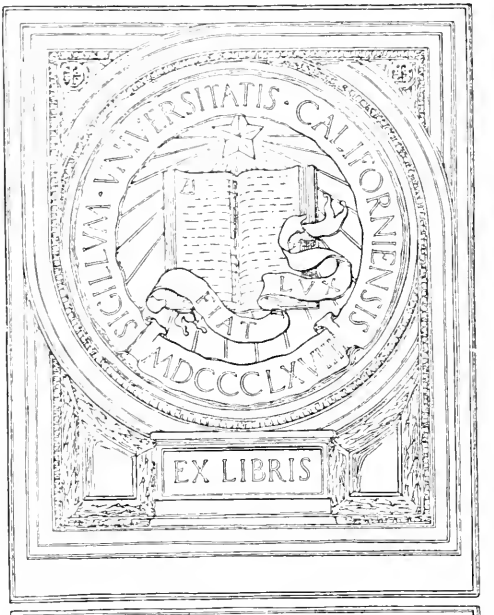

BRITISH CONSTITUTION

THIS work is part of the Society's larger treatise of POLITICAL PHILOSOPHY, and the references are to the Parts and Chapters of that work. The great importance of the subject has occasioned this separate publication.

UNDER THE SUPERINTENDENCE OF THE SOCIETY FOR
THE DIFFUSION OF USEFUL KNOWLEDGE

BRITISH CONSTITUTION

BY HENRY, LORD BROUGHAM F.R.S.

MEMBER OF THE NATIONAL INSTITUTE OF FRANCE
MEMBER OF THE ROYAL ACADEMY OF NAPLES

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PREFACE.

The Society have deemed that it may be useful to print a separate edition of the account given of the British Constitution, in the Third Part of their larger treatise on Political Philosophy.

It is quite impossible to understand accurately the principles of that Constitution without studying its history in all times; and an attentive examination of that history is fruitful of most important practical truths for the government of men's conduct in the present day. It shows that this country alone of the European states has in all ages possessed the great benefit of a Legislature distinct from the Executive Government, the Sovereign of England never having at any period had the power of making general laws. But it likewise shows most clearly that this or any other institution can give little security to the liberties of the people,—little obstruction to the maladministration of public affairs. The lesson taught by the history of our Constitution in all ages, is that unless the people continue watchful over their own rights and their own interests, the best constructed system of polity can afford them no

shelter from oppression, no safeguard against the mismanagement of their concerns. It may be very wrong to say that forms of Government are of no importance, and that the best system is the one best administered. But it is assuredly a truth to which all History bears testimony, that the chief advantage of free institutions is their enabling men to obtain a wise and an honest administration of their affairs; that the frame of Government approaches to perfection in proportion as it helps those who live under it to watch the conduct of their rulers, aiding them when right, checking them when wrong; and, above all, that no Constitution, however excellent, can supersede the necessity or dispense with the duty of this constant vigilance.

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BRITISH CONSTITUTION.

CHAPTER I.

GOVERNMENT OF ENGLAND—ITS STRUCTURE IN THE ANGLO-SAXON TIMES.

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THE early history of every Constitution must of necessity be involved in great obscurity. Two causes contribute to keep us in ignorance and uncertainty respecting the origin, and even respecting the first stages in the progress of all political institutions.

In the first place, all Governments must have been established long before the period of written history, because men must have lived together in society, and even brought their civil polity to a considerable degree of maturity, before any writer devoted his labour to record their progress in the arts of government. The want of written annals is but ill supplied by tradition; for that can never mark the successive changes in the form of government, and must always confound together the dates of different events. Then the blank in authentic or accurate accounts is always supplied by a plentiful admixture of fables, feigned by the superstition or national vanity of the people, or invented by the mere exercise of imagination in the absence of true narrative. Hence the accounts which come down to the earliest historians are always a confused mass of facts and fic-

tions, which they are little better able to digest and to purify than ourselves. Even the colonial establishments of both ancient and modern times form no exception to these positions, because the founders of them only carrying out with them a portion of the institutions already existing in the mother country, the true origin of the Colonial as well as of the Metropolitan Government is in truth one and the same.

But, in the second place, the province of History itself, after men have begun to write it, presents anything rather than a satisfactory or trustworthy record of the successive events which have been the origin of the constitutions ultimately found established in different countries. It is only in recent times that Historians have taken any care to describe the political constitutions of the nations whose annals they undertake to preserve. In ancient times, with scarcely any exception, and in modern times, until within the last two centuries, Historians assumed that all the civil institutions of the countries to which they belonged were matter of universal notoriety to the age in which they lived, and, moreover, regarding such subjects as of inferior interest to their readers, they confined themselves to describing the great events of war, or the sudden revolutions effected by violence, leaving us in the dark respecting the most important parts of the civil polity established in each æra and country. Hence, while the Greek and the Roman records contain a full detail of the battles, the sieges, the violent seditions, the massacres, which disfigure the early history of our species, and from which no period of its annals is exempt, we are left in doubt or in the dark as to many points of extreme interest respecting the institutions by which men's rights were protected, or their duties enforced, or the exigencies of the public service met; and are fain to glean our knowledge of these t ly important matters from occasional notices in the speeches that have been preserved, or from the discussions of philosophers on Moral and Political questions—discussions which always assume things to be known that have never reached our times. Of this many instances occurred in our examination of the ancient constitutions in a former part of this work (Part II., Chap. X. *et seq.*, XIV. *et seq.*, XVI. *et seq.*). But the same defect is perceptible to a great extent in modern histories. The preservation of the laws made from time to time, no doubt affords important materials, as do the records of politi-

cal changes that have happened. But many things exist in every form of government which the records of statutes fail to represent; and he would have a most imperfect knowledge of any constitution who should confine his study of it to the written law. It was only in the eighteenth century that the history of institutions, of manners and of customs, what may be termed the General History of Society, began to be written. The brilliant success of Voltaire in his truly philosophical work, and of Robertson in his general view of European history, has founded a new and invaluable school of Political science—which the great failure of others* has not been able to destroy. But whoever would learn the political annals of the nations composing the great European Commonwealth, will look in vain to their Histories for information upon many of the most important branches of the subject. The debates of the English Parliament, and the controversies among party men and speculative reasoners, which existed in the seventeenth century, throw much light on the unwritten law of the constitution at all times; while we have already found how difficult it was to ascertain the most important particulars connected with the successive changes in the structure of the French Monarchy from the entire want of the one of these sources of information, and the scanty amount of the other.

The Constitution of England, unless in the circumstance of our Parliamentary debates having for the last two centuries drawn its original principles and early history into public discussion, affords no exception to the general rule. The early period in which our civil institutions were founded is involved in great obscurity. The origin of these institutions, the shape which they at first assumed, the changes by which they were so moulded as to approach their ultimate condition, are all matters of doubt, and have given rise to controversies which there are no means of settling with any degree of satisfaction, controversies through which the candid student of our political History, only anxious in the pursuit of truth, finds it impossible to trace his way, or to avoid being bewildered among conflicting assertions.

The first question that presents itself to the inquirer upon the early structure of the Constitution relates to the degree of free-

* Dr. Henry's bad execution of a similar plan applied to England is well known. Mr. Miller's is an excellent work, though in many parts speculative and even fanciful.

dom enjoyed by the People, and the extent of the power vested in the Sovereign. It is very natural for a nation which highly prizes its liberty, and values itself upon the superiority enjoyed till within the last half century over all others, to plume itself also upon the length of time during which it has possessed so envied a distinction. A nation feels the same pride in this respect that a family does, and loves to trace back its nobility to a remote period of time, as individuals love to boast of the honours enjoyed by their remote ancestors. Hence, as might be expected, the English, and more especially that party among them which chiefly maintains popular rights, have fondly traced the origin of our free institutions to the most remote ages, and have easily lent themselves to the belief that there never was a period when a system of representative Government did not exist in the country. Under various names they consider a Parliament always to have formed a portion of the government, whether a Great Council or a Witenagemote, or a Michelgemote, or a Colloquium, or a Parliament.

In these theories there is some truth and some error. To hold that representation always existed is manifestly absurd; it is a position borne out by no historical facts; it is even plainly contradicted by the known facts recorded within the period of authentic History. We have already seen the clearest proofs of this in tracing the origin of representation; we have found that at the Conquest, and for nearly two centuries later, there were no representatives even of the counties; that the greater Barons or Peers sate in one Chamber with the lesser Barons or free tenants holding their lands, like the greater, directly or *in capite* of the Crown; that in the thirteenth century the counties began to send Knights as representatives of the lesser freeholders whose personal attendance was thus excused, that it was only towards the latter part of the century that the burgesses, or inhabitants of the towns, were represented, and that they, with the Knights representing counties, formed a body apart from the Peers, and had a chamber of their own. (Part III. Chap. VII.)

It was therefore a most violent exaggeration into which Lord Camden* fell when he affirmed, with undoubting confidence,

* British Statesmen, vol. iii.—Art. Lord Camden.

that at all times every portion of England was represented in Parliament, or, as he phrased it, that "at no period was there a single blade of grass within the realm unrepresented." The antiquaries—of whose lore he spoke with a contempt equally dogmatical, as subverting our liberties by their "fantastical speculations"—both come far more near the plain matter of fact, and do those liberties much better service when they show representation to be an improvement of comparatively recent date, and prove that if before the thirteenth century the country was represented it was only virtually, and not actually, inasmuch as the towns sent no one to Parliament at all, and of the county members those only sate in it who attended in their own proper persons,—none but tenants in chief of the crown having any place in the great council of the nation.

But if the reasoners who have held the higher language upon the antiquity of our Constitution, had only maintained that we have no record of any time in which the power of the Sovereign was absolute, they would have asserted a truth which cannot be contested. There is every reason to believe that, from the earliest period of our history, the Monarch's authority was of a limited extent. In this respect our history differs not at all from that of the other Monarchies which arose out of the Feudal system, or indeed rather formed a part of that system. Those who fixed limits to the royal authority were in England, as everywhere else, the greater Barons, with their dependants or vassals, and aided, no doubt, also by the concurrence of the lesser landowners in their schemes of ambition, of resistance to the Prince, and of war with each other. Here, up to this point, the history of the English Government presents no exception to that of the other feudal kingdoms.

But, the next position which we have to lay down presents a distinguishing feature in the English Government; for it is a truth to which our Constitutional History bears testimony almost as irrefragable, that the legislative power, in other words, the supreme power in the state, was shared at all periods of time by the great landowners, the Barons, and that it was probably shared, in some degree, by the lesser Freeholders also. This latter position may admit of somewhat more doubt; the share of the greater Barons seems to be incontrovertible.

In the times of the ancient Britons, before the Roman con-

quest, the whole country was under petty Princes, who waged continual war with each other, but united their forces by common consent under Cassibelaunus, King of Kent, to oppose Julius Cæsar.* The Princes appear to have had less power over their subjects than those of Gaul. But of course anything like regular government was out of the question; only the leading men here, as among the Germans, exercised great influence as a Council of Officers under the Chief. The common people appear to have been almost in a state of slavery to the chiefs: but there can be no doubt that the same Councils which were held in Gaul and in Germany upon public affairs, attended by their chiefs, were also held in Britain.† The Provincial Government of the Romans of course was established here after their conquest. Three legions of 42,000 men were stationed in the country, and the governor or proconsul exercised arbitrary power over the inhabitants. There were, in the later times of the empire, three of these officers: one termed *Dux Britanniæ;* another *Comes Britanniæ;* and the third, *Comes Littoris Saxonici,* as opposed to the Saxon invasions during the third century. After suffering the greatest oppressions under the Roman Government, and also from the incursions of the Scots and Picts in the north, when the increasing weakness of the Empire rendered it impossible to aid them against the Barbarians, the Britons called in the assistance of the Saxons, who, imitating the policy of the rider in the fable, when the horse asked his help, subdued them and retained peaceable possession of the country until interrupted, some centuries later, by the inroads of the Danes. The first invitation of the Saxons and Angles took place in consequence of a general council held by Vortigern, the most powerful of the British Chiefs, in the year 449; and the conquest of the whole country was not completed till the end of the next century. Eight separate kingdoms were then established, but the union of two of these made the whole amount to seven, usually called, from thence, the Heptarchy.‡ This division of the country continued above two centuries; for although the seven kingdoms are commonly represented to have been united under Egbert in 827, it is certain that he only obtained a partial and uncertain dominion over the greater part of

* De Bel. Gal., v. 11. † Ib., vi. 20.

‡ Sevenfold Government.

five; that he never had any footing in the sixth, and that he and his son Ethelwolf never even took any other title than King of the West Saxons. Indeed long before his time, in the sixth century, the more powerful Kings of Wessex, and afterwards those of Northumbria, used to take the title of *Breitwalda*, or governors of Britain—a distinction which only ceased in 670, on the death of Oswy. Oswy was the seventh Breitwalda, and Egbert called himself the eighth Alfred, his grandson, was the first prince who was called King of England, and his grandson Athelstane first really ruled over the whole United Kingdom in 927, calling himself sometimes King of the English, sometimes of England. The Saxon Monarchy was not of long duration: the Danes, in 1016, entirely defeated and conquered that people; and after a restoration for a very short period of the Saxon line, the Norman Conquest, in 1066, finally overthrew it, establishing a foreign family upon the throne, and a foreign nobility in possession of the landed property of the whole country.

The Constitutions of the Saxons appear to have been the same in the several kingdoms of the Heptarchy, and afterwards in the United Kingdom. The descent of the Crown was irregular, because the ideas of men on hereditary succession were not matured; and when a prince left a son, more especially if that son was very young, a dispute frequently arose between his claims and those of his grandfather's second son, that is, the young prince's elder paternal uncle. The choice in such cases devolved upon the leading men—the chief landowners or thanes of the country; and even when there existed no dispute, the form of an election appears in all cases to have been observed, and the Sovereign is always said in the Chronicles to have been chosen King (*electus in Regem*). At his coronation, a ceremony deemed essential to the perfection of his title, and performed by the chief prelate, the primate, he was presented to the assembled people, who, however, never had any real voice in his election, but only by their acclamations gave an affirmative answer to the question put, asking if they approved, or took, or acknowledged him for their King. The power of the King never was absolute, nor anything approaching to it, but it was great, and his influence was greater. He had not only far larger possessions than any of the thanes or lords; his possessions

were nearly equal to those of them all put together. Thus in the kingdom of Kent there were 430 places, or estates, and of these 191 belonged to the King. The rest were divided among two Prelates, as many Abbots, the Queen Dowager, and six Thanes, making in all eleven principal proprietors, beside whom there were smaller owners or sub-tenants, holding of the eleven thanes, as these held of the crown. In war the King commanded all the forces; he was the supreme judge, receiving appeals from all other judicatures, and sharing in all the fines paid upon conviction, according to the usual Saxon, and, indeed, feudal practice of commuting all punishments whatever for fines. The great officers—the Earl, Eorlderman, or Governor of the County, the Gereefa, Sheriff, or Viscount under him, the Borough-reeves, the Judges—were all appointed by the King, and removable at his pleasure. I speak of the general state of the prerogative, although by the laws of the Confessor the Heretochs, or Dukes, and Sheriffs, are said to be chosen by the freeholders in the yearly folkmote. But in earlier times the Crown clearly had the appointment, and Alfred is recorded by Asser, a contemporary writer,* to have removed all the ignorant eorldermen, and replaced them with others. He could grant "his peace," that is, a protection from the pursuit of enemies, to any one, and demand money or service for it; and within four miles of his Court all were secure. His first vassals did him homage by attending three times a year on his Court, and he had a right to their services in war, with those of their sub-vassals or retainers, according to the immemorial Saxon and indeed feudal usage, which annexed military service to the tenure of all lands, the service of the tenant *in capite* being due to the King, that of the sub-tenant to his Thane, Hlafod, or Lord. But except arming his immediate retainers, the King had no standing army or regular guard. The Danish Princes introduced this practice, probably from the insecurity of their conquest, keeping on foot a guard called *Thingmann*, or *Thinglate*, of 3000 men, selected from their whole forces, for whose government Canute compiled a code of rules. But this was an institution unknown to the Saxon polity, or even to the Norman, after the Conquest. With all these prerogatives and means of influence it is plain that the Sovereign's authority must have been very extensive.

* § 35.

