effect of levying a fine on the property to be conveyed was that all estates tail, and other rights vested in the person so levying the fine, were barred. All Relatives in blood or estate to him were, of course, barred at the same time, but strangers, or all the rest of the world, as appears at common law, were barred by a year and a day's non-claim subsequent to the proclamation of the fine, and the usual period allowed for incompetency of age, judgment, or social and local position.

This determinate period of a year and a day was afterwards, by the 34 Edward III. c. 16, indefinitely extended. This being found injurious from the uncertainty produced, the period of claim against a conveyance by fine, was fixed by 4 Henry VII. c. 24, at five years, to begin from the last public proclamation of such fine. And as these proclamations were made during the four terms subsequent to the levy of the fine, the whole period allowed for appeal against it was about six years.

A recovery was a fictitious action not compromised like the fine, but carried on to decision or

rather to an undefended issue. The party intending to convey the estate first vests the freehold in any nominal person, against whom, the party who is intended to take brings his action for recovery of the land. The tenant states that the conveying party had warranted the estate to him as a good title; the conveying party again vouches or calls on another person, a mere man of straw, to make it good to him as having warranted it. The man of straw is nowhere to be found, or has no lands; and the judgment of the Court is, that C takes the estate conveyed by A to B, and that B receive an equivalent for it from A, and A in his turn from the man of straw D. The last two receivers are of course imaginary, and C is supposed to enter upon the estate on the terms and subject to the conditions specified in a deed of the same date. This deed which was said to lead the uses of the fine or recovery, was of course the most important document in the whole proceeding, as on it depended the subsequent disposition of the property. The effect of the recovery was to bar not only the estate, whatever it might be then vested in the party suffering it, but all remainders and reversions expectant on it, except when vested in the Crown and in estates granted by it.

The influence of a recovery was therefore far more searching and comprehensive than that of a fine; and as no interval was allowed for proclamations or subsequent claim, the proceeding was more compendious and determinate. On the other hand

the recovery could only be suffered in term time, which was frequently inconvenient when death was imminent, or a marriage or sale of lands desired. Added to which the first step towards suffering a recovery, the conveyance, which was usually termed the erection of a tenant to the præcipe, was attended with many difficulties, and required much nicety and management, as a false step there not only vitiated all the subsequent proceedings, but in many instances caused a forfeiture of the estate originally vested in the recoveree. As a general rule, admitting of course of many and wide exceptions, the conveyance by recovery was more usual in actual alienations of property, and where some real opposition was expected; that by fine in the re-settlement of family estates, or where all the transfer was considered to be purely *inter amicos*. The levying a fine moreover was the usual and only safe way of passing the rights and barring the claim of a married woman.

This very simple and inartificial view of one of the subtlest and most purely technical branches of our jurisprudence, may draw a smile from the professional, and I fear be obscure to the general reader. But a view of the laws of England would have been incomplete without some reference to a system at once a singular feature in our jurisprudence, illustrative of the spirit of our tribunals, and one that played a most important part in the history of property in this country. Yet I am inclined to think that the Statute 3 & 4 William IV. c. 74, for

the abolition of fines and recoveries, and the substitution of more simple modes of assurance, was as acceptable to the profession, as it was undoubtedly beneficial to the public. A great mass of legal learning has been swept away and a variety of precedents and authorities become useless, while a new and far simpler arrangement, adopting the principle of the old system, but without requiring the formalities of process, affords every facility of conveyance and settlement to the present possessor of the estate, compatible with the expectations of those next in remainder.

It need scarcely be observed that an acquaintance with these branches of English law is still essential to members of the profession, as fines levied and recoveries suffered constantly occur as steps in titles to land, and will do so for many years to come.

This very remarkable part of our system of jurisprudence has been in this historical summary referred to the age in which it arose, rather than to any subsequent period during which it flourished; from a feeling that a singular invention ought rather to be viewed in connection with the epoch that called it into existence, than with later periods which only employed and consolidated a system already existing.

We will now proceed to the other class of fictions in the law of real property—that of fictitious ownership of property. It will be obvious that Uses and Trusts are here alluded to. These qualified interests in property arose at different epochs but in a great

degree from analogous causes. Uses, which were first introduced under the Plantagenets, as is generally thought by the clergy to evade the laws against mortmain, and which in the course of two centuries absorbed the greater part of the lands of England; arose from the difficulties thrown in the way of alienation of mortgage or devise by the spirit if not by the letter of the feudal code.

A man might be possessed of vast domains, manors, farms, and messuages, in a dozen counties, and yet not be able to sell or mortgage a single acre, nor provide by will for a single member of his family beyond the one marked out by the feudal law of primogeniture. But if he could create a *use* of that estate distinct from the estate itself, it was held by the Courts of Law, that he might dispose of that use as he pleased, free not only from the feudal restraints on alienation, but also from the scarcely less burdensome hindrances of enjoyment. By this means property might be disposed of *inter vivos*, or conveyed to the uses of a will, as well as enjoyed free from wardship, relief, rentage, dower, and other burdens and incidents of the feudal code.

The feoffee to uses, or the person ostensibly seised of the possession was considered in the Courts of Law as the real proprietor, and as such liable to the services and burdens of proprietorship; and if so disposed he might abuse the trust reposed in him, and alien it for his own benefit, or refuse to alien it

at the request of the *cestui que* use, or person beneficially interested in the property.

Both these dangers indeed were guarded against by the practice of the Court of Chancery, in which the interests and opinions of the clergy who had invented uses prevailed, and where redress might always be had by the *cestui que* use, who claimed it against his feoffee, on whose conscience the peculiar nature of his tenure was held binding, and on whom deference to the wishes of the beneficial owner was rendered compulsory by processes more stringent than those affecting the conscience.

And the legislature itself interfered by the 1 Rich. III. c. 1, to compel the feoffee to convey according to the wishes of the beneficial owner.

This provision however was, at least in theory, much neutralised from the exemption of prior conveyances for valuable consideration. Hence, had the feoffee been so unprincipled as to alien the estate vested in him for an actual money or other valuable consideration, the beneficial owner would lose his property without redress.

Yet it must be observed, to the credit of our national character, that very few instances are recorded of any faithless and dishonourable use of an advantage recognised and enforced by three out of the four superior Courts; and of the extensive temptation to which some idea may be formed from the fact, that at the accession of Richard III. the greater part of England was enfeoffed to him to uses.

And from this dry and forensic point of view some curious and novel glimpses may be caught of the last and most doubtful act in the great drama of the Civil Wars of the Roses.

It might reasonably be asked, on the one side, how it came that a Prince equally odious for private vices and political depravity as Richard III. is represented, should have received the marked because voluntary trusteeship of nearly half the landed property of England. While on the other side it might be urged with almost equal force, that such an hold as his trusteeship must have given him on the property of the country, would have, in no small degree, contributed to his usurpation of the Crown. Either of these hypotheses, based on stubborn facts that have not admitted of poetic colouring nor party misstatement, but which have received the solemn recognition of an Act of the Legislature, would be a fitter medium through which to view the stormy reign and doubtful character of Richard III., than the eloquence of Shakspeare, or the scepticism of Walpole.

But to return from this unusual diversion to the history of legal fiction, it may perhaps be a grateful duty to inform the reader, that uses, as distinct from possessions, were abolished by the 27 Hen. VIII. c. 10, or more properly speaking, all uses then existing were transferred into possessions. Since this enactment uses have not only been recognised at common law, but all power and interest of the feoffee in the

property, as distinct from the beneficial owner, has been altogether extinguished, and he is looked upon merely as a channel or pipe, through which the use may be diverted and limited for the benefit of the *cestui que* use.

Yet, from this relation, and from a maxim adopted by the Courts of no great apparent importance, that *a use could not be limited or declared upon a use*, has arisen all the nicety of modern conveyancing.

From the maxim alluded to, the different forms of conveyances have taken their distinctive peculiarities and effects, as well as the system generally its great difficulty. And from the vision or shadow of possession, supposed for certain purposes to reside in the feoffee, has grown up the abstruse doctrine of springing uses, and all the learning of powers.

But it will be sufficient here to say, that since the statute for transferring uses into possessions, Trusts have occupied pretty nearly the same place in relation to property that Uses had done previously. Not indeed so extensively, nor precisely for the same objects. For, while uses are said to have been limited on the greater part of the lands of the kingdom, and were adopted as a means of evading feudal burdens and restrictions on alienation, trusts on the other hand are of comparatively rare occurrence; and when they do occur, are introduced mainly with a view to ulterior objects, to prevent alienation, to protect future interests, and to check the waste and extravagance of life tenants. The

mode too, in which trusts are usually introduced in wills and settlements is peculiar, and quite different from the early modes of limiting uses. An estate is given to trustees for a long term of years, so placed as effectually to prevent the alienation of the property, without the consent of two or more independent persons. Or the estate in trustees is interposed between any two successive estates marked out on the condition, that if such and such provisions are not made for the support of widows or younger children, the trustees should then enter, and hold the property during the created term, for the purpose of raising the money, and for the objects specified. But the plan of these trusts will be better understood by an analysis, of two or three of the principal forms of deeds, in which these trusts occur.

To return to our historical summary:—The next new and important act affecting real property, was the 32 Henry VIII. c. 1, commonly called the Will Act. This Act explained and rather extended by the 34 Henry VIII. c. 5, was rendered necessary by the statute of uses above referred to. Previous to that enactment, it had been for many ages customary to devise the *use* of lands, and so avoid the feudal restrictions on devise. But on the use being clothed with possession, this was no longer possible, and therefore so necessary a provision as that enabling proprietors to devise, was within five years afforded by the Will Act of the 32 Henry VIII. c. 1. This statute enabled with some very reasonable

exceptions, all proprietors seised in fee, to will to whom they chose, except to bodies corporate, the whole of their socage lands, and two-thirds of estates held by tenure of Chivalry. This act was considerably extended in operation by the statute passed immediately after the Restoration of Charles II., to abolish all tenancies in chivalry, and reduce all lands of a free tenure to the rank of common socage.

It is clear that the latter act would affect more or less the whole system of our Law of Real Property. And it may be observed in this place as a remarkable fact, not only that in general the changes of our law of property were brought about in periods of internal peace and commercial activity and development, rather than at the stormy epochs of constitutional change and political convulsion; but that the eventful crisis of the Civil War and Commonwealth, all important as it is to the historian and political jurist, is to the private lawyer an entire blank, marked by no new principle, and scarcely evincing any change in practice.

Besides these great changes in the Law of Real Property generally, Acts of importance but more partial in their application have been passed from time to time, affecting more or less extensively the principles and details of the system, but which scarcely come within the scope of a work intended for the general reader. Of these may be instanced the Acts of Elizabeth and of her successor, for the management of ecclesiastical property. The laws

passed at different times against mortmain, and for the regulation of charitable bequests. Acts for rendering the estates of bankrupts and others liable to the claims of creditors. As also an Act of Anne for facilitating conveyances by doing away with the necessity of the attornment or consent of the tenant. More important by far were the Acts of Will. III. and of Anne, for abolishing certain local customs, that prevailed in London and in the original ecclesiastical province of York, respecting the power of willing personalty and the law of succession of intestates.