The legislative power, however, appears never to have resided in the monarch. Great as his influence was, and likely to give him overwhelming power in passing laws, he nevertheless must resort to his council, or gemote, to make them. There is no trace of any period at which their share of passing laws did not belong to the *witan*, or wise men, or councillors of the king. These formed his council; they were never very numerous, seldom exceeding thirty, never sixty; and the laws were made in the joint names of them and the king. Thus we find Ina, King of Wessex, in 688, making seventy-nine laws at his witenagemote, "with the advice of his prelates, eorldermen, wisemen, and clergy." So Edgar, in 971, long after the union of the Heptarchy, speaks of the laws which had been made by him and his witan (Ll. Sax. 80), and this form, as well as the substance, was universally preserved. As for taxation, the royal revenues formed the main body of the public income, and the services of the crown vassals superseded salary in the civil as well as pay in the military department. But direct taxes were occasionally levied, and frequently by the king without consent of the witenagemote; though certainly the most considerable of them, the Danegelt, originally raised in 991, to buy off with tribute the Danish invasion, was imposed by the witenagemote. It was continued, after many promises to repeal it, by successive sovereigns until the reign of Henry II., when it was finally abolished. One source of revenue, however, appears in these times always to have been under the immediate power of the king; he levied duties of customs upon imported goods. His officers also raised contributions on the monasteries and rich proprietors, both the landowners in the country and the burghers in towns. As for the advantages which he reaped from the fines paid by his vassals on succession to or alienation of their fees, as well as from the marriage and wardship of minors, these were rather part of his landed property than of his revenues, and were equally enjoyed by the other lords of the soil. The regular revenue chiefly consisted of the royal property and of the direct taxes which the witenagemote raised. It must further be observed that, beside sharing the legislative power, the witenagemote also shared the executive functions of the government. By degrees they seem to have had a voice in the choice of the governors and sheriffs of counties. All great acts of state were performed in their meet-

ings. Treaties were signed by them as well as by the king; and the power of making both war and peace became vested in them jointly with the sovereign. Indeed the necessity of having their concurrence when the king had no standing army, and could only rely on his own vassals for service in war, must at all times have made it highly expedient to act in concert with the great allodial proprietors, who owed him no military service other than they might voluntarily undertake; and hence a reference of all questions of peace and war to their assembly appears to have become a necessary course of proceeding. Even in other countries, where the States had less regular power, they were convened on such occasions.

In France, as we have seen (Part I., Chap. X.), the sovereigns had in early times a means of maintaining their power and of reducing the assembly of their states to insignificance, which our sovereign never enjoyed. This power was curbed by that of the great feudatories, the six other princes, who formed, as it were, members of a great federal community; and accordingly the English sovereigns were more powerful in proportion to their great vassals than the French. But a very material difference existed in the relations in which these princes stood to their councils or states. The Imperfect Federal Union in France produced its usual effects, and enabled the king to overpower any one province by the force which he derived from the rest. Hence, when the States of one rejected a law, or refused supplies, he had recourse to the others. So would it have been in England had the division of the Heptarchy continued, and the King of Wessex been only the most powerful of the seven princes. Happily for both our regular government and our legislative freedom, the whole were early moulded into one. The sovereign could not appeal from one to the others: he was forced to consult the general council; he was obliged to share with them his legislative functions; and their voice became a real and effectual control upon his power, instead of falling into a mere form or little better, as in France, where the States were only assembled to aid the king with their information, or to prepare the way for their co-operation in his wars, or to hear him publish such ordinances as he was pleased to frame for the government of his dominions.

After the Norman Conquest the Royal authority was greatly

increased, and came, notwithstanding the legislative power of the great Council now called the Parliament, greatly to exceed that of the French Monarchs. Before the Conquest the most effectual check to it arose from the consolidation of landed property, of many great fiefs, in the hands of a very few great lords. As long as these fiefs were vested in a great number of crown feudatories, there was no chance of their offering any resistance to the far superior resources of the sovereign. But in the tenth century three nobles, Godwin, Leofric, and Siward, had engrossed so large a portion of the country with the fourteen or fifteen earldoms conferred upon them and their families, that they more than overmatched the King, whose principal security lay in fomenting divisions among them. The whole spirit of the Saxon institutions was indeed eminently aristocratic, like those of all the feudal Monarchies. Not only the privileges of the great men, the Thanes, were ample, but there was a regard had to rank and blood running through every arrangement of the state policy. The violation of an *ethel* born or noble woman was paid for by a higher *murde* than that of an *un-ethel* or common person. The murder of all persons was in like manner paid for by a *were* or *were geld*, nicely adjusted to their relative rank. Nay, the testimony of persons was weighed in the same patrician balance, the oath of a tenant in chief, a King's thane, being of equal avail with that of six carles or peasants, and that of an eorlderman being equal to that of six thanes. A strange instance of this is preserved in the Saxon Chronicles. One Alfnoth sued the Abbey of Romsey for a piece of land; a jury of thirty-six thanes were about to decide the cause, and had retired, when Alfnoth, the demandant, challenged the tenants, the Monks, to prove their title by oath; the Eorlderman, patron of the Abbey, interposed, and the Court held his oath to be decisive, giving judgment for the Monks, and condemning Alfnoth to forfeit his goods and chattels for his false suit.

It is clear that the Saxon Government was an Aristocratic Monarchy, a Feudal Aristocracy in the strictest sense of the word. The whole power in the State was shared between the Sovereign and the nobles, clerical and lay. The King had much opposition to encounter from their great possessions, from the numerous free followers over whom they exercised an abso-

lute control, from the still more numerous hordes of serfs whom they possessed in property, and who were for the most part attached to the soil of which they were the only cultivators, from the warlike habits of these chiefs, and the habitual exercise of violence in which they lived, reduced into a system and termed the right of private war. The superstitions of an ignorant people gave the priests an ascendant, which interposed another kind of check upon the Prince's authority, while the legislative functions of the state, what is, properly speaking, the supreme power, was shared by the King with the assembly of the Prelates and temporal Lords. With all these checks to his power it was still very great, from his ample possessions, his numerous vassals, and the divisions of those chiefs who were his natural adversaries. But to represent his prerogative as unlimited, and his government as despotic, would be a gross abuse of language; it would, indeed, argue an entire ignorance of the Anglo-Saxon story.

Yet he would not commit a much less considerable error who should represent, as some partizans of popular rights have done, this ancient constitution as Mixed in the modern sense of the term, and containing the democratic principle which grew up with it in a later age. Nothing can be more certain than that the people, the commons, had no share whatever, direct or indirect, in the government. Nothing can be more manifest than that there was neither actual nor virtual representation in its structure; and that neither the lesser freeholders attended the Witenagemote in person, nor the burghers either personally or by deputy. They who have fondly imagined that they could trace in these remote times any semblance of the Constitution now established among us, have bewildered themselves in obscure paths, where the lack of light enabled their fancy to conceive things that had no real existence. They therefore, in exerting all their ingenuity, whether to embody the creations of their imagination, or pervert historical facts to suit a particular theory, have, with the best intentions towards popular rights and free institutions, done a very unacceptable service to the cause they patronized. Whosoever founds his esteem of any constitution upon the remote antiquity of its origin, may depend upon it that he of necessity limits its approaches to perfection, and restricts within narrow bounds his own efforts for its improve-

ment. Besides, the institutions of a rude age must needs be most imperfect and little suited to the wants of a society advanced in civilization and refinement; and if those things alone are to be valued and maintained which have had their existence among barbarians, civilized men must of necessity abandon the most precious results of political experience. Of the numberless evils entailed on the community by the feudal aristocracy which formed our more ancient Constitution, we have already had occasion to treat in the second part of this work (Chap. VII.). It may be fairly questioned if any society above the condition of men in the rude state, ever existed in a more wretched condition than that of England at the very period to which those reasoners, of whom I have just spoken, are so fond of bidding us look for the genuine principles of our free Constitution.

CHAPTER II.

GOVERNMENT OF ENGLAND—ANGLO-NORMAN MONARCHY.

William the Conqueror—Lord Coke's Error—Influence of Foreign Dominions—Great Possessions of the Conqueror's Family—Royal authority not absolute, though great—Parliament or Colloquium; its composition—Extension of Feudalism by William—Almost all his immediate successors usurpers—Occasions of assembling Parliament—Examples: Henry II.; Stephen; Richard I.; John—Taxation—Legislation—Henry II.'s profligacy—Royal power over the Church—Two practical tests of Royal authority—Tyranny and profligacy of the Anglo-Norman Kings: William I.; William II.; Henry I.; Henry II.; Richard I.—Anglo-Norman Monarchs practically almost absolute.

THERE can be no doubt that William was enabled to consolidate and extend the Royal authority from the period of his accession to the Crown. But much controversy has been raised upon the line of policy which he pursued, and even upon the course of his public conduct. While some have contended that he entirely changed the ancient policy of the realm, introduced the feudal system which had been established in Normandy, and fortified his authority by the extirpation of the ancient nobility and the transfer of all the landed property to his followers,—another class of reasoners have denied that he effected any change at all in the ancient Saxon institutions, and have strenuously contended that he obtained the Crown not by his victory over Harold, but by the will of Edward the Confessor, arguing that *conqueror* means in fact only *conquestor*, a person who succeeds by devise or by any other mode of purchase, as contradistinguished from one who takes by inheritance. Some indeed have been so inexcusably careless in their statements as to regard his title in the light of a devise, or at least of an appointment by the Confessor to him as one of the inheritable branches of the Saxon royal family,* and some in answering them have fallen into an

* Of this class is no less a feudal lawyer than Lord Coke. In his Commentary on the Statute of Merton (2nd Inst.), he mentions the marriage of Robert, William's father,

almost equal error by inadvertence to the canons regulating the descent of lands.

Both these views of the subject must be regarded as exaggerated and erroneous. The record of Domesday Book clearly shows that many persons retained their property who had held it in the Confessor's time; and although, in consequence of the rebellion which took place during his absence in Normandy, the greatest changes took place in the distribution of landed property from the number of confiscations which ensued, there seems no sufficient ground for the charge brought against him of encouraging disaffection underhand, in order that he might have a pretext for making an universal transfer of landed property to the Normans. On the other hand, to deny that the military force which he introduced into the country, and the possession of his foreign dominions, enabled him to curb the Barons and exact a much more vigorous rule than the English had hitherto known, would be shutting our eyes to the obvious facts of the case. The never-failing consequences of the Imperfect Federal Union (Part III. Chap. v.) were certain to flow, from the sceptre being in the hands of a prince who held on the continent a Principality equal to one-third of the French Monarchy. For nearly three centuries* the English monarchs were endowed with these resources; and

with Arlotta, his mother, after his birth, and conceives that though it made him legitimate by the custom of Normandy, and so inheritable to the duchy, it could not give him a claim to the crown of England, because no legitimation *per subsequens matrimonium* is known to our law, the famous enactment at Merton having of course been declaratory only. But even had William been born in lawful wedlock, he could not possibly have any claim; for his only connexion with the Confessor was the marriage of Edward's father with William's great-aunt, the sister of Richard II., his grandfather; consequently he had no blood of the Saxon purchaser, and was a mere stranger, be he ever so legitimate. As well might our Queen claim the crown of Denmark, being the great-niece of Matilda, the Danish King's grandmother. It is a somewhat singular circumstance that the Judges, in delivering their opinions in the House of Lords, in the great case of Doe *v.* Vardell, in 1840, rested their argument mainly on this passage of the 2nd Institute, which contains an error so gross as to throw great doubts on its authenticity, and, if authentic, to destroy the weight of the authority, beside every one of the three marginal references being erroneous. The Chancellor (Lord Cottenham) acceded to the opinion of the Judges avowedly on the score of Lord Coke's authority, conceiving it to be now for the first time cited, whereas it had been cited and rejected in the Court below, the King's Bench, from which the case came by writ of error. I have the satisfaction of knowing that the opposite view which I took of the whole question has met with the general concurrence of foreign jurists—in particular, Dr. Storeys; see the last edition of his celebrated work on the Conflict of Laws.

* Two hundred and ninety-two years

the event to which they owed their crown, a military conquest, with the constant presence of foreigners surrounding their persons, as well as the possession of so vast a proportion of the property of the country by those foreigners and their descendants, made the exercise of arbitrary power a far easier and safer thing than it had been under the native princes. Another change took place of great moment, and of extensive influence in augmenting the power of the sovereign. It is certainly most incorrect to represent the Conquest as having introduced the feudal policy; but it is certain that the Normans had established that scheme of government much more systematically and fully than any other people; consequently William never rested till he had moulded the less perfect Feudalism of the Anglo-Saxons after the Norman model. Allodial proprietors were tempted by offers of protection, and wearied out by vexatious proceedings, till they surrendered their independent titles and became, the more considerable sub-vassals or tenants in chief of the Crown, the less considerable vassals of other great lords, who themselves held of the Sovereign. The Conqueror derived from hence no little addition both to the splendour of his Court and the real power of his office; for all his vassals held by military service, and each when he took the field was attended by his own vassals or sub-vassals.

The vast possessions of the king and his family must have prodigiously strengthened his authority. William had 1432 manors all over England; his brother Odo, Bishop of Bayeux, 450; Geoffrey, 280; Robert, Earl of Mortagne, 937, making in all no less than 3099 manors belonging to the family, beside the sixty-eight royal forests, as well as many parks and free chases. Nor must we omit a most important change in the allegiance of the vassals introduced by the Conqueror, and calculated materially to curb the power of the Barons. Formerly the vassal sware to his baron fealty absolutely; he was both forced to follow him in rebellion against the Sovereign, and his oath of fealty to the Sovereign contained an exception of his duty to his liege lord. The Conqueror would not suffer any such limited or divided allegiance; he required all to owe him fealty without any exception; and he forfeited the lands of the sub-vassal as well as those of the vassal himself, if the tenant followed his liege lord in rebellion against the King, the universal overlord of the realm.

It has been said that Normandy was rather an apparent than a real increase of the English Sovereign's power, and of this opinion is Mr. Hume (Hist. vol. i. App. 1.) It cannot be denied that the Norman Barons, always aided by the French King in their attempts at throwing off the Duke's yoke, gave frequent occasion of annoyance to their prince, and often distracted his attention from the management of his English affairs. Yet no one can doubt that he derived considerable accession of power from so noble a principality; he often used his foreign troops directly in the subjugation of his refractory English Barons; and it is certain that the first establishment of a constitution, nearly resembling our present system, was after that duchy and all the continental dominions had been severed from the English Crown.

But nothing certainly can justify those who have contended on the other hand that there were no limits whatever affixed to the power of the Sovereign after the Conquest. The Monarch was very powerful; he was not absolute; and this leads us to consider the only but the material check to his power, beside the mere force of the wealthy Barons, always more or less a restraint upon the Prince in every feudal Monarchy—I mean, of course, the General Council, whose interposition was always held necessary for the making of laws.

This body had now changed its name, and was called by the Norman term of *Parliament*, in Latin *Colloquium*, instead of the Saxon Witenagemote or Michelgemote. In some sort, too, its composition had undergone a change; but rather in appearance than in reality. The sounder opinion seems to be, that before the Conquest its members were the Prelates and the great allodial proprietors, and that the vassals of the king did not form a part of it. This is certainly the subject of controversy; and they who deny the position have at least to urge in support of their opinion the great importance of the Crown vassals, the powerful tenants in capite, and the likelihood that the King, who alone had the power of summoning the Council, would call these his vassals to assist. But be this as it may, no doubt can exist that after William had, about the twentieth year of his reign, completed the feudalization of the whole kingdom, and converted all the allodial into feudal holdings, the Council was composed of the Bishops, Abbots, and greater Barons, tenants in chief of the Crown, who were re-

quired to attend their Lords' Court or Parliament three times a year, at the great festivals of Christmas, Easter, and Midsummer, as the Gemotes had been held before the Conquest at the same seasons. The numbers who attended the meetings were not great. The whole Barons of the realm were only, according to the most accurate enumeration, 605, of whom 140 were ecclesiastical; but a very large proportion, from their distant residence, never attended the court. The stated meetings were probably occupied chiefly with matters of form and routine, while the important concerns of the kingdom were reserved for occasional meetings, which the Prince summoned when he found that he wanted their aid in his wars, or their assent in making laws, and bringing great offenders to punishment.

It is chiefly from the interposition of these occasional assemblies, whenever matters of importance were to be transacted, that we learn the strength of the Parliament, and can estimate the degree in which the Royal Prerogative was limited by the established Constitution, subject to one remark which I shall find it necessary afterwards to subjoin. Let us mention a few of the principal occasions on which the very imperfect history of our early Constitution has preserved the memory of this parliamentary interference, and we shall be convinced that though the Conquest consolidated and extended the prerogative, it did not materially break in upon the functions and authority of the Great National Council.

When the Conqueror had nearly matured his plan for feudalizing the kingdom, he assembled a Parliament in London; and the country was divided into Knights' fees, the whole landowners, as well clerical as lay, being obliged to send for each fee, that is, each five hides, or 600 acres of land,* a Knight equipped for the field to serve during forty days.† This raised a body of 60,000 horse, there being 60,215 Knights' fees, whereof 20,015 were in the hands of the clergy.

One of the most certain occasions of calling a Parliament was the death of the King; when the old form of election was restored; and indeed as all of the Conqueror's successors, except Henry II., that is, William Rufus, Henry I., Stephen, Richard,

* This is about a fair average; but of course, as the apportionment was by value, there must have been a great difference in the extent, according to the quality of the soil.

† Wilkins, L.L. Sax., 227.

and John, were usurpers upon the rightful heirs, the assent of the Council became a material confirmation of a bad title. Thus William II. was chosen according to his father's dying request, Robert, his elder brother, being set aside. Stephen was crowned without any Parliament, but he convoked soon after a Synod of the Clergy, who assumed to dispose of the Crown. The Empress Maude had been acknowledged Henry's next successor at a Parliament held nine years before his death. On Henry II.'s decease the Queen convoked a Parliament to receive Richard I. and fix his coronation. At his death John held one at Southampton, which gave him the preference over his nephew Arthur, the rightful heir to the Crown.