Nor has our own age been less rich in legislative enactments relative to real property. The 3 & 4 Will. IV. saw not only the old and complicated law of fines and recoveries swept away, and the period for the limitation of real actions more elaborately if not more accurately defined, but the law of prescription, of exemption from tithe, and of the boundaries of Church property put on a new footing. As also some ancient dogmas respecting the descent of landed property, and the right of widows to dower, involving no principle though occasionally inconvenient, have been deliberately repealed; and real estates also have been made liable to the payment of simple contract debts.

Since that most law-making session, we have seen the tithes of England commuted by a most wise and just measure, and the whole law of wills altered by an enactment, that has from its arbitrary technicality

and novelty of principle caused much confusion and injury in the disposition of property.

The statute of frauds, the 29 of Charles II. c. 3, had enacted among other rules and formalities for contract and conveyances, that a will of lands should be in writing, and signed by the testator or by some other person in his presence and at his express direction, and subscribed in his presence by three or more credible witnesses. While however the law was so strict and special as regarded wills of land, it had been the practice from very early times in the Ecclesiastical Courts, which had the jurisdiction over personalty, to be very indulgent to the apparent wish of the testator. In consequence of this indulgent interpretation any memorandum in the handwriting of the deceased or signed by him, even a private letter, a cheque on a banker, or an indorsement on a note have been held to be good testamentary dispositions, if it could be anyhow inferred that the testator contemplated his own death at the time. This simple and unshackled power of disposing of personalty had rarely been abused, and was undoubtedly well suited both to the independent character of our people, and the light and transitory nature of personal property. But the law-makers thought otherwise, and have tied up the testamentary disposition of personal property with all the formalities, saving one witness that had been held necessary for the devise of castles and baronies.

Feeling it my duty to reprobate thus strongly the

flagrant injustice and impolicy of an enactment, with whose practical operation I have had more opportunities of becoming acquainted than most men, I must in fairness admit the wisdom and consideration of many of its provisions. The old law of powers, as regarded the execution of them by will, was most anomalous and arbitrary, and is most wisely reduced to the level of the formalities required in the execution of ordinary wills. While the rules laid down for the construction of wills, and for making them speak as from the death of the testator, together with the extension of the power of devising in the ordinary way to copyholders can not be too highly extolled. With these remarks I will close this historical summary of the Law of Real Property in England, which I trust will clear up many difficulties, and give a better general view than an elaborate disquisition.

Criminal Law.

The criminal law of England, which, both from its bearing on the liberty of the subject and as indicating the spirit of the Government generally, must be considered as closely allied to any investigation of the Constitution, may be summed up in a manner more intelligible to the general reader, than the law of Property or of Action. With this part of our system an Englishman has little ground for complacency, either in regard to the justice of its first principles, or the uniformity of its practical application. We have remarked above, that while the

Saxon code, with its endless fines and compensations, seemed written in letters of gold, the stern and vindictive Norman law seemed traced in characters of blood. And though the early efforts of freedom secured some Saxon principles, as the jury, publicity of procedure, etc., which gave at least the theory of fair trial, yet in the positive enactments of law, and the penalties by which they were sanctioned, the Norman spirit prevailed still. And we must blush and mourn over the centuries of advancing civilization, and even of reformed religion, which were marked by no mitigation of the criminal law. This is not the place to express feelings almost too big for utterance on the execrable system of capital punishments for small offences, under which a vast sacrifice of human lives, innocent in comparison with the legislators who enacted, and the judges who enforced the sanguinary statutes, was effected. A sacrifice which ascended to heaven in all the character of national guilt, from the very forms of jury verdicts and publicity that sanctioned it. To Sir S. Romilly and Sir R. Peel, the two best and most moderate men of two great parties, is the merit due, though in unequal degree, of originating and carrying out a reform, on which there is now no difference of opinion. The conscientious though narrow mind of George III., had during his long reign gradually abated some abominations more immediately within the scope of the executive. But his ear was too much occupied by one class of

advisers to accede to some legislative reforms, that met the cordial acceptance of his voluptuous but tender-hearted son. Nor should we forget that, while the old Tory party that swayed the mind of George III. are morally answerable for the retention of this sanguinary code, the Whig opposition, formidable in the eloquence and union of its members, never urged this reform with the force and pertinacity, that was exhibited in far more questionable cases. If a tithe of the talent and party zeal that was employed to support Wilkes, or justify the Jacobins, had been directed to reform the criminal law and save the humble thief, we should not have had a system prolonged to the nineteenth century, that is at the present moment humiliating to dwell on.

We may briefly consider the criminal law of England in three respects. 1. The Courts employed in this branch of judicature. 2. The classification of offences that are brought before them. And 3. The course of proceeding in criminal cases.

1. As to Courts.

A summary jurisdiction is given by a variety of statutes, in some cases to one, but oftener to two or more magistrates, in a vast range of trifling offences, such as petty thefts, assaults, and other breaches of the peace and good order. This jurisdiction is exercised in a very simple manner without the intervention of a jury or the use of pleadings, but the punishment awarded is limited to either a small fine or three months imprisonment. The Petty Sessions,

which is a periodical meeting of several magistrates in different parts of a county or division, has much the same jurisdiction in criminal matters, and also transacts business connected with licences, the management of roads, and the administration of the Poor Law. The Quarter Sessions, which are held four times a year in every county, are attended by the magistrates generally, and are presided over by a permanent magistrate as chairman, who is now frequently an educated lawyer with an official salary. This important and useful Court has jurisdiction over all ordinary criminal offences, except such as burglary, manslaughter, etc., which were formerly capital, or which, like perjury and bigamy, involve much legal difficulty.