It is manifest that little or no reliance can be placed upon such appeals to Parliament, as evincing the legal structure of the Constitution; because the power of the great Barons was such as made it necessary for the Sovereign who would succeed upon an infirm title to conciliate as many of them as he could, and no better way presented itself of strengthening a defective claim to the Crown than obtaining the consent of a council composed of those Barons and the heads of the Church. There seems great reason for believing that this also was the main if not the only reason for assembling Parliament when any measure of policy or new law was to be sanctioned; and this is the remark subject to which I before stated the proposition, that appeals to Parliament were evidence of some power existing in the Constitution independent of and even superior to the King's. It is possible that this was rather an expedient to which the King resorted in consequence of the power and wealth vested in the Barons, than an acknowledged and fundamental principle of the Constitution. Nevertheless the appeal to those assemblies on all important occasions, whether executive or legislative, is unquestionable.

When a prince was disposed to make any grant or concession to the people, it seems not to have been held necessary that a Parliament should be summoned. This arose from the original principle of the Anglo-Saxon and Norman legislation. The law was held to be the King's decree; he made it generally on the petition of the Witan, or great lords and prelates; but he might also make it of his own free will, provided it was a concession to the nation, which might be presumed as of course to

meet with their consent. The modern constitution retains this form, but extending it to all cases, as well those in which the prince yields something as those in which he claims something. According to this view of the matter Henry I. promulgated his famous Charter, renewing and confirming the old Saxon laws and those of the Confessor, of which we have no account, unless that of Henry's confirmation. It is a very important statement in this charter that all the alterations made by the Conqueror in Edward's laws are distinctly stated to have been made with the consent of the barons as well as the prelates.

The treaty (1153) between Stephen and Henry II. was ratified in an assembly of Prelates and Barons, who witnessed the charter then granted by Stephen. Stephen held three other councils, in which he agreed to confirm all the rights granted by Henry I. to the nation.

The celebrated Constitutions of Clarendon, by which the clergy were subjected to the jurisdiction of the temporal courts, were made at a parliament attended by thirty-seven barons and eleven counts.*

In 1191 a Parliament was held against the usurpation of Longchamp, in Richard I.'s absence, and to appoint a council of regency. In 1205 a Parliament at Winchester ordered every tenth knight in the realm to be raised and mounted at the charge of the other nine, as a force to aid in recovering the continental dominions of the Crown, and required every man, on an enemy landing, to rise and serve on pain of perpetual slavery with a heavy poll-tax. This Parliament is said to have been attended by the Prelates, Barons, and "all the faithful people of the King," which last term means only, as we have frequently shown, that the assent of all not summoned was assumed. When, in 1213, John surrendered the kingdom into the hands of the Pope, and agreed to hold it as a fief, doing him homage as his liege lord, a council of the Barons and Pre-

* It is curious to observe the working of clerical prejudice in an accurate, and, generally speaking, a liberal mind. When Dr. Lingard (i. 386) is mentioning the most important of those provisions, that which makes a clergyman triable for a crime before a civil or temporal judge, he treats it as an innovation upon the rights of the clergy overturning the old law, and only says of it, "however it might have been called for by the exigencies of the time." Can he really mean to affirm that it required any peculiar "exigency of the times" to render a priest amenable for theft, rape, or murder, like the rest of his fellow-subjects?

lates was held, and two Bishops, nine Earls, and three Barons signed the instrument. Nor were the Barons willing to forget this transaction, or indisposed to avail themselves of its disgraceful import when it suited their purpose. Soon after, they appealed to Pope Innocent, as their liege lord, against John, for whom however his Holiness not unnaturally decided.*

Although it seems to have been understood that all general laws must have the consent of the Parliament, it seems equally clear that the limits of the Royal authority in regard to taxation were very imperfectly defined, especially in the earlier period of the Anglo-Norman monarchy; yet it is not very easy to determine whether the Prince in his exactions was committing an usurpation or only acting according to his prerogative. The Conqueror and his successors, beside their exactions from their vassals in the name of marriage, wardship, and the fines which they levied upon them on many other accounts, also levied tolls at fairs and markets, and on the passage of goods over bridges. No ancient charter granting a right of market with tolls, pickage, and stallage, ever purports to be by consent of Parliament. Customs were also levied on goods imported and exported at the havens of the realm. On towns, especially those in the demesne lands of the Crown, a tallage, in the nature of excise, was levied, and the inhabitants used to offer a composition, which occasionally was refused. The Conqueror, of his own authority, revived the payment of Danegelt, which the Confessor had remitted; and he is said to have raised by such means the incredible sum of nearly 11,000,000*l.* of our money. One of the provisions of Henry I.'s charter was a restriction of the Crown's power of fining. Instead of the culprit being in the King's mercy, as had been the case under his father and brother, that prince restored the Saxon *were gelds*, which ascertained the amount of fine for each offence. He also provided that no new taxes should thenceforth be imposed, and he materially lessened the burthen of the feudal incidents. Yet notwithstanding this charter, the result of the infirmity of his title at the beginning of his reign, his extortions were fully

* Dr. Lingard, though he does not defend this base transaction, is anxious to extenuate it by all the means in his power. Nor can anything be conceived much more flimsy than the topics he resorts to; for example, that the condition of vassalage was reckoned honourable in those times!

equal to those of his predecessors, although from the Barons making no complaint it is probable that he confined himself to oppressing the inferior classes and the towns. He also kept bishops' sees vacant three and even five years, during which he received all their revenues, and sometimes he seized all a prelate's property at his decease. Canons being made against the marriage of the clergy, he sold at a high price licences to break these. Desiring to raise a large sum, by fining the parochial clergy who had transgressed some canon, and finding this yield very little, he at once and of his own authority raised a general tax upon them, and called it a fine for breach of the canons. It is certain that, with great talents and address, he was one of the most unprincipled and tyrannical princes that ever sate upon the English throne.

The quarrels in which Henry II. was constantly engaged with the Church, probably restrained his violent and cunning nature so far as to prevent him from exciting general odium by interfering with the property of his subjects. But his successor, the favourite theme of all our romance-mongers' praises,* the gallant Cœur-de-Lion, was the most rapacious prince of his age. His shameless sale of Earldoms for money, and his restoring to the Scots their castles long in the hands of the Crown, for large ransoms to feed his extravagance, as well as his emancipating them from their fealty to the English Sovereign, are acts of as scandalous and as mean profligacy as any which his despicable successor ever committed. The regent, De Burgh, whom he left to scourge the country when he went abroad in 1194, is said to have raised in two years a sum equal to eleven millions of our money at the least. The exactions of this functionary drove the citizens of London to resistance, and Fitzosbert's rebellion was the consequence. The Council of Regency in 1193, for his ransom levied a tax of 20*s.* on every knight's fee, and 25 per cent. on all income, ecclesiastical as well as lay. They appear to have had no Parliamentary authority for this; although they were named to the Regency by the Parlia-

* Whoever admires Sir Walter Scott's genius for romance-writing—as who must not?—naturally feels concerned for the failure of his Crusade tales to interest us in Richard. Nothing more unnatural, more upon stilts, more unbearable to read, than the speeches he puts into his hero's mouth, is anywhere to be found; hardly his manufacture of speeches for Elizabeth, and of light conversation for Buckingham and Charles I. about "Sweet Will" (*i. e.* Shakspeare) and other matters.

ment held in 1191, as has been already stated. Following their example, John, in 1199, soon after his accession, levied a seventh of the income as well as the personalty of his Barons by way of penalty for their having deserted him in his disastrous Norman campaign. In short, with the exception of the Parliament held at Nottingham in 1194, of spiritual and temporal Peers, we see hardly any example of a tax imposed by the National Council. That assembly imposed a tax upon land. The numbers which attended it, however, are a proof how little the principles of the constitution were understood, or the interference of the Parliament valued; only fifteen Peers of both kinds, lay and clerical, were present. It appears that in England as in France, a semblance rather than the reality of general assent to taxes was alone required for their being imposed. The great difference between the two constitutions was that the general laws appear in England always to have been made in the National Assembly or Parliament, while in France the King and his Council did no more than promulgate their edicts to the General Assembly, making sure of its assent, if indeed that assent was ever asked, of which there remains nothing like evidence.

The power of the Crown in respect of the Church formed in these times a very important article of the constitution. In England, as in all other countries since the establishment of Christianity, the Bishops were originally the mere overseers of the clergy, and possessed of no temporal wealth or power under a religion of which poverty was the chief characteristic; and they were chosen partly by the clergy, and partly by their lay flock, as we have seen in the first part of this work (Ch. XI., XVI.). But in proportion as their importance increased, the Church showed a desire to exclude the laity from interfering in the choice, making a decree in the Council of Constantinople, 869, against all lay votes at elections, and also against the Chapters receiving any royal nomination. At the same time the sovereigns evinced an equal disposition to interfere with their choice of prelates. Sometimes they accomplished, by main force, their purpose of directing the election; more frequently by influence. In Spain alone was the power of appointment vested directly in the sovereign, by a grant of Urban II., in 1088. In France, although the princes of the two first races assumed the nomination, they afterwards yielded it, at least nominally, to the clergy.

In England the right of the Chapters was not denied; but then the King claimed two important privileges; he insisted upon his licence to elect being necessary before the Chapters could proceed, which gave him the previous power of recommending whom he pleased, and he then required the presentment of the prelate when chosen for his confirmation or acceptance, which gave him a veto on the election in the last stage. The monasteries in some cases claimed the right to the exclusion of the secular clergy, a claim admitted by even the stoutest advocates of the Romish Church to be wholly preposterous. The quarrel between John and the See of Rome began from the monks of Christ Church claiming to elect the Archbishop of Canterbury, and the Pope allowing this claim upon an appeal to him by all parties. The Anglo-Norman Kings may be said substantially to have directed the choice of all their prelates, though not to have directly named them. On particular occasions they made their appeal to the Great Council of the Barons, or Parliament, as when William the Conqueror appointed Lanefranc in 1070, by consent, it was said, of the Barons, probably because he was a foreigner, being a native of Pavia. The Barons appear occasionally to have interfered in this matter without being consulted, for we are told that they combined against Guitmond, to whom the King had offered an English see, which he refused on the ground that the King had no right to impose superiors on the clergy; and this answer was said to have been so distasteful to the Barons, that they drove him from Normandy after preventing him from being raised to the See of Rouen.

The only instance in which the Anglo-Norman Kings lost any of the Prerogatives which those of the Saxon times had possessed, was on the Earldoms becoming hereditary, as in Normandy, instead of being, as formerly, conferred for life only. This difference was probably more in name than in substance; for the Earl's son must generally have been so much more powerful than the rest of the Barons in the district as to ensure his nomination upon his father's decease. But, even were it otherwise, we may easily perceive that, with such influence over the clergy, with the direct power of appointing to all judicial and other executive offices, with their exorbitant landed property, and their numerous retainers, to say nothing of their privilege of interfering with the course of justice and with property by its

administration, they must have possessed a power so extensive as to reduce the privileges of the subject within narrow limits.

There are two tests of the extent to which Royal prerogative is enjoyed in any community. The one is the power of making, or concurring in making, the laws by which the state is governed; the other is the power of ruling arbitrarily, so as to set at defiance any laws which may nominally exist for the government of the state. The former in theory may appear to occupy a larger space, because the legislative in truth means the supreme power in every country. But the force of the law itself, and consequently the value of the legislative authority, is truly tested by the latter circumstance, inasmuch as the silence of the law before the Monarch sets him above it, and if all his other attributes enable him to defy it, there is but little lost to him in having no power to change its provisions. Practically he may be absolute, though forming part of a constitution theoretically limited; not to mention that if the existing laws do not interpose obstacles to his tyranny, it signifies very little that he should be unable of his own mere authority to change them by new enactments.

If we apply these principles to the prerogative of the Anglo-Norman Crown, we shall find little reason for believing it to have been of a very limited nature. The Princes who reigned from the Conquest to the granting of the Great Charter were, in the strictest sense of the word, tyrants; and Stephen, were he excepted from this description, owed his curbed authority to the constant rebellion of his Barons, and his disputed succession to the Crown, which filled his reign with anarchy, and covered the country with desolation. These Princes not only displayed the fiercer disposition of tyrants, with the caprice of their ungovernable humours, but they were constantly gratifying their arbitrary or cruel propensities at the expense of their subjects, and without exciting resistance or suffering restraint. The Conqueror, not content with possessing sixty-eight forests, with other old parks and rights of free chase for the amusement of hunting, to which, like all his race, he was passionately addicted, threw into a New Forest (the name it still bears) great part of the fine county of Hants, thirty miles square in extent. This operation was repeated in other districts by his sons and grandsons, and it implied the destruction of all the property within

the district thus seized. the razing houses and cottages to the ground. the throwing lands out of tillage, the expulsion, and often the destruction. of the inhabitants. A promise to abstain from such waste was frequently made by these Princes when they had any point to gain, as to excite a spirit of hostility to the refractory Barons; and it was as often broken as made. At length the Charter of the Forest was extorted from John; its effect was to disafforest all that had been thus wasted since Henry II.'s time, and it prevented the future spread of this intolerable mischief. These Princes often prohibited under severe penalties any person from hunting on his own domains, or granted to one the exclusive right of chase over another's property, a right not yet wholly extinguished in all parts of the island.*

But the worst of the Conqueror's crimes remains to be told, and the one which most strikingly proves under how little restraint the caprice and the cruelty of the Norman Princes were placed by the Constitution, how much soever they may have been occasionally thwarted by their Nobles, barbarians as cruel, as overbearing, and as lawless as themselves. He resolved to draw a zone of desolation—a desert country—between his dominions and the northern tribes, who had given him trouble by their incursions; and accordingly he dispersed over the northern counties bands of soldiery, with orders to burn, sack, and ravage the land, sparing neither man nor beast. The whole country between York and Durham was thus laid waste; upwards of 100,000 persons of all ages and both sexes, not enemies but subjects, were slain; and a century afterwards the traces of this awful devastation were discernible on the whole of that road for above seventy miles. When we hear of Eastern Despots we must confess that they would be greatly slandered by any comparison of the Norman king's conduct with theirs. No instance is on record of any Oriental Prince ever thus treating the territory and the people subject to his dominion; their ravages are confined to hostile countries and inimical nations.

William Rufus passed his short reign in the unbridled gratification of his voluptuous passions and his cruel disposition; butchering prisoners with his own hand; laying waste districts

* The maxim in William's time was—"Whoso shall slay hart or hind, men shall him blind."

to extend his parks; putting out the eyes of his captives when they were of rank—an Oriental cruelty, in which all the Anglo-Norman Kings indulged. It was his encomium on his rapacious minister, Ralph Flambard (the devouring torch), that to please a master he would brave the vengeance of all mankind; and his exactions were so intolerable, that the blow which deprived William of life was supposed to have been directed by private revenge.

Henry I., the scholar, as flattering historians have named him, when alarmed by the resistance of his Barons, pursued a policy the most profligate and tyrannical ever known in modern times; he employed all the energies of the law and the services of corrupt judges to entrap and convict great landowners, whose forfeited estates on their attainder he bestowed on men of the basest extraction and most abandoned lives. Outlaws themselves for infamous offences, they thus became suddenly possessed of immense wealth, and formed a trusty body of allies against the old Barons of the realm. His dissimulation was proverbial; his violent temper bespoke him the son of William; his dungeons were crowded with victims; and, at his death, there was found his cousin, the Earl of Mortoil, who had long been in the dungeon, and had likewise been deprived of sight. Barrè, a troubadour poet and knight, prisoner of war, was ordered by him, in revenge of a satire he had written, to lose his eyes, notwithstanding the remonstrance of the Earl of Flanders, who was against a proceeding as cowardly as it was against the laws of chivalry and war. Henry persisted, and the unhappy victim dashed out his brains in a paroxysm of grief and indignation.

The passion of the chase was not merely shown by the Anglo-Norman Princes in laying the country waste to extend their forests; they established a code of forest laws the most cruel and barbarous of any known among men pretending to the least degree of civilization. All within the forest precincts, and all who dwelt on the borders, were subject to this sanguinary code. It punished the slightest of the innumerable offences which it denounced against the game and the timber, with mutilation, loss of limb, and loss of sight. Henry II. had, at the commencement of his reign, when his crown was doubtful, substituted for these punishments the more merciful penalty of fine and imprisonment; but as his authority became better established he

restored the old and savage inflictions. His rapacity yielded to no Prince's since the Conquest; justice was openly bought and sold during his long reign, and instances are not wanting of his taking money from one party to accelerate the decision of a suit after having been bribed to retard it by the other. That he was the best of William's successors may easily be admitted, without bestowing upon his memory any great praise; but when Hume represents his character as "almost without a blemish;" and adds, that it "extremely resembled that of his "grandfather Henry I.," we are naturally led both to reflect on the sanguinary forest laws revived by the one Prince after he had yielded to the voice of nature in their repeal, and on the corrupt administration of justice, as well as on the barbarous cruelty of the other, in which he had not been surpassed by any sovereign who ever filled the English throne. As for Richard, Hume himself, with all the "childish love for kings" which Mr. Fox so justly imputes to him, has confessed that he was cruel, haughty, tyrannical, and rapacious; and indeed his courage appears to have been his only redeeming quality.

I apprehend, therefore, that the exercise of such tyrannous acts as we thus find to have signalized the Anglo-Norman reigns, and without ever producing resistance from the subject, much less remonstrance from the Parliament, demonstrates the extent of the Royal authority and the feeble restraints imposed upon it by the constitution. Provided the King only called his Barons together upon great occurrences, to confer with them touching measures of peace and war, or to obtain their assent to new laws, it should seem that he was at liberty to act as he pleased; that the administration of justice afforded no protection to the people; and that the privileges of the Parliament afforded no real check to the caprices, or the cruelty, or even the rapacity of the Prince.

It is quite certain that although in England there was at all times a legislature, of which the King formed only one portion, and though the foundations were then laid from the most remote antiquity for the free government which was gradually raised upon them, yet as far as regards the actual power of the Sovereign it was fully as great to all practical purposes, and that the rights and liberties of the people were fully as contracted, as in the neighbouring kingdoms of France and Germany. Indeed

the Baronial power, which formed the principal counterpoise in practice to the exercise of the Royal prerogative, was unquestionably more curbed and subdued in England than in the monarchies of the Continent. There can be no creation of national vanity more groundless than the notions which represent our ancestors as enjoying more freedom, and their princes as holding a more limited authority than was known in the feudal monarchies of the neighbouring nations.

CHAPTER III.

GOVERNMENT OF ENGLAND—FOUNDATION OF ITS PRESENT CONSTITUTION.

Four essential requisites of limited Monarchy—Error of supposing nominal privileges real—Causes of the resistance to John—Great Charter—Forest Charter—Broken by John—Civil War—French aid called in—Henry III.—Pembroke Regent—Confirmations of the Charters—Mad Parliament—King deposed—Simon de Montford—His Parliament with Borough Members—Edward I.—Earls Bohun and Bigod—Statute against Taxing by the Crown—Parliamentary Constitution fully established in Law—Merits of Cardinal Langton—Compared with Archbishop Winchelsey—Errors of Romish Historians—Edward I.'s Legislation—His Wars.

THE history of our ancient Constitution, as far as we have now traced it, appears very fully to prove one material proposition respecting its structure. The mere existence of a legislative body independent of the Sovereign, though endowed with the right to share in the making of all laws, and though even admitted to the occasional privilege of being consulted upon extraordinary emergencies, whether of war or of finance, did not of itself secure the freedom of the country, or fix limits to the exercise of the Royal authority.

In order to attain these great objects of all free government, it is absolutely necessary *first* of all that the national assembly should be composed of persons entitled to sit in it of their own right, or by some other title than a Royal summons, which may be withheld at pleasure. But it is equally essential, in the *second* place, that it should be summoned regularly, or that the Royal authority should be so circumstanced, the Sovereign so situated, as to make his calling the members together a matter of necessity. *Thirdly*, even if they are secure of meeting, unless their assent be required to all measures of importance, and the Sovereign be held bound by the laws of the realm, no effectual check can be provided to his arbitrary power. *Lastly*, unless the members, of one at least of the assemblies, owe their seats in that assembly to the voice of the community at large, or are

taken from the body of that community, and so have the same interest with their fellows, the security of the public interests and liberties must be altogether imperfect; the Crown may be limited in its power; the Parliament may be clothed with important privileges; many of the greatest abuses may be prevented, considerable assurances of the general good being the guide of the government in its administration may be obtained; but nothing can prevent the machine from working with a bias towards the interests of particular classes in the community, those classes composing the assembly, because the deliberations of that body must lean towards the interests of those who form its members.

It is necessary to keep these fundamental principles constantly in view while considering the ancient structure of the English Government, else we shall surely be deceived by the mere name of a Parliament, and fancy that because there was always in England a National Council, there was always a free Constitution. There cannot be a greater mistake. When William laid waste Hampshire for a hunting ground, Yorkshire and Durham for a security to his conquests—when his successors each in his turn imitated his example as far as their pleasures were concerned—when they imprisoned in English or in Norman dungeons those grandees who had offended them, and put out their eyes like Persian or Egyptian Sultans—when they proclaimed the life of a man and of a stag of equal value, and mutilated the peasant who presumed to kill the deer or the hare that had trespassed on his corn-fields—those tyrants, thus well earning the character given by the Chronicles, "that while the rich moaned and the poor murmured, all must follow the King's will who would have either lands or goods," yet could none of them make any law without calling together a Parliament in order to obtain the assent of the Prelates and the Barons. No more clear proof surely needs be given of their thoughtless folly who, in the zeal of party or the overflowing of national vanity, scruple not to affirm that the English have in all ages enjoyed a free because a Parliamentary Constitution.

The four great requisites of a real and effectual Parliamentary government—independent right of the members to sit, security for meeting regularly, necessity of being consulted, and general representation—were only obtained by our ancestors in the long

course of ages, during which the Constitution became gradually more and more perfect. The foundations of the whole, however, were laid at a very early period, when the Barons came in conflict with the violence of the King, and when they found that the most effectual way of resisting his encroachments and securing their own rights, was not by making war upon him, but by securing the calling them to the national assembly, of which they formed the most important part as regarded influence in the country, although less important than the clergy in point of personal weight and authority. This first step was made in the reign of John, and others of almost equal importance were at the same time partially made.

The immediate cause of the quarrel between John and his Barons is extremely immaterial. From the beginning of his reign he had fallen into general contempt, by the feeble conduct which lost Normandy to the Crown; and the Barons resisted all his attempts to make them aid him in recovering it. For their disaffection he had rapaciously levied large sums, as we have seen (Chap. XXIII.), the seventh, it is said, of their personal property, under pretence of punishing their misconduct. The cruel murder of his nephew Prince Arthur impressed men's minds with the greatest abhorrence of him; and his general conduct was that of a profligate, a cowardly, and a bloodthirsty tyrant. An association of the Barons was formed, and they held a council at St. Alban's in 1214, under the Justiciary, when, without the King's concurrence, they republished the Charter of Henry I., and threatened the King's officers with death if they in any way exceeded the bounds of their lawful authority. Soon after a second Council was held by them at St. Paul's, in London, and an oath taken to stand by one another with their lives and fortunes until redress should be obtained. After fruitless attempts to divide their league, John was next summer compelled to yield their demands by granting both the general or Great Charter and that of the Forest, hardly of less practical importance than the former.

The Barons had found it necessary, in carrying on their long struggle against the tyrant, to take measures for conciliating the people and securing their support in case matters were pushed to the extremity of a civil war. Hence the same concessions which they demanded from the King to his vassals, they them-

selves made on their parts to their own; and the feudal oppressions were thus mitigated both to themselves as tenants in chief of the Crown and to their sub-tenants. The King and the other feudal lords were restricted in their demands of aid from their vassals to the three cases of knighting their eldest son, marrying their eldest daughter, and ransoming their person if taken in war; all other aids must have the consent of Parliament. The King's ministers were deprived of all the jurisdiction by which they had previously levied fines arbitrarily for offences in order to fill the Royal coffers. His officers were no longer permitted to take provisions for his use on his progresses through the country, termed *purveyance*. Justice was declared to be no longer within the King's breast to deny, or delay, or sell it to the highest bidder, as Henry II. had so shamelessly done. Judges were henceforth to go the circuit all over the country at stated times. It was expressly provided that no free man should be imprisoned, or his goods seized, unless upon conviction by a jury of his peers, according to the law of the land. But the most important provision in the Great Charter, as regards the form of the government, related to the summoning of Parliament. The clause which prohibited the raising of aids without the consent of a Council, required it to be composed of Archbishops, Bishops, Abbots, Earls, and greater Barons, all of whom were to be summoned individually by the King's writ, and of the other tenants *in capite* of the Crown, who were to be summoned in the mass by the sheriffs of counties. The notice of forty days was to be given them, and the subject-matter of their deliberations was to be stated in the summons. It is remarkable that this important clause formed no part of the original demand of the Barons; and that it was omitted in the charter subsequently granted by Henry III. There seems reasonable ground for suspecting that the Barons little valued this provision; they were obliged to attend the King's court as a burthen incident to their feudal tenure; and the principal object in the clause was to declare that those who neglected to attend should, if the Parliament were duly summoned, be bound, though absent, by the determinations of those who were present at any council. It must be further observed that this provision refers exclusively to one species of council, that which should be held for the granting of an

aid or supply to the Crown. But, on the other hand, the insertion of the provision sufficiently proves the greater attention which was now paid to the subject of taxation. We have seen in the last Chapter how irregularly the power of levying money was exercised, and how seldom the Norman Princes resorted to Parliament for their extraordinary supplies. The loss of many landed possessions, especially during the civil wars of Stephen and Maude, and the loss by John of the Norman dominions, had now so far impoverished the Crown that recourse was more frequently had than formerly to the levying of extraordinary aids; and hence the care taken to make this provision in the Charter.

It is a further and important proof of the progress which the towns and ports had made in wealth, that their privileges and liberties are guaranteed by a specific clause; so that the power hitherto exercised of levying tolls and customs upon the markets and upon imports could no longer be lawfully used by the King.

The Forest Charter declared that all the land taken in to form parts of Royal forests, since John's accession, should be thrown open, and that twelve Knights should be chosen in each county court to inquire into forest abuses, and abolish all illegal customs which had been introduced, as well as to examine the conduct of the sheriffs and inferior officers of the Crown.

In order to secure the execution of the Great Charter, an extraordinary step was taken. Not only the Tower of London was delivered into the hands of the Barons for two months; but twenty-five of their number were chosen, without any limitation of time, as Conservators of the Privileges of the Realm, authorized, upon a complaint made, to admonish the King, and empowered, if redress were refused, to levy war against him. All persons were required to swear obedience to them, and, in fact, the executive power was entrusted to their hands. Nothing can more clearly show that the whole proceeding was of a revolutionary character; and, accordingly, John no sooner saw the Barons disperse than he collected his troops, ravaged the whole country, and finding no resistance from the League, would have entirely effaced all recollection of his submission at Runnimede, had not the Barons, unable to cope with him, called in Louis, the French King's son, and delivered over the crown to him, in the defence of which he was engaged when the death of John and the able administration of the Regent Pembroke enabled

the Barons to defeat him, and to restore the independence of the kingdom.

The first step taken by the Regent, when preparing for this important operation, was to assemble a Great Council or Parliament, which was attended by all the Prelates and Abbots, some Barons, and many Knights. The Great Charter was renewed and confirmed with some omissions, among others that of the clause authorizing resistance, that respecting the summons to Parliament, and that respecting the forest abuses. But those provisions were expressly reserved for further consideration in a full assembly. Another confirmation of the Charter was given soon after. Many years later Henry called a Parliament to grant him an aid, which was at first refused, but afterwards given, on the ground of a threatened invasion from France. The assembly granted a fifteenth of personal property, but made the ratification of both the Charters an express condition of the grant. Notwithstanding the two former confirmations, little effect was given to the provisions of those Charters by the King's officers. They were since renewed no less than five-and-thirty times in the reign of the Plantagenet Kings down to Henry VI.; and always in the same form which they assumed in the 9th of Henry III. This Prince was ever in want of money, and he confirmed the two Charters in all six times; once or twice he was compelled to swear that he would observe them religiously.

The misfortunes which afterwards befel him are well known. In 1258, a Parliament called by him at Westminster was attended by the Barons, who assembled in armour, and, requiring redress of their grievances, compelled him to deliver over the greater part of the Royal prerogatives to a commission of lay and clerical peers, who should be named in a Parliament speedily to be holden at Oxford. This, which is known by the name of the "*Mad Parliament*," virtually deposed the King, vested the representation in twelve persons, and appointed Parliaments to be held three times every year. The victory of Simon de Montford at the Battle of Lincoln led to his usurping the Royal authority; and, in 1264, he assembled such a Parliament as he considered would be favourable to his views. The writs of summons ran not only to Prelates, Abbots, and Barons, such being selected as were known to favour him; but four Knights were called to

be elected in the court of each county, and two deputies from each city and borough town. The lesser Barons and free tenants had in all probability for some time before been in the practice of sending two or four of their own number to attend the Council, and save the whole freeholders the trouble and expense of attendance; but it seems certain that this was the first occasion in which the towns sent representatives. I have entered so much at large into this controverted question in the Seventh Chapter of this Third Part, that there needs no further discussion of it here. But we may observe, that although the origin of our burgh representation seems thus to be fixed, we are altogether in the dark as to the mode in which the representatives were chosen. The freeholders chose their representatives at the county court; we know not how the townfolk chose theirs.

In the Chapter just referred to I had occasion to trace the early history of the Parliament thus for the first time composed as it has ever since been. It appears that during the whole of Edward I.'s reign, till towards the latter end, though the cities and towns were summoned, yet their members did not attend regularly unless when the question of taxes upon these places arose. This seems to be the result of the best examination which I have been able to give the Statutes and the Writs. The towns which had the earliest writ of summons were those in all probability of the Royal demesne, they being in the nature of tenants in chief of the Crown. For the details of the question regarding the origin of the representation, and for the early history and the peculiarities of the Scotch Parliament, the reader is referred to the Seventh Chapter, in which it appeared, for the reason there assigned, necessary to anticipate a portion of the subject, belonging naturally to the present discussion.

The most important step which was made in those times towards the establishment of a Parliamentary constitution, was the concession extorted from Edward I. towards the close of his reign. We have seen that the clause in King John's Great Charter, forbidding the Crown to levy any aid not granted by Parliament, was immediately afterwards struck out of the confirmations granted in Henry III.'s time; and greater oppressions than ever were practised in levying taxes upon the people. The revenues of the Crown from land were much diminished; the

numbers of men liable to military service had also greatly decreased from the negligence of the mustering officers; and the turbulence of the feudal militia rendering the sovereign unwilling to employ them, he had recourse to hiring mercenaries, or bargaining with the Barons for paid forces. A great necessity for supplies was thus experienced by Edward in the course of the constant wars which he waged in Wales, in Scotland, and in France. To obtain these supplies he had frequent recourse to Parliament. In the first thirty-four years of his reign he had twelve times assembled that body for this purpose, and obtained twenty-one grants from the laity and five from the clergy. The former amounted in all to nearly the whole personal property in the kingdom; the latter did not fall much short of a whole year's income of the Church. Yet still his wants were pressing, and he had recourse to the most violent means for supplying them as often as the Parliament refused the aids which he required. He occasionally levied tallages, or a per centage, on all personal property, of his own authority. All his predecessors had maintained their right to do so. John had sent itinerant justices round the counties for the purpose of swearing the bailiffs of all the landowners to the amount of their goods and rents. Henry III. had caused the same inquisition to be performed by four knights in each county, these commissioners being chosen by the justices. They swore each person to the amount of his own and the personal property of his two next neighbours; and a jury of twelve men was to decide if the amount thus given in was disputed. Edward likewise sent out commissioners round the country to ascertain and levy the amount of tallage, as well that granted by Parliament as that which he imposed, more rarely, of his own authority; and the oppression and corruption of these officers was a cruel grievance to the people. But when he found a difficulty with the Parliament he did not confine himself to exacting tallage after the manner of his predecessors; his expeditions made other supplies necessary; and, fortunately for the liberties of the country, he had recourse to means which proved still more vexatious, till the evil worked its own cure. He raised, arbitrarily, the duties on exported wool, and forced the merchants to give him a loan equal to the whole value of the quantity shipped by them, and he more than once seized all their wool and hides, and sold them for his own use. He equally assailed the landowners,

seizing their live stock, and issuing orders to the sheriffs to collect both provisions and grain for his army. A spirit of resistance was excited by these violent encroachments unequalled even in the worst times of his predecessors, and the Barons under Bohun and Bigod so far intimidated the officers as to stop the purveyances which the King had ordered. Edward was alarmed by the proceedings of the two earls, made his peace with the clergy, gained over the citizens of London by a flattering speech, and sailed for the Continent. But he soon ordered a large levy to be made on the clergy, and thus united them with the people in support of the earls. The council appointed to assist the Prince of Wales in the regency took the same course, and Edward was compelled most reluctantly to grant a solemn confirmation of the two Charters, with this important addition, that no aid or tallage should thenceforth be raised, unless by the assent of Parliament—that is, of the Prelates, Barons, Knights, and Burgesses of the realm; that no seizure of wool, hides, or other goods should be made by the Crown, nor any toll taken upon them; that all customs and penalties contrary to the Charter and to this additional article should be void; that the Charter so amended should be read twice a year in all cathedrals; and that all persons acting against it should be excommunicated.

Edward endeavoured soon after to evade the force of the obligation thus solemnly contracted; and added a clause, saving all the Crown's rights. This, when proclaimed, excited so great a clamour in the city of London, that he again became alarmed, and gave his unqualified retractation of the clause. The year after, 1300, complaint being made in Parliament that the Charters remained unexecuted, he was obliged to grant an additional article, that the Charter should be read four times a year in all the sheriffs' courts, and that three knights in each county should be chosen by the freeholders, with power from the King, to punish summarily all offences not otherwise provided for against the Charters. In the course of two or three years, however, he openly violated the new law thus made, levying tallage and poll-tax without resistance. He also appealed to the Pope to be absolved from the obligations which he had contracted; but though he obtained a rescript declaring all his concessions void, as it artfully contrived to state the supposition that they had been contrary to the lawful rights of the Crown, and saving to the sub-

jects their ancient rights, he never ventured to use it; so that at his death, two years after, he left the famous statute prohibiting all taxation without the consent of Parliament, as the established law of the land.