Lastly, there are the Assizes, held twice a-year in each county by two Judges of the superior Courts of Westminster, who, by virtue of their commissions of gaol delivery and of the peace, are authorised to try any prisoners committed or defendants on bail, against whom indictments may be found. This jurisdiction is now practically confined to the graver class of criminal offenders. Though some of the Judges feel bound, as no doubt they are authorised, to try every person committed for an offence within the county.

Offences are very unequally and arbitrarily classified under the several heads of Treason, Felony, and Misdemeanor. The first of these has been already sufficiently adverted to in these pages, and

in the very limited and extreme sense in which it is known to the English law, is happily of such rare occurrence as to render the learning relative to it of little practical importance to the constitutional student.

Misdemeanors include most inappropriately some offences of a trivial nature, even when fully accomplished, but with them also a large class of criminal actions, supposed to be only the preludes or incomplete attempts at more serious offences. Now in addition to the obvious absurdity of thus coupling small crimes and attempts at great ones, and subjecting them, as we shall see, to similar consequences; there is this great moral blot that crimes, whose very attempt constitutes their gravamen, are classed with other attempts of a much less distinct and reprehensible character, and also with trivial thefts and breaches of the peace. It is unnecessary to dwell further on this subject, but it is revolting to feeling and common sense, that assaults with intent to commit infamous crimes should be classed and punished like petty larceny or a drunken brawl. Generally speaking, misdemeanors are bailable, are punished by fine and imprisonment, and subject the offender to no forfeiture of property or loss of civil rights. The large range of offences, from murder down to simple theft, are classed as felonies by our common law, implying that they incurred the loss of fee or landed property, which on conviction escheated to the Lord, and in the case of freeholders to the Crown. The anomalous but generally severe punish-

ments meted out to these offences have been already the subject of censure. The want, till the development of our colonial system, of an effectual mode of secondary punishment, and the sanguinary blindness of statutes directed to particular offences, may palliate though they could not justify the Draconic code, which is now a matter of history. In practice now capital punishment is only inflicted for murder, though retained in name for two or three other grave offences. Transportation, varying from life to seven years, is the most ordinary punishment. And smaller offences, or more juvenile offenders, are punished by shorter terms of confinement in gaols or the hulks.

In giving a sketch of the mode of proceeding in criminal cases, it will be sufficient to follow the course in the more ordinary case of felonies, and as the occasion offers to point out the variation in case of misdemeanor. For treason is so important in a constitutional point of view as to deserve a separate consideration. Generally then all criminal proceedings must commence with an information laid or charge made before some magistrate of county or borough, or of police having a district jurisdiction. The magistrate may take bail or security for the appearance of the accused in all cases of misdemeanor and in trifling felonies. In graver felonies it is not usual, but depends much on the discretion of the magistrate, as to the doubtfulness of the charge. But in practice bail is out of the question in a large

majority of cases, from the impossibility of producing substantial securities to answer for the appearance of if not a notorious character, at any rate an obscure vagrant. When the trial comes on, whether at the Assizes or Quarter Sessions, the Grand Jury, composed of the chief men in the county, assemble in a separate room, adjoining the Court. To them is submitted a bill or charge against the accused, setting forth his accusation in legal terms, and in several counts or separate views of the case, in order to meet any difficulty, arising from inaccuracy as to fact, or any technical discrepancy. On this bill they examine some generally not all the witnesses for the prosecution. They hear nothing in defence, but if the charge appears unfounded or insufficiently supported, they report accordingly to the Judge, who directs the prisoner to be dismissed, if there is no other charge against him. If however they are satisfied with the case for the prosecution, they state so, and the trial proceeds. The bill, when found is called an indictment, and the prisoner has the right to a copy, and a list of the witnesses to be produced against him. The next step is in felonies, arraignment or being brought before the Jury ; that is actually to try the case. This was the occasion, when in darker times the prisoner stood mute, and opposed the obstacle of a tenacious silence to the process of law and his own conviction. The satanic cruelty of the bloody pedants of common law met this obstinacy with a certain and lingering death,

which yet many submitted to, in order to save their estates from forfeiture to their families, and also to avoid corruption of blood, which would have followed a full conviction in cases of felony and petit treason. This abomination was swept away by 12 Geo. III., c. 20; and standing mute is viewed as a confession or verdict of guilty. At this stage of the proceedings the prisoner should plead guilty or not guilty; and on tendering the latter plea, he may challenge or object to the jurors, who are to try him. This challenge may be either to the whole body, as being wrongfully or partially named by the Sheriff; or to individuals seriatim on the ground of prejudice or partiality.

When a Jury is obtained the trial proceeds; the counsel for the prosecution states the case, and produces witnesses in support of his argument;—these witnesses have in felony and misdemeanor always been subject to the cross-examination of the prisoner or his counsel. The prisoner in his defence may always produce evidence if he chooses, though as the prosecution may cross-examine them, and if new matter has been brought in may reply, it is not in most cases very prudent to do so. In treason, this privilege of producing evidence was not granted till 7 W. III. c. 3, nor were the witnesses put on their oath till 1 Anne, c. 9.