Although we should admit that the provisions in the Charter, thus confirmed for the tenth time, and the important additions made to it, were but imperfectly kept, that they were so often violated as to require constant renewals with repeated pledges, no less indeed than fifteen times in the next reign but one, it is nevertheless certain that a prodigious advantage was gained to Constitutional Government and popular rights by the nation having the text of a treaty to cite, the provisions of a law solemnly made in writing and universally known, to rely upon in their disputes with the Crown. The Prince who now levied money without the consent of Parliament, or who assembled a few dependent Barons and Burgesses instead of the whole Lords and Commons, acted avowedly and openly an illegal part, and plainly violated a known, established, and fundamental law of the land. It might depend upon the temper of his subjects at the moment, upon the force at his command, upon his success in courting and gaining one class of men to side with him against the rest, upon the courage and patriotism of the Parliamentary and popular leaders, above all upon his own personal endowments, and his credit with the country for an able and successful administration of its affairs, whether he should be suffered to break the law with impunity,—whether he had to dread resistance to his oppressive acts,—and consequently it would naturally depend on all these circumstances whether or not he should venture upon so unlawful a course. But there can be no doubt that he was sure to be often restrained in making the attempt, sometimes opposed when he made it, and occasionally punished when he ventured so far. The most important part of the new law of Edward was the renewal of the provisions originally inserted nearly a century before, and immediately afterwards left out, with the more precise recognition of the power of Parliament, and the important addition of the County and Burgh representation. From this period we may truly say that the Constitution of Parliament, as now established, took its origin; and however that body may have occasionally had to struggle for its privileges, how often soever it may have

submitted unworthily to oppression, how little soever it may have shown a determination to resist cruelty and injustice, and even a disposition to become the accomplice in such acts, we must allow that, generally speaking, it has, ever since the end of the thirteenth century, formed a substantive and effective part of the Constitution, and that the monarchy then assumed the mixed form which it now wears. The great outline was then drawn; the details and shades and tints have since been filled in.

The English nation ought piously to hold in veneration the memory of those gallant and virtuous men who thus laid the foundations of a Constitution to which they are so justly attached. The conduct of the Barons in John's reign is indeed above all praise, because it was marked by as much moderation and wisdom as firmness of purpose and contempt of personal danger. They had no sooner held their Council at St. Albans, and proclaimed the Charter of Henry I., than the tyrant, landing with his foreign troops, marched to lay their estates under military execution, and take signal vengeance on their persons. Cardinal Langton, the Primate, who, though forced on the kingdom by papal domination, had ever shown himself a true patriot, stayed his progress by his peremptory remonstrances, and by his threat of excommunicating all who should engage in such a warfare, while the legal course of bringing offenders to trial was open to the Crown. He afterwards encouraged the Barons, at the Council of St. Paul's, to insist on Henry's Charter, and excited them by his persuasive eloquence to take the famous oath, which he solemnly administered to them, that they would die sooner than depart from this demand. He had already compelled John to promise the same Charter, then termed the Confessor's Laws, as the condition of reversing his excommunication. Once more, in the assembly of Bury St. Edmunds, he influenced them by his eloquence, and they took their oath at the altar, to make endless war on the King until he granted their demands. Nay, when John, in order to gain over the clergy, as a last expedient granted them a charter, abandoning all right of interfering with the choice of Bishops, and declaring that their election, though not confirmed by him, should still be valid, promising, moreover, to lead an army to Palestine, and taking the cross himself as a pledge of his pious resolution, the

Primate was so little to be moved from his principles, or duped by such tricks, that he adhered to the party of the Barons throughout, only so far gained the King as to make himself the bearer of propositions for their consideration, and, when the Pope had commanded him to yield, positively refused to excommunicate them, according to the papal threats, but threatened to excommunicate John's foreign troops unless they were instantly disbanded.*

But as the Pope's whole conduct in this important affair was wholly unjustifiable, and indeed despicable, and as his successor in Edward's time had no share in the resistance offered by the Barons, the Romish advocates are fain to claim for their Church a share not only in the proceedings which extorted the Great Charter from John, but also in those which rendered it effectual to its purpose under Edward. Accordingly, Dr. Lingard, while he places Langton on a level with the Barons of Runnimede, pronounces Archbishop Winchelsey the author, with the two earls, Norfolk and Hereford, of the great change in 1297. Nothing can be more absurd. He wholly overlooks Langton's great praise, of having alike opposed the encroachments of Rome and of the domestic tyrant, of having faced the indignation of the Vatican, refused to execute its menaces, and used its thunder against John and his foreign mercenaries—of having shown so noble a disregard of his order and its interests, that the bribe of the January charter fell as powerless before him as the threats both of Innocent and his vassal. Winchelsey, on the contrary, was ever in league with Boniface VIII., obtained from him the bull against lay encroachments, took up his position in defence of the Church revenues behind that bulwark, was melted by Edward's speech and tears at Westminster, as much as the mere mob, to whom the crafty Prince appealed

* I feel assured that this is the correct view of Langton's conduct, notwithstanding the suspicion that may be supposed to rest on it from his having been employed by John after his Charter of the 15th July in favour of the Church. It is certainly true that the Primate was tendered with the Bishop of Ely and Earl of Pembroke as his security to the Barons for his promise in January to give them an answer at Easter to their demands. He was also joined in the mission to the Earls of Pembroke and Warenne in April. But his refusal to excommunicate them, his threats of excommunicating the Foreign troops, and the Pope's letter in March, insinuating that he fomented the dispute, seem decisive in his favour; not to mention that his suspension from his see by John continued to the end of that tyrant's reign.

against his Barons, and was evidently disarmed by the order immediately after issued in imitation of John's early Charter, so utterly scorned by Langton, to protect the clergy in the enjoyment of all their possessions, and Edward immediately took him into favour, appointing him one of the young Prince's tutors and Council as Regent in his absence. His conduct in this office has been extolled. But to what did it amount? On the Barons refusing to attend the Council's summons to Parliament unless the gates of London were given up to their keeping, Winchelsey advised that this requisition should be complied with, clearly against his duty as the Regent's chief councillor. He appears throughout to have acted an interested part, prompted solely by a regard for the interests of his order; and the whole merit of the great change which we have been contemplating belongs to the Barons, the merchants and their leaders, Bohun of Hereford, and Bigod of Norfolk.* The clergy all behaved like their Primate. Edward's concessions won them over to his side, and they left the Barons and the people. On his sailing he, forgetting these concessions, ordered a heavy tallage to be levied upon their personal property; straightway they left him, and once more took part with the country.

While Edward has justly obtained the highest praise from lawyers for the great improvements which he introduced into our jurisprudence, we may remark that the two great changes which he made in the law, were pointed in directions not merely different, but diametrically opposite. The power of the Barons and of all landed proprietors was exceedingly increased by the famous statute *de Donis*, which allowed them to entail their real property, and thus to sustain the landed aristocracy. But the restraints upon alienations to the Church by the laws of mortmain, tended exceedingly to restrain the power of the spiritual Barons, though they might also give some additional protection to the lay aristocracy.

* The answer of the latter to Edward, when ordered to follow him abroad as commander-in-chief, is well known. "By the eternal God, Sir Earl, you either go or hang." —"By the eternal God, Sir King, I neither go nor hang." The Primate and his Clergy were contented with a lower tone. They begged the Commissioners sent by the King to represent that they had a spiritual head as well as a temporal, and must first have his leave to pay their money—adding, "We dare not speak to the King ourselves."

The conquests of Edward had no sensible tendency to increase the power of the Crown. Scotland was a source of expense and of weakness. Wales was a still greater diversion to his forces, without producing the least return either in men or money. On the Continent he was generally unsuccessful, and he found the expense and defence of his dominions there fully equal to any benefit they ever yielded him.

CHAPTER IV.

GOVERNMENT OF ENGLAND—THE PLANTAGENETS.

Edward II.—The Ordinances—Virtual Deposition of the King—His actual Deposition—Edward III.—His Encroachments—Checked by Parliament—Right of levying Men—Restrictions on it—Parliamentary Elections and Procedure more obscure—County and Borough Elections—Composition of the Lords' House—Of the Commons—Places of meeting—Powers of the Houses severally—Partial Parliaments summoned by the Crown—Procedure—Triers; Petitions; Bills—Preparing of Statutes—Mode of executing them—Vacation Committee—Richard II.—Revolutionary times—Henry IV.—Henry V.—Progress of the Commons under the Lancastrian Princes—Henry VI.—Progress of Parliamentary Privilege—Base conduct of the Plantagenet Parliaments—Richard III.—Henry VII.—Decline of Baronial power.

THE more regular establishment of the Parliament, and the more full recognition of its privileges, was plainly to be seen in the events of the next reign. Edward, on his death-bed, had extorted a promise from his son that he would never allow his unpopular favourite, Piers Gaveston, to return from banishment without the Parliament's leave. That body made the favourite's return without their assent the ground of hostile proceedings against him, and his perpetual exile was made one of the conditions annexed to their first grant of a subsidy to Edward II. The annexing as a condition the redress of public grievances was now the course taken by them as a natural consequence of their acknowledged power to give or to withhold supplies. But a short time, however, elapsed before all regular and constitutional government was at an end, the Barons having, by an armed demonstration, compelled the King to allow the appointment of a Commission, called the *Ordinances*, consisting of Prelates and Barons empowered to prepare new Ordinances for the redress of grievances. Their proceedings agreed to by the King in Parliament nearly resembled those of the Mad Parliament in Henry III.'s reign; as their authority was plainly modelled upon that of the Committee of Barons then appointed. Some of their Ordinances were valuable improvements, especially that regulating the choice of sheriffs; abolishing all but the ancient purveyances, and repeal-

ing the new and oppressive taxes on wool and other merchandize. One clearly resembled the Mad Parliament's law, that three parliaments should be held yearly. The Ordinances required "one to be held each year, or oftener if need be." Another also resembled the former precedent, for it transferred the whole functions of the Crown to the Parliament. The King was bound to obtain the consent of the Barons before he could either levy war or quit the realm; and the Regent, in his absence, was to be chosen by the Parliament, whose advice and consent was also made necessary to the appointment of all the great officers of state and governors of the foreign possessions of the Crown.

The other transactions of Edward II.'s reign are immaterial to our present purpose, but throughout the whole of it there prevailed the assumption that no matter of great importance could be transacted without the presence, interference, and sanction of Parliament. Nor is there any part of the Constitution practically of more importance than the recognition of this principle. The King's deposition was effected by a Parliament which the Queen and her paramour, Mortimer, summoned at Westminster, in the name of the King, by means of the Prince whom the Prelates and Barons in their interest had named guardian of the realm, or Regent. The Parliament also passed an act of indemnity for all offences committed during the revolutionary crisis, and appointed a Council of Regency, the young sovereign being only fifteen years of age.

The weakness of the Crown in the second Edward's reign had prevented all violent measures for raising supplies by the Royal authority alone. But his son, whose wars occasioned a great increase of expenditure, was frequently induced to exert the prerogative which, like his grandfather, he always asserted, and which he maintained that the famous statute of 1297 had not validly abridged. He contended that he had the right to impose tallage "in cases of public emergency, and for reasonable cause;" nor would he even so far yield to the representations of the Commons as to declare such imposts illegal, always adding a saving clause for these extraordinary occasions. He several times, in defiance of the statute "*De Tallagio non Concedendo*," levied a tallage of his mere authority. He did so in 1338, at the beginning of the war which led to his great naval victory of Blakensberg; and moreover had recourse to forced loans, and to

seizures of all the tin and wool of the year, the *Maletolte* of his grandfather. Nevertheless the war was extremely popular with both Lords and Commons; both urged him to prosecute it, and were satisfied with his promises that the *Maletolte* should cease in two years, to which effect a statute was made. In 1342, however, he was allowed to levy it for three years longer, by the assent of the Lords and a Council of Merchants whom he had irregularly summoned, instead of assembling the Commons. The Parliament suffered this on express condition that no such maletolte should ever after be imposed. For some years he found that the grants of Parliament were a more convenient resource, and to these he confined himself. He yearly assembled his Parliament, and obtained grants for the prosecution of the war, illustrated as it was by the great victories of Crecy in 1346, and Poitiers in 1356, the capture of Calais in 1347, and the great sea-fight of 1350 in the Channel. The consequence of this constant recourse to Parliament was that taxation became in some sort regulated upon a system; and sometimes when the King had exceeded his lawful authority and imposed a tax, the Parliament would, after remonstrance, themselves grant the same duty, evidently for the purpose of preventing an illegal precedent, and wisely preserving the bulk of their constitutional privileges. On one occasion, in 1346, when he had issued an ordinance that all landowners should furnish knights and archers in proportion to their rental, and each burgh so much money, the Commons remonstrated; when he stated the necessities of the war, and the assent of the Lords. This, however, did not satisfy the Commons; and he promised that it should never be drawn into a precedent. Several further remonstrances followed, and an act was passed, that for the future all such ordinances should be deemed contrary to the liberties of the realm, and further that no petition of the clergy should be granted without the Council certifying that it contained nothing against the rights of the Lords and Commons. To all this the King assented; but when the Parliament further insisted that no statute should be made at the petition of the clergy without the consent of the Lords and Commons, he gave their request a civil refusal.

In raising men for the public service, the King, during the early reigns of the Plantagenets, appears to have been under less restraint than in raising money. This greater latitude arose

from two causes: the pretext of danger to the state was always at hand, and the great bulk of the men levied were of the common people, whose interests were little regarded by the Barons, Knights, and traders that composed the Parliament. Hence we can trace hardly any limits to the King's authority in calling out his subjects on emergencies. In the Anglo-Saxon times, and even under the Anglo-Norman Princes, the reliance of the Crown was entirely upon the feudal services of the vassals with their sub-tenants; and it was a force much better calculated for home defence than for the operations of foreign war, because it only served for a limited time, and was seldom in the field. The number of men which the land was bound to furnish had so exceedingly decreased from the changes in the distribution of property, and from the neglect of the public servants who had charge of the musters and arrays, that they were supposed to have been ten times more numerous in the twelfth than in the thirteenth century; and the main reliance of the Edwards was upon contracts, for men properly equipped, made with the Barons at the hire of enormous sums, as much as one shilling and sixpence a-day for a mounted archer (equal to thirty shillings of our money); and upon infantry raised by mere Royal authority in the counties. It was indeed understood that no man could be compelled to leave his county unless in case of invasion; but pretexts were never wanting of such threatened dangers; and it was often urged that the interest of the people was rather to fight at a distance than have their homes ravaged by the war. Not only fighting-men were thus pressed into the military service of the Crown, and vessels to carry troops abroad, sometimes all the shipping to be found in any of the ports, with as many seamen as were wanted to man them, but workmen and artificers were swept away in great numbers and exposed to the perils of war. Thus near 400 of these were carried over to the siege of Calais in 1348. As many as 1100 vessels were seized in this manner and used by Edward III. before the battle of Blakensberg. When, in 1346, before Crecy he issued the ordinance which has been mentioned above, the Commons complained of the practice as regarded levies of men, inasmuch as the landowners were affected by that proceeding, and not merely the peasants. An Act was in consequence passed forbidding the

carrying of any man out of his county in future, excepting in the case of actual invasion.

Such was the struggle always maintained in those times between the Crown and the Parliament, that is, between the Sovereign and the great and little Barons and the mercantile classes, then first rising into importance. There were many infractions of the laws made to protect the subject, many invasions of the constitution as it was allowed to stand upon the provisions of the Charters, and the statutes confirming and extending those Charters. But the progress was steadily making towards a more exact observance of the law, a more secure enjoyment of popular rights, and a more strict limitation of the Royal authority. The reign of Edward III. was distinguished, as we have seen, by an additional statutory declaration of those liberties and those restraints, both as regarded taxing and the levying of troops, if indeed the latter enactment be not rather to be regarded as a new chapter added to the rights of the people and the limitation of the King's power. Another statute in his reign regulated and defined the right or abuse of purveyance, that is, the exaction of provisions on the Royal journeys. A third, made in 1351 by what has been in consequence called the Blessed Parliament, abolished the fanciful heads of the old treason law, and confined that offence within known and narrow bounds, which it has, in the further progress of legislation, never materially exceeded, unless for short periods of time.

Hitherto in tracing all the branches of the Constitutional progress in these three reigns, we have been upon well-known ground; but if we proceed further and inquire into the constitution of Parliament, as regards the mode of its election, and the course of its proceedings, we are involved in extraordinary difficulties. The ancient authorities, for the reasons stated in Chap. XXII., are either silent or give us very meagre information on those most important matters; and we know little more for certain than the result, without being able to ascertain the steps by which it was attained. Thus, though we know that the whole Freeholders, first the tenants *in capite*, and afterwards, but at a period unknown, also the sub-tenants of the Crown,*

* Mr. Hume erroneously thinks that the statute 7 Hen. IV. gave rear-vassals their right of election, but both that and the statute 11 Hen. IV. evidently assume that they already possessed it.

chose the Knights of the shire, we are little able to tell how the Burgesses were elected. The probability is, that all the Burghers in each town had a voice; but we cannot say what regulated the issuing of the writs to the different towns, and whether this depended on the Royal will, or on that of the sheriff, or on the right of some towns to send representatives, and of others to be excused from the burthen, as it was then considered in consequence of the obligation to pay the members wages during the session. So we are left in some doubt as to the right of the Barons. All Prelates had seats in Parliament by virtue of their episcopal baronies; and all who held lands by tenure of barony had a right to sit. But how these were distinguished from the lesser Barons, the freeholders, and how far the King could withhold the writ, as well as how he was to distinguish the classes of Barons, we are imperfectly informed; only we may affirm, that a large discretion in this respect appears to have rested in the Crown. Again, mitred Abbots had seats at first as well as Bishops; and their right to sit only ceased upon the dissolution of the monasteries in Henry VIII.'s reign.