It was by quite a recent enactment, mainly due to the humane perseverance of Mr. Ewart, that counsel may address the Jury on behalf of the

prisoner in felony, which oddly enough had been previously conceded in treason.* I the more cheerfully bear testimony to the justice of this innovation, as it was one of the few changes of the kind that I viewed with some apprehension, fearing that a tone of immorality and irrelevancy would be given to criminal defences to influence verdicts, from the nature of the subject matter, and the inexperience of practitioners. That this anticipation has been, in a great measure removed, is due, no doubt, mainly to the firmness and wisdom of the Judges, who limit the defence to the real matter of fact in issue. But at the same time, one must give some measure of praise to the counsel who reject, and the juries who repudiate such appeals, as are too common in foreign criminal proceedings. The province of the jury being to decide the matter of fact; the Judge in his charge sums up the facts as detailed by the evidence, with such remarks and advice as he may deem of use, in pointing out the value to be attached to the evidence given, and the bearing of such evidence on the point at issue. The jury, if as usual they do not at once agree, retire to a separate room, and are kept in an honourable custody without food, fire, or light, till they agree unanimously on their verdict, whether of guilt or acquittal. On the verdict of the jury follows conviction; and on conviction judgment is pronounced by the Judge in open Court to the

* As it would appear by 1 Mary. See Blackstone, vol. iv. chap. 27.

prisoner, who is previously invited to allege any ground why it should not be passed on him.

This would be the time to plead a pardon, or formerly to urge the benefit of clergy, which to encourage education, rather than to favour clerics as such, conferred a most undeserved indulgence on convict felons, who could claim their clergy, either in profession or attainment. This barbarism was finally abolished by an early statute of George III.

But it is of more importance to remark that judgment and not merely conviction, entailed the consequences attaching to attaint, such as forfeiture, escheat, and corruption of blood, which in those ages, when the higher classes more frequently fell under the penalties of the criminal law, than in more civilized times, extended the punishment of the individual to the disgrace and ruin of his family to unborn generations. The vindictive incident of corruption of blood was abolished far on in the reign of George III.

It would be obviously beyond the scope of this essay to enter into any elaborate investigation of Chancery Law. But as the very fact of the independent existence of a collateral system of jurisprudence, is highly characteristic of the spirit of our institutions, and as the nature and origin of the distinction between Law and Equity is little understood by unprofessional natives, and a still profounder mystery to foreigners; I can scarcely close this chapter without a slight sketch of this system, more particu-

larly where it is distinguished from the procedure of common law, or as it bears on constitutional principles.

The origin of the distinct and exceptional character of Equity jurisprudence lay in the reluctance to alter the fundamental principles of the common law, which has always influenced both the legislature and the tribunals of England, combined with the more liberal tendency to afford relief and assistance in every case that really demanded it. Now this supreme dispensing or rather supplementary power, could no where be more appropriately lodged than in the Sovereign; and by none more effectively executed than by the high and confidential functionary, half confessor half minister, who early appears in history with the semi-ecclesiastical title of Chancellor. To this clerical character assigned to the Chancery by the opinion of early ages, is owing a considerable portion of its acquired jurisdiction, and the greater part of its peculiarities of form and procedure.

By far the largest, though for our purpose the least important branch of Equity jurisdiction is the law of contracts; of which as may be supposed it takes a liberal and equitable view as opposed to the strict and literal requirements, that would be enforced or fatally omitted in common law. Equity is satisfied with a moral assent to an engagement, and will receive reasonable testimony to that effect, though from sources disqualified at common law, from interest or technical incapacity. In regard too to

the subject matter of such covenants, where it is called upon to interfere, Equity requires that the object of its aid should be in its nature equitable, and that the consideration tendered should be sufficient.

But as the early Chancellors were generally ecclesiastics, the resort to the Chancery was, not only from the strict and unbending Sovereign as exhibited in his feudal Courts, to the Sovereign in his more private and conscientious exercise of power; but to a tribunal versed in the equity of the old imperial code, and actuated by the principles of a just and merciful religion. Thus should the Chancellor's jurisdiction over the persons and estates of minors be referred to a feudal prerogative, his cognizance in matters of lunacy, of bankruptcy, and of the interests of married women, must be traced to principles of the civil code opposed to the maxims of the common law.

On this ground also at the Reformation so large a proportion of ecclesiastical patronage became vested in the holder of the Great Seal, and such extensive powers of visitation and arrangement devolved on him, in respect of charitable and educational institutions. And on this principle alone can we justify the sole remaining trace of persecution, as political writers of a certain order of intellect would term it, which in the general opening of the honours and offices of the state to all sects and religions still requires the Lord Chancellor to be a Protestant.

Another ample sphere of equitable jurisdiction

over property is opened by the different views entertained in Chancery, and at common law with respect to trusts and mortgages.

The Common Law considering the trustee as the actual proprietor, while Equity enforces on him the duties and liabilities of his trusts. While in the case of mortgages the Common Law considers the mortgagee to whom the land is conveyed as a security as the actual owner, while Equity views him only as a trustee for the mortgagor to the extent that the estate exceeds his own claims on it. The Court also interferes in the interpretation of wills, either in its capacity of the general director of trusts or from what is called the *cy-pres* doctrine, by which where an object can not be literally accomplished, Equity compels the nearest approach to the wishes of a testator possible.

We thus see the jurisdiction of the Court of Chancery derived from three different sources: —

1. The assumed power of the Sovereign to interpret the law in an equitable spirit, and supply its deficiencies where required for the ends of justice.
2. The advantages offered by the Court of Chancery for certain objects, by the superiority of its procedure or greater wisdom of its maxims, compared with those of Common Law.
3. The ecclesiastical character of its original officers, that rendered it the appropriate channel for administering matters of semi-clerical nature, such as public charities, educational endowments, and trusts.

But while we give this as the rationale of Equitable jurisdiction, and a moderately satisfactory apology for the apparent anomaly of two codes, independent and conflicting, coexistent in the same age and country, it is not pretended that such an arrangement is either good or necessary. Had our early legislators been a little less jealous of reasonable innovation, or the sages of the common law shewn a little more readiness to adopt their forms and maxims to the growing wants of an advancing people, no necessity would have arisen for the supplementary action of Equity. Or again, which is more to our present purpose, had the Chancery endeavoured to assimilate its procedure to the comparatively cheap, expeditious, and popular forms of the Common Law, and applied as far as possible the masterly inventions of the circuit, the jury, and oral evidence to the objects of its cognizance, no real anomaly would have been presented by a fourth Court of Common Law, and much expense and odium have been saved. For it is not a little remarkable that while in their origin Law and Equity were characterised by rigour and pliancy respectively, those characteristics have become almost transposed. And the Common Law in the last half century has been so modified by a variety of statutes, as to have lost much of its essentially feudal and rigid character. While Equity, less the subject of statutory innovation, and resting rather in the traditions of a limited number of eminent adepts has in our time har-

dened into a form less susceptible of improvement, and more open to objection than the procedure at Common Law. As the principles of Equity jurisdiction are those of simple moral right, and as no want of integrity or ability can reasonably be objected to the eminent individuals, who have in modern times presided in its Courts, we are necessarily led to the conclusion that it is in the forms and method of procedure that the evil lies, and that the efforts of law reformers should be directed to that point. It would be scarcely within the scope of a popular inquiry to enter with any minuteness into the forms of Chancery proceedings. Rather would one congratulate the unlearned reader on that ignorance, which, in this case, is really the bliss occasionally attributed to it. But two important particulars in which the forms of Chancery differ from those of Common Law may be instanced, as mainly chargeable with the evil supposed to pervade the whole system.

Though a prolix verbosity is a fault from which no branch of the law is exempt, and from which Lord Campbell at least despairs to rescue pleading; yet it is obvious that where evidence is taken in writing, a wider extent is given to the evil already entailed by avarice on the lengthening of pleadings. Again the want of number and movement in the Judges, and their seclusion from the witnesses, have raised a functionary in the Master, unknown to the Common Law. This functionary

partly a judge and partly an officer of the Court, has questions of fact and account referred to him at various stages of the proceedings. These he determines, and remits the matter so far advanced, to his superior. But it is evident that delay, confusion, and infinite labour is incurred by such a mode of procedure. The progress of a cause is delayed by this constant reference to a subordinate tribunal, and from the references and hearings not being consecutive in the same cause, but occurring at long intervals, after a variety of other cases have been considered, both Chancellor and Master find themselves constantly in the position of dealing with a new case, or one so long forgotten as to demand a complete re-consideration. And when to the waste of time and mental power that is the result of this arrangement, we add that the staff itself is insufficient for the work, however arranged ; a pretty strong case is made out against the existing practice of the Court of Chancery, though it must be admitted the remedy is by no means so obvious. The original and permanent staff of the Court of Chancery consists, after the Keeper of the Great Seal himself, who is always a first-rate lawyer and considerable politician, of the Master of the Rolls, who may be, and generally is, a member of the Legislature, but does not hold office as a part of the Government ; and the Twelve Masters, whose duties have been just alluded to. The number of Vice Chancellors has varied—one, three, and now two

share in the adjudication of Equity cases. But as an appeal lies from all these functionaries to their chief, the assistance to public business is more apparent than real. And the Chancellor himself, as a member of the Government, and President of the House of Lords, has his time and attention devoted to political objects and cases of appeals, that leave but a portion of his faculties, however powerful and cultivated, at the service of his own Court.

It has been proposed from time to time to subdivide the functions so anomalously heaped upon the holder of the Great Seal, and either by separating the politician from the judge, or dispersing the judicial functions themselves among a plurality of tribunals, to obviate the great inconvenience resulting from the present arrangement. But while both professional feeling and constitutional doctrine would revolt from the idea of displacing the leading jurist of the age from a leading political position, as it were excluding the Law itself from the Cabinet and Councils of the Sovereign; and while this wise political position almost necessarily implies the Presidency of the Peers, and the chairmanship of their appellate jurisdiction, it is submitted that real relief might be afforded by the reconstruction of the Court of Chancery itself. If the Masters were empowered to decide facts on evidence taken orally on circuit—an immense saving of time and expense would be effected. And if the decisions of the

Rolls and Vice-Chancellors' Court were without appeal to the Lord Chancellor, but to the Lords direct, vast relief would be felt in the Chancellor's own Court, and its jurisdiction would then be confined to original cases, and those more expeditiously and cheaply prepared for sentence by the ubiquitous action of the Masters. And ample time would be afforded to bring the first judicial mind of the age to preside over the varied appeals of the House of Lords, to moderate the passions of debate, and caution the councils of Government.