Beside Barons, lay and clerical, the Judges and Privy Councillors were also summoned to Parliament, and formed part of the upper or Lords' house when this was separated from the lower. They at first sat and voted as well as attended; when they ceased to be component parts of the Lords' house, and began to attend as assistants only (which the Judges do still), we are unable to say.

The number of the County members was generally two from each shire; but in the 11 Edward I. four were chosen. The Burghs were, about the same period, not more than twenty: each of which chose two members. In the reign of Edward III. the Burghs amounted to one hundred and twenty, and continued of this number till Elizabeth's time.

The precise period at which the Commons first sat apart from the Lords is equally unknown: indeed, it is perhaps less known than any part of the Parliamentary history. It can hardly be supposed that the different orders ever sat together after the Burghs sent members. At first the Knights sat in all probability with the Barons, and afterwards with the Commons. That in early times the separation of the orders, and even of different members of the same order, was frequent, there remains

clear proof. In 1282 the members for towns north and south of Trent met in different parts of the kingdom, and each came to separate resolutions as to supply. In 1360 the Commons met in as many as five different places. Nothing can more clearly show that the purpose in summoning the Commons was to obtain grants from them of supply. The clergy met in Convocation, and taxed themselves in their separate character. The Prelates who attended Parliament formed an entirely different body from that properly representing the Church; they sat as holding their lands and their bishopries generally by the tenure of barony, and in this respect were exactly on the same footing with the lay Barons. The Commons only by slow degrees obtained a full equality with the Lords; they were gradually admitted to an equal voice upon the greater concerns of the State. All questions respecting the succession to the Crown, the guardianship of the infant Sovereign, the Royal marriages; treaties concerning the foreign possessions of the realm; all questions, indeed, that did not immediately concern the imposing of taxes or regulation of trade, appear to have been confined to the cognizance of the Lords. But the Commons occasionally took the opportunity of a difficult crisis to interfere at first only with their assent, and in support of the prevailing party in the Lords, generally by an almost unanimous resolution; and in the time of the first Plantagenets there are few instances of even this interference. The ordinary course of the Crown was to consult the different orders upon different matters, and no one order was held entitled to have its assent asked as necessary to the passing of any bill that did not affect its separate interests. The whole were only understood to be consulted of necessity on matters affecting the whole, and the Commons hardly ever upon the higher affairs of State. Thus the Lords were entitled to refuse their assent to bills affecting the Peerage or Prelacy, and generally on the *ardua regni*, and the Burgesses on matters affecting trade. But the Commons were not entitled to be heard on measures of the former description, or the Peers on those of the latter. Thus in Edward III.'s time a duty of 2*s.* tonnage on foreign wines, and 6*d.* in the pound on goods imported, was granted by the Citizens and Burgesses only, the consent of the Lords not being held necessary, as they were not supposed to be interested in the matter. Edward attempted once or twice to

carry this notion much further, defending his imposition of duties on foreign merchandize upon the pretext that it was paid by foreigners and did not affect his English subjects. But the Parliament remonstrated, and generally obtained his consent to abstain from such impositions.

Another course was more than once resorted to by him upon the same principle. He would assemble one class, as the foreign merchants in London, and ask an increase of the duties imposed by Parliament, in consideration of granting them certain commercial privileges. They agreed; and he then issued writs to all the towns that he might meet the members from each and offer them the same privileges on the same conditions. They met in an irregular kind of Parliament, and very wisely refused his offer. Another proceeding of his was liable to less objection, though it would at this day be deemed very irregular. He would assemble the Lords and obtain their approval of some measures, or the Lords and Knights of the Shire, or Deputies from the merchants, and thus fortified would hold a Parliament and propose the bill to them. But it was also usual to hold assemblies of the Lords apart from the Commons, and these were termed Councils rather than Parliaments. If any of the Commons attended, they were there only in their capacity of great officers of state or Privy Councillors; and it could but rarely happen that these offices were held by any but the Peers, lay or ecclesiastical.

The time of holding Parliaments was, as we have seen, early the subject of legislative enactment. In Henry III.'s reign, in Edward I.'s and in Edward II.'s, provision was made that Parliament should be holden yearly at the least. In Edward III.'s time a new Act was passed requiring a Parliament to be held every year.

When the Parliament met there was generally an adjournment to give the members time to arrive. The Chancellor then explained the King's reason for assembling them, and directed each order to go to its own chamber. Two committees were then appointed of what was called *Triers*, that is, to examine and decide on petitions. The Lords chiefly occupied themselves with such subjects, administering justice in the last resort, deciding cases when the Judges differed or thought they had no authority, and granting relief generally on the application of

parties. The number of petitions presented is said to have been enormous under the first Plantagenet Princes after Magna Charta. It is related that a practice grew up of lawyers getting counties to elect them, and then surreptitiously intruding the claims of their clients into Petitions or bills of the Commons, which thus appeared to back those claims before the Lords. This led to the statute prohibiting lawyers from being chosen knights of the shire. There was little chance of the merchants and others in burghs returning them.

All propositions in either house took the form of Petitions to the King for his order, assent, or edict, which thus had the force of law; and at the close of each session, the Clerks of the Chancery reduced the whole to the form of Statutes, which were then sent to the Judges for their guidance, and to the Sheriffs of Counties for general publication. But it thus often happened that the matters in the bills underwent great alteration; that the King caused the redress which the Parliament had sought, and which he had promised them, to be omitted in the statute; and that the clerks themselves, from carelessness, ignorance, or sinister motives, changed the terms of the law. It also constantly happened that as soon as the supplies were granted Parliament was dismissed by prorogation; the promised redress was forgotten; and the King's officers and others, whom the Acts commanded to do certain things, entirely disregarded the command. Indeed, the King even claimed a right to alter in his Privy Council the provisions of the Acts that had been passed during the session. These abuses, which never could at any time have been the law, were complained of, and regulations were made to prevent them in future. The Commons required that all enactments should be put into their final shape before the Parliament was prorogued; and in 1354 a statute was made strictly forbidding any alteration whatever of an Act after it had been made, without the consent of both houses. It was not so easy to compel the strict execution of the laws made, and we meet with constant complaints of their being inoperative.

It is remarkable how the careless manner of preparing Acts of Parliament has been handed down even to our day. It is a remnant of the "olden time," and the practice of leaving everything to the clerks, that there is at this day so very imperfect a security against careless or wilful error, or alteration in the most impor-

tant of all records, that of the statutes of the realm. There is no true record, no constat of even bills being read as often as the law of Parliament requires, nothing except a mere note of the clerks of the Houses; and when an alteration is made in a bill by one House, it is made on an unsigned and wholly unauthenticated slip of paper. A serious irregularity lately arose in this way, and gave rise to much discussion.

The imperfect provision made in the old Acts for carrying into effect the avowed intention of the legislature is well known. Thus when an aid, or a tallage, or a subsidy was granted, the machinery for raising it was left undescribed. A tallage was in fact a property-tax, and the Act granting it gave in a few lines what it takes now a hundred pages to describe. The whole manner of levying the money (a thing fully as important to the subject as the amount to be levied) was left in the King's discretion. The greatest oppression having been suffered in Edward II.'s time from his collectors, Edward III. fell upon an expedient which gave very great satisfaction to all, though it was certainly an unauthorised act of legislation in itself; he appointed commissioners to compound with each county and each town for the amount which they should pay towards the tallage or subsidy that had been granted in general terms by the Parliament.

When the King dismissed, prorogued, or dissolved the Parliament, and it seldom sat more than one session, a committee was sometimes appointed of the Lords to sit during the recess, for the purpose of finishing the judicial or administrative business which had proved too bulky to be dispatched during the session, the time being always very short during which Parliament was kept together. Abuses arose out of this practice, the committee assuming powers of a legislative kind; and another practice of a far worse nature was resorted to in troublous times, of which we have seen already two instances under Henry III. and Edward II., that of delivering over the Prerogative of the Crown and the legislative power of Parliament to a select committee, always composed, like the Vacation Committee, of Lords only.

The constitution of Parliament appears to have undergone little or no alteration from the time of Edward III., but its functions became gradually better defined; the authority of the Commons was pretty regularly on the increase; and the privileges of its members became more fully secured. In the turbulent reign

of Richard II. the Lords alone gave absolute power to the Duke of Gloster during the King's minority. But the Commons carefully looked after the public expenditure, required to have the inspection of the accounts, insisted on the supplies being enrolled, in order that the expenditure might be better examined, and only granted a subsidy on finding that everything had been regularly carried on. This was in 1378, and next year the King offered to produce all accounts; when the Lords chose a committee of their number to examine even his household expenditure. The Parliament having now required that the ministers of state should be chosen with their consent, and having imposed a poll-tax, the well-known insurrection of the common people under Wat Tyler broke out, and the sufferings of the villeins or serfs, the bulk of the people, excited such fury that the King granted a charter of emancipation to appease it. The aristocracy immediately revoked this grant. The Commons now required, for the first time, the removal of one obnoxious minister, Suffolk, the Chancellor: the King said he would not at their desire displace the meanest scullion in his kitchen. He was, however, forced to yield, and Suffolk was at first dismissed, then impeached. The Lords now appear to have usurped the powers of the Government, which they handed over to a committee of their number, creatures of Gloster, with legislative as well as executive authority, as in Henry III. and Edward II.'s time. This happened in 1386, and the next Parliament was devoted to that ambitious Prince. The Commons, however, suddenly took part with the King,* protected him in his resumption of the Royal authority, and even after his murder of Gloster, helped him to pass the statute of Provisors, which finally excluded the papal power, and established the Royal authority in all ecclesiastical appointments; and they gave him both a subsidy for life and appointed a committee of his creatures, vested with supreme legislative powers. The result is well known; an universal disgust was excited by a revolution which changed the government into a despotism—a revolution, too, effected by the people's representatives, and for the benefit of a Prince whose life was as disreputable and base as his capacity was mean. Henry of Lancaster was enabled to dethrone and murder him, and that family reigned for

* Nothing can be more obscure and more defective than the records which have reached us of all these sudden changes.

two generations peaceably, for a third with constant resistance and various fortunes during a desolating civil war. But the infirm title of the Lancastrian Princes, although supported by the universal consent of the country, and backed by the great talents of the first and the brilliant victories of the second monarch, was in that early age a source of such weakness, that none of them ever ventured upon any excess of the legal prerogative; all of them were fain to await the will of their Parliaments for grants of money, and all of them suffered the privileges of Parliament to grow up and be consolidated.

Thus Henry IV. was no sooner seated on the throne than a Parliamentary declaration was made that all transfer of the supreme power of legislation to any committee of Parliament was illegal. The interference of the King in elections, which had first been practised by Richard II., was complained of as soon as the importance of the Commons came to be partially felt, and the sheriff was restricted from exercising the power he had hitherto assumed of returning persons not chosen by the true majority of votes. Moreover the Commons now began to interfere with all parts of the administration, and to insist upon being consulted on other matters as well as on questions of taxation. They were allowed to have freedom from arrest, though an Act to declare this immunity was at first refused, and only granted in the reign of Henry VI. They claimed freedom of speech; and on the sentence which had been passed on Haxy, one of their members, in the last reign, for words spoken in Parliament, being now reviewed, a complaint was made of the Speaker making verbal speeches to the Lords and the King—a practice, however, which has been continued to our time, and which gave rise, within my recollection, to a formal motion against Mr. Abbot, supported with great ability, and characteristic and hereditary love of liberty, by my excellent friend Lord William Russell, that Speaker having taken upon him to pronounce an opinion against the Catholic question while addressing the Throne at the close of the session. The false entries made after the end of the session were again complained of, and it was agreed by both houses that these should be in future made in presence of a joint committee. Grievances were regularly stated, and redress promised, previous to any supply being granted. The King was even obliged to send out of the country on one occasion persons dis-

tasteful to the Commons, among others four foreign attendants on the Queen, and against whom the King vowed that he knew no ground of complaint whatever but that the two houses disliked them. About 1401 a most important step was made by the Commons requiring to determine in each grant the appropriation of the money, to which the King assented, excepting only such moderate sums as might be left at his free disposal.

The brilliant career of Henry V., and his marvellous achievement of nearly conquering France, and obtaining the French crown, which a singular combination of accidents aiding the gallantry and skill of his military operations enabled him to perform, while it gratified the vanity of the nation, and made his wars as popular as they were pernicious to the country, had no effect whatever upon the balance of the constitution. On the contrary, while he always obtained his resources from the grants of the Commons, he treated respectfully their complaints; pledged himself that no alteration of the statutes, when made, should ever be permitted without their consent; and, what had never before been distinctly admitted, and what was directly contrary to the understood rule and practice in the time of the Edwards, he agreed that no statute should have any force or effect without their express assent, although they granted him the tonnage and poundage for his life, a thing never before done except in Richard II.'s reign, and on the eve of his usurping absolute power. Henry laid before them his negotiations with the Emperor Sigismund, and he applied to them for interposing the security of Parliament to the loans which his wars obliged him to contract—a precedent now first given, and unfortunately followed afterwards to so ruinous an extent.

To his unhappy son he bequeathed the crown of France as well as England; and his quiet inheritance of both the great genius of his brother, the Duke of Bedford, would have ensured if anything could have maintained such a conquest, or anything could quiet the English Barons. But beside losing his foreign dominions, this ill-fated prince was doomed to pass a life of thraldom, of deposition, of constant vicissitudes, while his kingdom was torn by the most violent factions, and his people became a prey to all the evils of civil war. In the earlier part of his reign, indeed, he was only nominally on the throne. From his accession, at nine months old, to the age of twenty-one, he had little or no

power. The regency was committed to a Council and a Protector by a resolution of the Lords, without any interposition whatever of the Commons. Thirty-two years afterwards, when he had fallen into a state of mental alienation, the Lords alone appointed a committee of their number to visit him, and ascertain his capacity; and on their report an Act was passed appointing a Protector. He recovered his reason and his authority some time after. He again fell ill, when the Commons went no further than to request that the Lords would provide for the emergency by appointing a Protector. They named York accordingly. He required as a condition to his accepting the place that his authority should only be determined by the King in Parliament, with the advice of the Lords Spiritual and Temporal. By the Lords alone then was the defect of the Royal authority supplied, and they named the great officers of state, as well as the Protector, without any interference of the Commons. On one occasion, while Henry possessed his authority, the Commons, who never were consulted on such high questions, unless when a grant of money was required, or a statute was to be passed regulating the administration of the government, yielded to a popular clamour wholly groundless, and impeached a minister, Suffolk. The sentence of banishment was not pronounced by the Lords, but by the King alone, the Lords protesting that it was his act, not theirs. The mob, as is well known, dissatisfied with the punishment, put him to death. To speak of this period, therefore, as one of the least authority upon questions relating to the Regency, or indeed to the powers of either house of Parliament, seems one of the wildest and most unreflecting errors that could be committed. Nevertheless in the discussions on the regency, 1789, no precedent was made more the subject of reference and argument than those furnished by this troublous reign: a singular proof of the value attached to precedents, and the disposition blindly to consult them!

In some respects the Commons made progress during those times. They obtained that Parliamentary recognition of the privilege to be free from arrest which Henry V. had refused. They likewise were allowed to pass statutes regulating the modes of election and preventing false returns. Early in this reign, too, the qualification of forty shillings was fixed to the right of voting for knights of the shire, an encroachment certainly upon

the rights of freeholders, but a clear proof of the growing value attached to a seat in the lower house.

The conduct of the Parliament, both Lords and Commons, in the times of which we have been treating, was as bad as possible in all particulars save what related to their own privileges. The nation can never be sufficiently grateful for the steadiness with which they then persisted in establishing their legislative rights, and their title to interfere in the administration of public affairs. But their whole conduct towards individuals and parties, the use they made of their power, was almost always profligate and unjust in the greatest possible degree. During all Richard II.'s reign, all Henry VI.'s, all Edward IV.'s, and Richard III.'s, up to the accession of Henry VII., they blindly followed the dictates of the faction which had the upper-hand—the prince whose success in the field had defeated his competitors, the powerful chief whose authority prevailed at the moment. The history of their proceedings is a succession of contrary decisions on the same question, conflicting laws on the same title, attainders and reversals, consigning one day all the adherents of one party to confiscation and the scaffold, reinstating them the next, and placing their adversaries in the same cruel predicament. Thus, in 1461, on Edward IV.'s victory, they unanimously attainted Henry VI., and all his adherents, including 138 knights, priests, and esquires, as well as princes and peers, and declared all the Lancastrian princes usurpers. A few years after both Edward IV. and Henry VI. were actually prisoners at one and the same time. The next year Edward, who had not regained his freedom and his crown for many months, was fain to fly the realm, when all his adherents were attainted without exception. Richard III., notwithstanding the unusual horror excited by his manifold crimes, after a few months wearing the crown, which he had been offered by many of the Lords and some citizens and gentlemen, but by neither house of the legislature, found it quite safe to assemble a Parliament, which at once recognized his incurable title, and attainted all his adversaries. When the Earl of Richmond defeated and killed him at Bosworth, and took the crown offered him by the soldiers on the field of battle, the Parliament immediately reversed all the attainders of the Lancastrians, and declared the princes of that house to have been lawfully seized of the crown. Nay, the Commons settled tonnage and

poundage on him for life. They however added as a kind of condition, in which the Lords concurred, and to which he assented, that he should strengthen his confessedly bad title to the crown by marrying Elizabeth, the representative of the York family. At the same time, partly as a means of finance, somewhat inconsistently with their opinion of the York title, they attainted, that is, confiscated, thirty of the York party, on the unreasonable and indeed unintelligible ground of having been in rebellion against Henry when he was only a private gentleman, Earl of Richmond. But it is to be observed that the statute limiting the crown to Henry and the heirs of his body, was made by the assent of the Lords at the request of the Commons.