It has been already observed, that this anomaly of two adverse and independent codes co-existing in the country is highly significant of the spirit of the Constitution, which, adhering to the same forms, is always anxious to meet the exigencies of the times. And it is also indicative of the freedom of action and corporate self-government recognized by our Laws, that yet another code prevails in a class of Courts totally independent of the government and patronage of the Crown. It is one of the marvels of history, that the Ecclesiastical Courts should have survived alike the Reformation and the Great Rebellion of the following century. The part that the Church, and more particularly the Episcopal order, took in promoting the great religious reforms under the Tudor dynasty, no doubt saved their Courts from abolition, as it did their own order from an Erastian extinction. But it is more remarkable, that at the Restoration the Bishops' Courts, which

were the very engine as well as personification of those relations of the Church to the people, that were so earnestly deprecated by the Puritan section of the liberal party, should have again appeared in *statu quo.*

The altered relations of the Church and State and the change of spirit in the Church itself, that were the combined result of the Restoration and Revolution, have been noticed in their proper place, and of course would suspend or extinguish those applications of the Church Courts that were most obnoxious to dissidents, and opposed to the public opinion of the age. But it is yet curious that a system should have been perpetuated, that vested in the rulers of the Church an extensive secular jurisdiction and a nominally criminal authority.

This singular relic of medieval opinion and jurisprudence has remained to our own times, and though the writer has as extensive an interest in the practice and jurisdiction of the Ecclesiastical Courts as any one living, he hopes in the few observations they require in connexion with his subject, to give a fair and impartial account of their merits and defects. The jurisdiction, at present exercised by the Ecclesiastical Courts of England and Wales, is principally divided among the Diocesan and Archiepiscopal tribunals. The numerous and anomalous peculiar or exempt jurisdictions making a much greater figure in the speeches of ignorant Members of Parliament, than in the actual business of the

country. These small jurisdictions, though exceeding 200 in number, having often no business at all, and still oftener as at Salisbury being administered by the officer of the Diocesan Court. These Diocesan Courts have each a Chancellor or Judge appointed by the Bishop, often almost a sinecure and of small emolument, and likewise a Registrar, who, as regards the Court, discharges much the same duties as the Master in Chancery, and out of Court transacts an immense mass of business arising from the perusal and proof of wills and the grant of administrations. This vast business, with the collection of the important revenue arising from stamp-duties, and the recording and referring to a constantly increasing mass of documents relating to property, is of course a very responsible and lucrative office; varying in labour and emolument with the wealth and population of the district comprised in the Diocese, and in some degree on its distance and provincial separation from the metropolis.

The subjects of Ecclesiastical jurisdiction are just such as arise from the very nature of a Church establishment, such as the maintenance of discipline among the members of the clerical body, the proper support of Ecclesiastical fabrics, with the collection of the revenue, whether tithes or church-rates, appropriated to their respective support.

But far more important in practice is the jurisdiction, which the opinion of the middle ages vested in the Church over Marriage, and the succession of

personal property. In right of which theory the modern Ecclesiastical Courts take cognizance of marriage and divorce, the proof or rejection of wills and the recovery of legacies and administration of intestate property. The old criminous jurisdiction originating in a totally different social and moral state from what now exists, though never specifically abolished, has deservedly sunk into oblivion and desuetude, except in some trivial cases of slander, or quarrel within a sacred precinct, for which a certain class of practitioners occasionally bring forth the rusty arms of an obsolete procedure. It may now seem a task at once delicate and ungracious to comment on the existing system of the Ecclesiastical Courts as just sketched. But the same objection that was urged above to the forms of Chancery proceeding, may generally, though in a less degree, be brought against the cognate system we are now examining. Cognate indeed they may literally be termed as both springing from the forms of the Civil Code, that Imperial or Papal Rome had widely diffused throughout Europe. We have to regret in the practice of the Ecclesiastical Courts the same mass of tardily obtained written evidence, though not the same prolixity of pleading as in Chancery. We are struck by the same delay and suspension as it were of progress occurring at certain stages of the cause, in which the waste of time is not to be estimated by the elapsing interval. Then the seclusion of the witnesses from the Judge, whose decision

is to be grounded on their evidence, and influenced by their manner and bearing, is a great though necessary evil of the system. But on the other hand many of the advantages of the circuit system are afforded by the Diocesan constitution of these Courts, which bring the Law such as it is into most neighbourhoods, and give the spur of personal responsibility to the best administration that the law is capable of. From what has just been said it may be surmised that many of the Reforms suggested for Chancery proceedings are also applicable to the practice of the Ecclesiastical Courts. The abolition of many appeals, the compression of certain stages of procedure, and the expediting of each cause that had reached a certain stage to the exclusion of other business, the taking evidence orally and in the presence of the Judge, would all be reforms as conducive to the improvement of the Ecclesiastical as of the Equity Courts. The limits of jurisdiction might be at once defined and more nearly equalised to each Court, so as to secure to the public the certainty that their resort was right, and the adequate but not inordinate amount of employment, that would remunerate a competent officer. This last suggestion more particularly applies to the Registries, whose common form business of vast amount and great importance is conducted with perfect simplicity and celerity, as no obsolete forms impede and no opposing party delays the succession of property. A defined and adequate jurisdiction comprising a county if large, or a group

of smaller ones, with the abolition of peculiar and exempt jurisdictions within those limits, would be the real reform of which the Diocesan registries are capable. And this might be combined with a central Registration of either indexes or copies, and an efficient superintendence as to fees charged, and the security and enlargement of buildings. The patronage of these appointments still as heretofore in the Prelates of the Church, might not inappropriately be transferred to the Crown or its ministers in exchange for the Church patronage of the Diocese at present vested in the Crown, or a part of the same.

The criminous jurisdiction of the Courts obsolete in practice might be formally abolished by statute. And if the jurisdiction in Church Rate questions was still obnoxious to the conscience of Dissenters, those bitter and not very satisfactory cases might be transferred to other tribunals.