Except in these Acts, in requesting Henry would marry, and in obtaining from Richard III. a declaration against the legality of the grants extorted by Edward IV. under the preposterous name of benevolences, the Commons never interfered in state affairs, successions, regencies, or appointment of protectors, during these latter Plantagenet reigns, any more than they had done in the earliest periods of the family's history. Richard was chosen Protector by the Council, as Gloster had been named with a Council of Regency, on Henry V.'s decease, by the Lords alone—as Henry IV. had been by the Lords, when they declared Richard II. dethroned—as Richard of York had been declared also, by the Lords alone, heir to the crown on Henry VI.'s decease. The Lords too declared Edward IV. King after the battle of Barnet. The aristocratic form of the government is sufficiently proved by these passages; by the power of the Barons, which disposed of the crown repeatedly in the field as well as in Parliament; by the occasional arbitrary authority conferred upon committees of their own body. It was only by slow degrees, and after the Crown had succeeded in curbing the Baronial influence, during the next period of our history, that the Commons could be said to have obtained their full equality with the Lords in the frame and practice of our Constitution. To this fourth period, the reign of the Tudors, we now proceed.

CHAPTER V.

GOVERNMENT OF ENGLAND—THE TUDORS.

Men's conduct more important than Institutions—Tudors and Plantagenets compared—Sources of the Tudor Power: Title; Economy—Infamy of Henry VIII.'s Parliaments—Three Examples worse than the rest—Henry VIII.'s Judicial Murders—Henry VII. and VIII. compared—Edward VI.'s Reign—Subserviency of Mary's Parliament—Privy Council Jurisdiction; Star Chamber—Its operation on Parliament and Juries—Abuse of the Power by Individuals—Elizabeth's Reign; Progress of Parliamentary Privilege—Question of Monopolies—New Boroughs added—Tudor Measures touching Religion—Elizabeth's Persecutions—Causes of the Subserviency of the Tudor Parliaments.

NOTHING in the history of Government so strongly illustrates the position that the tyranny of rulers and the liberties of their subjects depend still more upon the manner in which the people and their leaders act, and as it were work the constitution, than upon the frame of the government itself, as a comparison of our history under the Plantagenets and under the Tudors. The powers of the Crown and of the Parliament, the political institutions of the country, its municipal as well as its organic laws, were the same under the two lines of Princes; nor had any event happened, except the destruction of the ancient nobility, to arm the latter family with a force not possessed by the former race; and that important event had not taken place all at once, by any sudden revolution, but by a series of civil wars, with their consequent attainders and confiscations, which left hardly any of the old baronial families, and substituted in their room a number of new ones, neither possessing the same large domains, nor enjoying the same influence over their vassals, nor holding the same place in the public estimation. The great diminution of aristocratic power, that is of the feudal aristocracy, thus occasioned during a century, from the reign of Richard II. to that of Richard III., had not materially increased or confirmed the power of the Sovereign, partly because of the infirm title of the House of Lancaster during the earlier portion of the period, partly because of the constant struggles of the King for his crown with one party or other of the Barons

during the remaining and greater portion of the time. But when Henry VII., by his marriage with Elizabeth of York, put an end to the contest of the two Roses, it was of great importance to the Royal authority that the feudal power had ceased to be formidable. Nevertheless, no change whatever had been effected in the fundamental principles of the constitution from the time of Edward III.—hardly indeed from that of Edward I.—as far as the extension of the prerogative was concerned; and the progress of the constitution had since the decease of Richard II. been altogether in the opposite direction, of confirming the rights of Parliament, and extending the influence of the Commons over the administration of public affairs. The Tudors, however, reigned with a more absolute authority than their predecessors had possessed.

The better title of these monarchs no doubt contributed much to their authority as compared with that of the Plantagenets who immediately preceded them. But they owed still more to the state of their finances. Almost all the concessions which had been obtained from the Crown for the last two hundred and fifty years had been extorted by the pecuniary difficulties in which the successive princes were placed, first, from the defects of the feudal policy, throwing the Sovereign upon the resources of his land revenue and the services of his vassals, afterwards from the expensive wars carried on upon the Continent. Henry VII. was the first of our kings since Henry III. who ever lived within his income. His avaricious habits inclined him to rigid parsimony; when the grant of tonnage and poundage for life was made to him, he found that he could gratify his propensity to accumulate without having recourse to Parliament for supplies, and he only applied in 1504 to that body for the feudal aids on knighting his eldest son and marrying his eldest daughter. So little, however, was he in want of their liberality that he accepted but 30,000*l.* of the 40,000*l.* which they granted him. The treasure which he left enabled his more brilliant and spendthrift successor to go on, if he had so chosen to do, for some years without a Parliament. Thus, had it not been for Perkin Warbeck's rebellion, which gave room to forfeit the estates of those attainted for adhering to him, there would have been no Parliament assembled from that which ratified Henry VII.'s title in 1485 to that which he called

in 1504 for a special purpose, nor from that till his son's in 1517; and as the Parliament of 1494 only met for a few days, on account of the rebellion, and that of 1507 for a like period, these two princes might have ruled without any national assembly for a period of above thirty years. But a comparison of the number of Parliaments called by the Tudors and the Plantagenets will set this in a very clear light. The first three Edwards reigned 105 years, and called 119 Parliaments. The five Tudors reigned 118 years, and called only 58, not nearly half the proportion. The whole Plantagenet reigns from Edward I.'s accession to Richard III.'s were 205 years; and there were called 193 Parliaments. Even if we deduct the several Parliaments held in the same year, and take it by years, the Plantagenets held Parliaments in 130 years of their 205 years' reign; the Tudors only 56 years in their 118. Edward III. held 53 in the 50 years of his reign; Edward I. 49 in 35 years; while Henry VII., in 25 years, held but 7; Henry VIII.,* in 37 years, 21; and Elizabeth, in 43 years, only 13.

But the conduct of the Parliament in the reign of the first Tudors presents the most degrading and the most disgusting spectacle which our history has to record. The successive Parliaments in Richard II., Henry VI., and Edward IV.'s reign were subservient to the faction of the day, and committed violence by wholesale upon whatever party happened to have lost the superiority in the field. But it is more offensive to all feelings of honour, and betokens a baser spirit, or rather a more complete want of all spirit, that the same body, without any revolution having happened in the state to inflame men's passions, or any physical force having been actually impressed upon it, should for the whole of a long reign have made itself the unresisting instrument of whatever oppression a ferocious tyrant could devise for gratifying his cruelty, his lust, or his caprice. Upon one only occasion can we perceive any disposition to resist Henry VIII.: it was in 1525, when he attempted to levy a tax, and afterwards a benevolence. The clergy, whom he first attacked, excited the citizens of London to object, and the Parliament remonstrated, first against the illegal exaction of the tax, afterwards against the demand of a benevolence, as against

* These numbers are taken from the Statute Book, which omits several Parliaments; but the proportions are probably not varied by such omissions.

the statute of Richard III. Nevertheless, the King obtained what he sought, forcing men to compound for fear of violent treatment; and no step whatever was taken to make those answerable who were the instruments of his oppressions—those for instance through whom Henry sent an alderman of London to serve in the Scotch invasion as a punishment for refusing to contribute.

Let us, however, enumerate some of the statutes which were made, and which were immediately acted upon in defiance of all justice and all principle, though not of law.

It was made treason to deny the King's supremacy, though two years before this notable law, to assert it would have been deemed rather insanity than wickedness. Under this act Bishop Fisher and the famous Sir Thomas More both suffered death. It was made treason for any person to marry the King after leading an unchaste life in any respect. To have any criminal conversation with any of his reputed children, with his sisters, aunts, or nieces, was in like manner made high treason. The marriage with Catharine was declared invalid in the face of the whole facts of the case; and the marriage with Anne Boleyn and the legitimacy of her issue were declared by law, with the penalty of imprisonment and forfeiture against all who refused to swear to it, and of death against all who slandered either the Sovereigns or their issue. Then when he tired of Anne Boleyn and put her to death by a mock trial, the Parliament declared that the same marriage had from the beginning been void, and the issue counterfeit or bastard. Not only did this servile body gratify all his caprices in respect of his wives and progeny, marrying and unmarrying him, legitimatizing and bastardizing his issue, at his nod, but in settling permanently the order of the succession they allowed him to alter that order, and to entail the Crown at his pleasure; and thus gave him a power of disturbing the realm, of plunging it once more into all the horrors of civil war, the security from which is really the only benefit, except the Reformation, that the country owes to the Tudors. Their full gratification of his rapacity was in part owing to their timid servility, in part to their religious zeal; but how great soever may have been the benefits derived from suppressing the monastic orders or the exclusion of the Abbots from Parliament, it must be allowed to have been purchased at a costly price, when we

reflect, first, on the wholesale confiscation of the property belonging to nearly 900 bodies, besides above 2300 chantries and chapelries, and, next, on the scandalous perversion of all justice by which the parties were by thousands condemned to poverty and stigmatized in their reputation, unheard and before a judicature of their enemies; and, lastly, on the use made of the spoil thus greedily seized upon false and slanderous pretexts, or given up with reckless profusion to the tyrant, and parcelled out by him among the creatures of his favour, the tools of his oppression. Whatever victims he chose to destroy, the Parliament attainted, often without hearing them in their defence and against the bills. This was done, too, after they had asked the opinion of the Judges on the possibility of reversing in a Court of Law a statutory attainder, and after the Judges had stated, that though such judicial reversal was impossible, yet it became the Parliament to set an example to all inferior judicatures of not violating the principles of justice. Thus Cromwell, having lost the tyrant's favour because he had recommended the marriage with Anne of Cleves, and Henry had tired of her, the Parliament readily attainted him of treason and heresy without any hearing; and they did the like by Dr. Barnes, who was burnt for heresy. Many others shared the same fate. Anything more ridiculous than the reasons alleged can hardly be conceived. Surrey, the most accomplished nobleman of his age, suffered death by Act of Parliament, because he had quartered the Royal arms with his own, and this the savage despot called treason.

Three acts of Parliament, however, stand out before all the rest in their infamy:—1. The King was, in 1529, formally released of all the debts he had contracted six years before, although his securities had passed into the hands of third parties, and many persons held them by purchase for various sums; and this abominable precedent was followed, in 1541, with the incredible addition that if any one had been repaid his debt the money was to be refunded by him. 2. The King was empowered,* as a general law, on attaining the age of twenty-four, to repeal all Acts of Parliament made while he was under that age; so that whatever was enacted during the Regency became of no avail unless he chose: and even after the Regency had ceased, he was suffered

* 28 Hen. VIII. c. 17.

to rescind whatever had been done for six years. 3 The proclamations of the King in Council, if made under pain of fine and imprisonment, were declared to have the force of statutes, provided they affected no one's property or life, and violated no existing law; but the King by proclamation might make any opinion heretical, and might denounce death as the penalty of holding it.*

The judicial, or rather statutory, murders of Henry VIII. were far more numerous, and, in their circumstances, more revolting than those of his father. Yet that Prince must be allowed to have left him the bad example. He inveigled Warwick, the unfortunate son of Clarence, into a confession that he had contrived, with Perkin Warbeck, his escape from the Tower, where he had been confined since he was twelve years old; he was now fifteen. For this he was tried as for a conspiracy, and executed. Suffolk, a nephew of Edward IV., and near in the order of succession to Henry's Queen, had engaged in a conspiracy in the Low Countries; and Henry, having obtained possession of the Archduke's person by the accident of his shipwreck, obliged him to deliver up the Earl on a promise of sparing his life. He died before he could, as he wished, break his word; but his dying injunction to his son was that he should put the Earl to death; which Henry VIII. did a few years after, upon the old attainder.

There was little difference in the disposition of the two tyrants, as far as an unfeeling nature and overbearing temper ministered to their absolute sway. But the son's more careless expenditure of money, more frank, indiscreet habits, and more affable manner, partaking, in outward show, of generosity, honesty, and even kindness, gave him a popularity in his own times, especially during the first half of his reign, which the father never possessed, labouring as he did under the two greatest drawbacks to popular favour that a Prince can have, avarice and reserve; while the cruelty of the son's whole conduct has made him justly more abhorred by after ages, when the services rendered by his lusts, and his rapacity, and his caprice, to the cause of the Reformation can no longer blind us, as it did his contemporaries, to the enormities of his execrable character.

As much of the disgraceful subserviency of which we have

* 31 Hen. VIII. c. 8.

been contemplating the fruits was owing to the severe character of the first Tudor, and the violent temper of the second, we might naturally expect the Parliament to recover somewhat of its independence under the infant prince who followed them, and in the necessarily feeble government of a Regency. Accordingly, the first Parliament of Edward VI. abrogated all the new treasons invented to gratify his father's caprices.* Others of his bad and cruel laws were mitigated; though the power of proclamation was exercised by declaring all propagators of tales and lies affecting the Government liable to work in the galleys. An important improvement, however, of the Treason Law, the only constitutional gift of the Tudor race, was made during this reign; two witnesses were now first required† to convict. The illegal conduct of the Council of Regency, which owed its existence to Henry VIII.'s appointment under the powers of an Act made late in his reign,‡ and which nevertheless wholly altered the Regency's own constitution and made Seymour, the King's maternal uncle, Protector, with full power, was submitted to without any objection or hesitation by the same Parliament; and his brother the admiral's attainder was easily passed by the same body to gratify that powerful nobleman.

The tendency of Parliament in those times to obey the Royal dictates is perhaps still more clearly seen in the early acts of Mary than even in all their subserviency to her father. The restoration of the Catholic religion and the Romish supremacy was accomplished by this young woman with a severe struggle it is true,§ but accomplished by a person void of capacity, without any experience, unpopular in her address, only armed with the name and prerogative of royalty, only supported by her own fanatical firmness of purpose, and by the remains of the sect which had been defeated and crushed in the two former reigns. The resistance made, though ineffectually, to this change is rather a proof that religious feeling will arm men against the influence of their fears or their sycophancy; it was the only sure indication of the Parliament having recovered its tone.

The Spanish marriage, however, confirmed and increased the opposition which the Queen's bigotry at first excited; and

* 1 Ed. VI. c. 12. † 5 and 6 Ed. VI. c. 11, § 12.

‡ 28 Henry VIII.

§ Mary tells Cardinal Pole, in a letter to him, that the Supremacy Bill had not been carried without "contention, bitter discussion, and the utmost pains of the faithful."

her third Parliament rejected some of her favourite bills. The care taken by her to influence the House of Commons, where alone she encountered any opposition, illustrates this still further. Edward had added twenty-two burghs, of which seven were insignificant and easily influenced. She enlarged the number by fourteen, and she wrote also a circular letter to the sheriffs, directing them to recommend good Catholics to the electors; and the Spanish ambassador is believed to have applied the influence of money directly in favour of the marriage with Philip. The French ambassador addressed himself zealously to the same quarter, the Commons, while engaged in resisting the Queen's profligate and infatuated design of transferring her kingdom to the Spanish monarchy, and lavishly promised the aid of France against this abominable scheme.

In all these four reigns, as well as in that of Elizabeth, the criminal judicature of the Privy Council, exercised in one branch called sometimes the King's Ordinary Council, sometimes the Council of Star Chamber, from the ceiling of the room in which it met, was a very important addition to the Royal authority, and a great restraint upon both the Parliament and the people. The Crown had recourse to this power originally in order to control the factions of domineering Barons, who, yielding to the forms of the ordinary jurisdiction, entirely defeated its substance by overpowering the juries and even the judges before whom they or their retainers were brought, and by whom their civil rights were decided. A statute had been made early in Henry VII.'s reign* confirming the jurisdiction of the Star Chamber in cases of combinations to obstruct the due administration of justice; and there can be no doubt that much benefit resulted from the interference of the body in times when the feudal power reduced the judicial to a mere name whenever great men or their followers were concerned. The preamble to the statute I have just mentioned sets forth, that by the practices of the great men, the "police and good rule of the realm was almost subdued, and the security of all men living, their lands and goods, destroyed†." But the most grievous

* 3 Hen. VII. c. 1.

† Lord Bacon (Life of Henry VII.) describes as the evils aimed at by this Act, "combinations of multitudes, and headship of great persons." These, as he observes, are the two main supports of force against law. The Statute of Fines, also made in this reign, gave another blow to the aristocracy, by facilitating the alienation of lands.

abuses arose out of this Star Chamber jurisdiction; and the Sovereign was enabled by it, not only to intimidate all who would oppose him legally in Parliament as well as factiously in the country, but to interfere with the administration of justice fully as much as the Barons had ever done, and more systematically. Not only did the Plantagenets and the Tudors commit to prison or ransom for heavy fines those against whom they conceived an ill will, thus depriving them of the protection of the common law, and signally violating the most remarkable provision of the Great Charter; but they exercised a like control over members of Parliament who had offended them, and jurors who had given verdicts displeasing to them; committing such members and jurors, interrogating them, sentencing them to imprisonment, and only releasing them on payment of heavy fines. A capital jurisdiction was never exercised by them, at least directly; but it really amounted to the same thing, whether they sentenced obnoxious men to death or compelled timid jurors to find them guilty through dread of personal consequences. It was in this Council that all the Sovereign's more violent acts were performed, because he was thus covered over with an apparent authority by the concurrence of an ancient body. Mary committed by this sentence a knight to the Tower, for his opposition to her in Parliament. She committed to prison by a like order in Council all the jury that acquitted Throckmorton; four were released on acknowledging their offence; the others proving refractory were fined, some in the enormous sum of 2000*l*.