Two other Courts are usually viewed as in connexion with the Ecclesiastical; the Court of Admiralty and the Privy Council. The Court of Admiralty decides questions of salvage, collision, and in war of prizes, on the principles and by the forms of process of the Civil Law. This merely accidental resemblance, arising from the necessity of employing for international purposes forms and principles recognized among civilized nations, has led to the result, that the same branch of the legal profession, whether as advocates or proctors, are competent to

act alike in the Ecclesiastical and Admiralty Courts. And Judges even are not unfrequently transferred from one tribunal to another, though the subjects of inquiry in each are of no affinity whatever.

The Judicial Committee of the Privy Council has, I believe, no original jurisdiction whatever, unless it might be in a colony, where no authority was in existence. But in practice it is the Court of Appeal from both the Ecclesiastical and Colonial Courts. And as no subject matter can possibly reach it that has not gone through the preliminary forms of other Courts, its own duties are properly confined to the arguments of advocates, and the decision of the Judges. The distinguished personages, who discharge this important appellate duty are not specifically appointed to the post, but are named from the eminent, either actual or retired, chiefs of the several tribunals of Common Law, of Equity and Ecclesiastical Law that we have been just reviewing.

The Privy Council is in fact the government of the country, the cabinet or actual ministry, being only a committee of it, unknown as such to the earlier constitution, and adopted for the sake of convenience, and the further individualizing of responsibility. The political changes to which this important body has been subject, have been fully adverted to in the course of this work. These changes were principally the dissolution of the Courts of the Star Chamber, and of Requests composed of Privy Councillors, and their submission to the Habeas

Corpus on their commitments in the reign of Charles I. A still more important alteration in its composition temporarily adopted under Charles II. has been adverted to in its proper place. At Common Law the Privy Council might be dissolved, or any member dismissed at the King's pleasure. But the latter prerogative is rarely resorted to, and the former never. The Council was anciently dissolved on the demise of the Crown, but now, by 6 Anne c. 7, such dissolution necessitating a re-appointment, does not take place till six months after. But the judicial duties of the Committee of the Privy Council, as constituted by the recent act of W. IV., owes its origin to the principle that the ultimate appeal in all matters not of Common Law, lies to the Sovereign and his immediate Council. In like manner as the ultimate resort at Common Law was to the more independent Baronial assembly, that still wields the judicial functions of the House of Lords. The Lords were the constitutional advisers of the Crown on all matters that fell within the pale of the Constitution; whereas the Privy Council, like any advisers of an absolute monarch, took cognizance of matters arising out of the country, or affecting persons not entitled to the privileges of the Constitution. On this principle, appeals lie to the Privy Council from the Ecclesiastical and Admiralty Courts, and also from the Colonial. And it is a curious instance of the wide spread power of the British Crown, and

the still more comprehensive toleration, that recognizes, as far as opinion and rights are concerned, every creed and code that obtains within its sway, that the same tribunal may be seen determining in succession the doctrine of Christian baptism, and right of a Hindoo temple to certain jaghires in Bengal, appeals on points of old French Feudal Law as retained in Canada or the Channel Islands, or from Colonies ruled by the Civil codes of Holland or Spain, or the still remoter climes whose jurisprudence is based on the Koran, or the laws of Menou.

This chapter ought not to close without some reference to another branch of our judicial system, which, though it varies from session to session with the eagerness and direction of commercial enterprise, has yet grown into an average, that far exceeds the provision made for it, and awakens grave apprehensions as to its constitutional consequences.

The right assumed by the House of Commons to determine by its own Committees every matter relating to its own privileges and elections, has necessarily thrown a great amount of business to be disposed of by tribunals, of which their professional unfitness was perhaps their least defect. But while this evil is in its nature irremediable, its worst practical consequences have been combated by the Grenville Act, and really corrected by the Election Act of Sir R. Peel. But far more important, as regards the interests of the public, has been the amount of Com-

mittee business, arising from public works and undertakings for which Acts of Parliament are required, and which are examined and passed by select committees of the House. Now, in addition to the obvious unfitness of tribunals so selected to grapple with nice questions of evidence, of the law of property, and the various rights and exigencies that must be weighed and decided on; a frightful amount of expense is entailed by the brief and disturbed sittings of these Committees at Westminster. While the very qualifications, that render the members appropriate representatives of the feelings and interests of the public, expose them to a participation in those popular delusions and fevers of speculation, that recur from time to time in the progress of a commercial people. It cannot, of course, be expected, nor even perhaps desired, that the House of Commons should surrender to any other power this branch of legislation; though any attempt of the Legislature to intrude on the province of the Judicial is perhaps of still more serious moment than interference with the Executive. But error and expense would be much obviated, did Select Committees, with the aid of a professional chairman, open commissions during the parliamentary recess, or in the early part of the session, for the taking of evidence, and ascertaining local facts, on the very spots where the works were to be carried on. While one central Committee, entrusted with the control of the whole private business of the House, should direct the in-

quiries of the ambulatory Sub-Committees, and leaving to them the details of measures, should reserve for itself the important right of granting or refusing the undertaking, and so moderating, on their own responsibility and experience, the rash enterprise of speculators, that has so often spread ruin and panic through the country.*

* It is submitted that the actual representation of the Executive, through an imaginary constituency of its own employees, is no greater violation of the Constitution, and far more convenient, than the repeal of the Place Act of Anne now proposed by Lord John Russell, as the forlorn hope for working his new constituencies.

THE END.

G. NORMAN, PRINTER, MAIDEN LANE, COVENT GARDEN