It even appears that individual Privy Councillors, assuming to be clothed, as it were, with an emanation of Royal authority, would commit persons who offended them. As late as the latter part of Elizabeth's reign (1592) there was a representation made by eleven of the twelve Judges to the Chancellor and Treasurer, complaining that this outrageous power was used to prevent parties from bringing actions, as well as to punish or threaten them for other lawful acts.

Other interferences with the administration of justice were likewise practised by the Crown. The Sheriffs selected Jurors, according to the Crown's presumed and frequently declared wishes. That officer was always employed as representing the Sovereign in his Bailiwick. Thus we find letters from two of

Elizabeth's Council, to which one Ashburnham had presented his complaint, but without prosecuting it, requiring that the Sheriff of Sussex should not aid his creditors to molest him until the pleasure of the Council be known. An appellate jurisdiction in earlier times appears to have been exercised by the same body. A case, mentioned in Hale's MS., was lately cited by our Judges before the House of Lords (Reg. *v.* Milliss), showing that the Star Chamber had revised a judgment of the Common Pleas in a real action—a Writ of Dower.

The Star Chamber took upon it to superintend the abuses of the Press. It prohibited the circulation of Roman Catholic works, and ordered them to be seized. With its concurrence Elizabeth issued a proclamation for trying by martial law the importers of bulls and libels; another, denouncing capital punishment against those who attended riotous meetings, or committed acts of vagrancy; and a third, ordering Anabaptists to quit the realm, and Irishmen to return home.

The power of regulating generally all matters punishable by law, and of enforcing by particular modes things commanded by statutes which did not describe the means of their enforcement, was always, under the Tudors as well as the Plantagenets, assumed by the Crown; and within this general and important head came under both families the power of regulating commerce. But the Tudors much more rarely interfered to levy money without Parliamentary sanction, and Elizabeth only once appears to have done so, when she imposed a duty on sweet wines, and retained one of her sister's duties on foreign cloths. She also, in 1586, made the Clergy pay an assessment not voted by Convocation. Loans or benevolences were two or three times exacted by her, notwithstanding the statute of Richard III., but her economy always enabled her to repay them; and she was truly said to have been the first sovereign in whose reign the constitutional right of Parliament to grant supplies was practically made of universal application.

The independence of Parliament generally was much more secure under her than under her father or her sister, and it showed a far higher spirit, notwithstanding her strong assertions of her prerogative, and her exalted notion of its extent. In her father's time the Commons had punished, with his concurrence, those who arrested members during the session. This

under her reign became a common assertion of privilege; and both strangers and members were now severely punished for contempts of the House and its jurisdiction. Even with the Queen herself the Commons ventured to struggle in a way very different from anything that her father would have borne. They disregarded her positive commands, intimated through the Speaker, that they should no longer discuss the question of her naming a successor, and though she continued to desire that they should leave matters of state alone, she nevertheless revoked her former injunction.

The Commons may be said to have obtained another victory over her in their remonstrance against Monopolies—an oppressive source of revenue, but one not denied to have been vested in the Crown. In the session 1571, though Bacon, the Chancellor, had, in answer to their claims of liberty of speech, renewed the recommendation against meddling with state affairs, the Commons began their struggle against that great abuse. The Queen, who set great store by this prerogative, calling it the fairest flower of her garden, desired them to spend little time in motions, and make no long speeches. The chief mover against monopolies (one Bell) was called before the Star Chamber and frightened; the Lord Keeper Bacon severely reprimanded them at the close of the session for meddling "with matters not pertaining to them, nor within the capacity of their understanding." Next year, however, the new Parliament chose Bell for their Speaker, but proceeded no further; indeed, they seem to have been terrified by the proceedings in the Star Chamber at the close of the last session, and they begged the Queen on presenting their bills "not to form an ill opinion of the House if she should dislike them." The next time they met, the most bold and even violent language against her infringement of their privileges was freely used; and she was plainly told, that if they had committed faults, "so had she great and dangerous ones," and taxed with "ingratitude and unkindness to her people." Wentworth, the person who had led the way in this freedom of speech, was committed to the Tower for a month, and reprimanded on being discharged when the Queen had forgiven him. At their next meeting, in 1581, the usual warning as to interfering in state affairs was given. Wentworth was again committed to the Tower by the House, and

detained till its dissolution, for new acts of boldness in debate. Again, in 1588, he moved on the question of the succession, and was, with one who seconded him, committed by the Council to prison; as was another member soon after for presenting a bill against abuses in Ecclesiastical Courts contrary to the Queen's injunction. She did not release them while the session lasted, although petitioned by the House on the ground that no subsidies could be granted from places whose members were in custody. At length, although in 1597 the Queen prevailed on them by soft and pleasing words to leave the remedy of monopolies to her care, yet finding she did not correct the abuse, in 1601, after four days' debate, and the refusal of the Commons to adopt the contemptible advice of Cecil and Bacon that they should proceed by petition and not by bill, the Queen sent a message to promise a general revocation of all such grants as were found on trial to be against law.

The importance of the House of Commons in Elizabeth's reign, as in that of her sister and brother, is evinced by the pains taken to secure an ascendancy in it. She added no less than sixty-two burgh members, chiefly by enfranchising petty burghs under royal or noble influence. The general attendance was under 250, and hence those new members must have given great weight to the Crown. The ministers and the peers also used every exertion to influence elections elsewhere.

The services rendered by the Tudors to religion, in freeing us from the yoke of Rome and the superstitions of popery, have been more than once glanced at. But it must be recollected that these favours were bestowed with the characteristic tyranny of the family. Nothing can be more clear than the connexion between Henry VIII.'s revolt against the Pope, and his desire to break his first marriage from his wish to espouse Anne Boleyn; and his adherence to the Catholic errors not only lasted for life, but was testified in the most arbitrary Acts of his reign, Acts which his submissive Parliament almost immediately enabled him to pass. The very worst, perhaps, of all his statutes is that called the "*Law of the Six Articles*," or as the Protestants termed it, "*The bloody Act*," made after he had reigned thirty years and separated from Rome five years. Some of the grossest errors of Romanism were there laid down as undoubted truths, including transubstantiation, the obligation of monastic

vows, clerical celibacy, and auricular confession, and were commanded to be believed on pain of death, without power of escape by abjuring errors once uttered; so that if any person once denied the real presence, though he afterwards confessed his error and recanted, he was liable to be burnt.*

The cruelties of Mary are known and are proverbial; they have prevented us from reflecting how entirely her Parliament, so lately Protestant, supported her in them, and how far her sister went in following her example. It cannot be doubted that the Reformation in Elizabeth's reign was carried by force, even by military force, as far as the people were concerned; for they adhered to the religion of their forefathers. Bishop Burnet, a witness wholly above all suspicion on such a point, is constrained to allow that she had to send over German troops in 1549 from Calais, on account of the Catholic bigotry of the nation at large. The use made of the Church revenues too deserves our attention. Henry VIII. was not the only sovereign who endowed great families out of this spoil. In Edward's time, Winchester and Canterbury suffered much for this purpose; Exeter and Llandaff were impoverished, and Lichfield was stripped to endow Lord Paget. Somerset House was founded out of Church lands by the Protector. Cecil's estate at Burleigh was made out of Peterborough: part of Hatton's in Holborn retains the name which shows that it had belonged to Ely; and Lord Keeper Puckering obtained it for a simoniacal prelate, that he might obtain a part of the estate on lease for himself.

Elizabeth, though friendly at all times to the Reformation, held the Puritans in far more hatred than the Catholics, on account of their republican propensities and their dislike of the episcopal discipline. It was against them that the Act compelling all persons to go to church under pecuniary penalties was passed; an Act never yet repealed, and of late warmed into a noxious vitality, after being long torpid, in consequence of some magistrates having failed to convict some poor men of poaching.

The præmunire Act was extended so as to subject all the Catholics in the country to capital punishment for refusing a

* A denial of the other five articles was, in the first instance, punishable with forfeiture and imprisonment, and with death for a second offence though followed by recantation.

second time to abjure their religion, a law so cruel, that the Queen ventured not to execute it generally. An Act punishing with death any publication containing seditious matters, or defaming the Queen, was wrested to include the offence of writing against the Liturgy, and Puritans suffered death under this strange perversion. Many Catholics also suffered under an Act making it high treason to import bulls, relics, or crosses; and others, after being tortured to confess having denied the Queen's supremacy, were executed.

The Anabaptists were also persecuted; many driven beyond the seas; some burnt for heresy; sixty-one clergymen, forty-seven laymen, and two ladies, suffered death in misery for being Catholics during fourteen years of this Queen's reign. To all these vile proceedings Elizabeth's Parliaments were as willing parties, or as callous instruments, as their predecessors in the time of Henry and Mary. The support therefore of the Reformation, whether by the father or the daughter, is rather to be regarded as an indication of that body's subserviency and the Sovereign's power, than any proof of the progress that had been made by constitutional liberty.

Upon the whole, however, there can be no doubt that the Parliament had become more independent and the Crown more under restraint in the reign of Elizabeth, high as were her notions of prerogative, and submissively as her reproofs were generally received; and the Speaker, Onslow, was justified in his remark upon the difference between our government and those of the continental kingdoms; justified by the fact, but also justified by the safety with which in her time the Commons could address language to the throne such as her father would never have permitted to be used in his presence. "By our common law," said he, "though there be for the Prince provided many princely prerogatives, yet it is not such as that the Prince can take money or other things, or do as he will at his own pleasure without order; but quietly to suffer their subjects to enjoy their own without wrongful oppression, wherein other Princes by their liberty do take as pleaseth them."

Let us now mark the main causes of the subserviency which so utterly disgraced the Tudor Parliaments, until under Elizabeth they gradually began to feel some sense of their duty, and to show, though but rarely and faintly, some spirit of resistance;

for we must lay entirely out of our view in considering this subject the violent Acts of Henry VIII.'s Parliament, authorising him to repeal statutes and giving his proclamations the force of law. These Acts were only, like the attainders in which they concurred with their master, indications of their submission to his will, and not real alterations effected in the Constitution, and enlarging the powers of the Crown. But the causes of that general submission, and the circumstances which enabled the Tudors to reign so absolutely in a limited Monarchy, were these:—

In the *first* place, the character of the Aristocracy, in whose hands the whole Parliamentary power was vested. They were a half-civilised, imperfectly enlightened, and exceedingly unprincipled body, just emerged from a state of feudal anarchy, repressed by the Sovereign's increased and constitutional authority, careless of what befel their countrymen at large, only anxious each for himself and his own retainers, and all willing rather to find protection in their individual power and following, than to seek it from the safeguards which the laws and institutions of a country provide for both high and low within its bounds. No tenderness for liberty, no feeling for the rights of the community, no regard for the laws could be expected from a body so constituted. The Lords were always found ranged on the side of power and of the Prince. *Secondly*, the Commons were exceedingly affected, as, indeed, were the less powerful of the Lords, by the powers which the Sovereign exercised through the Council, the Star Chamber. Examples were occasionally made of punishing by fine and imprisonment discontented members; and the course of justice was, as we have seen, materially affected by the operations of the same force. *Thirdly*,—and to this I attach much greater weight, because otherwise the powers of the Star Chamber never could have stood against an united legislature—there was operating in favour of the Crown, and against all resistance, that principle which gives every established government the greater portion of its solidity, by preventing all effective opposition; that principle which enabled the triumvirs of France in 1793 to domineer through terror over both the Convention and the people for nearly two long years of suffering and crime. Men distrusted each other; every man feared to be made the sacrifice were he to move first; as no one in a

mob will rush willingly on, till forced by those behind him, upon a single individual armed with a pistol; because each knows that though it can kill but one, he may be the one. Who could venture to protest for a moment against any of Henry's worst schemes of profligacy and cruelty, when he felt that an attainder being suddenly propounded against himself should he oppose the attainder pressed upon the legislature, he must be the sacrifice to the honest discharge of a public duty? Nothing else can account for the obsequious and pusillanimous demeanour of the Parliament, first under the Plantagenets, but afterwards far more under the Tudors.

The personal character of these Tudor Princes entered for something into this account of their tyranny, because the main stay of their power was the terror which operated upon the Commons, with their distrust of one another, and their reckoning upon the Lords always taking the Sovereign's part. Accordingly we find them far more inclined to follow an independent course under Edward and the Regency than under any of the other four princes of that family. We also observe them kept down by dread of Elizabeth while she was in the vigour of her faculties and the height of her pride. The favourite subject of the monopolies had been somewhat broached by the Commons as early as 1566; it was very openly taken up in 1572; but the fear of her indignation afterwards made them press it very feebly till towards the end of her reign, when her energy being impaired rather by the melancholy that clouded her latter days than by the hand of age, they could venture upon matters which at a former period they dared not broach.

CHAPTER VI.

GOVERNMENT OF ENGLAND—THE STUARTS—COMMONWEALTH—RESTORATION.

Contrast of James I. to Elizabeth—Divine Right—Error of Authors on this—Commons struggle for their Privileges—Slavish Conduct of the Judges—Impeachments by the Commons—Extravagant assertion of Privilege—Conflict between the King and Commons—Oppressions exercised by the Crown—Revolting Doctrines of the Stuart Princes—Character of Charles I.—Early Errors of his Reign—Favouritism to Buckingham—Baseness of the Judges—New Oppressions of the Crown—Long Parliament; its admirable Conduct at first—Petition of Right—Strafford's Attainder—Violence of the Parliament—Overthrow of the Constitution—Commonwealth—Causes of the Rebellion—Error of Romish Writers—Evils of suffering a Minority to rule through Terror—Cromwell's Usurpation—His Plans and Constitutions—Obliged to call a Parliament—Restoration.

THE bold, determined, impetuous character of the Tudors suddenly found a great contrast in the feeble mind and contemptible manners of James I., and though his capacity was far from mean and his acquirements were very considerable, both his abilities and his accomplishments were of a kind the least useful on the throne; consequently the genius of Elizabeth, peculiarly formed for command, was as manifestly superior to his, as the vigour of her masculine nature surpassed his paltry disposition. Men were not slow to mark the change in the hand that now held the sceptre; the statesman perceived it in a day; the Parliament showed that they were aware of it on the morrow of their meeting.

Accordingly, with this Prince began the real contest between the Crown and the Parliament, which ended in the full establishment of our free Constitution. A movement in this direction had been made in Elizabeth's time; towards the end of her reign it had become very perceptible; and no attentive observer could doubt, that even under the same race of vigorous and able tyrants who had long filled the throne, the increased importance of the towns from the progress of commerce, and the daily diminishing influence of the feudal aristocracy, as well as the gradual diffusion of knowledge, accelerated with the spread of free principles since the Reformation, would in time have occasioned the same great and useful struggle. But the change of the family,

and the character of its first sovereign, contributed much to bring on this conflict, and give it a turn favourable to liberty. This, however, was in no wise owing to any moderate views entertained by the Stuarts of their prerogative; on the contrary, they held this fully as high as the Tudors.

It has been remarked by writers on our Constitutional History, and particularly by Mr. Hallam, that, singularly enough, the family which held such lofty notions of Royal prerogative and rights of legitimacy (as they are now termed) should themselves have owed their succession to the very influence of which they most were jealous, deriving their sole title to the crown of England from the people, whose right to interfere with such high and sacred subjects they wholly denied. Perhaps this discrepancy between their title and their principles is more apparent than real. It is perfectly true that an Act of Parliament gave Henry VIII. the power of naming his successor, and limiting the Crown to any series of heirs whom he might choose to appoint in a will executed by himself. It is equally true that he named the Suffolk family, descended from his youngest sister, and passed by the King of Scots, issue of Margaret. Much doubt has been cast upon the point whether or not the will was signed by him; whether, as the lawyers say, the power was well or ill executed. The balance of evidence appears in favour of the due execution; and there was lawful issue of the Countess of Suffolk living at Elizabeth's decease. So far the succession of James appears to have been precluded by statute, and he only to have been let in by the voice of the Nation disapproving the Act of Harry's Parliament, which had, however, never been repealed, and by the recognition of his own first Parliament in a statute declaring his title. But there can be no doubt that the same persons who maintained the high prerogative doctrines of the Stuarts, would equally deny the right of Parliament in Henry VIII.'s time to set aside the elder or Stuart branch, and to substitute, by Henry's appointment, the younger. They regarded the title by hereditary succession as paramount to any legislative enactment. If any proof of this were wanting, surely it is furnished by the Jacobites persisting in regarding their Stuart Kings as the true and lawful Kings of England, after the Crown had been limited to a younger branch of the family, and possession held under that limitation for near a century. The inconsistency is thus rather apparent than real;

though the absurdity of the Stuart doctrine is as flagrant as if it were not irreconcilable with itself.

James, in his proclamation for summoning his first Parliament, had required that neither Bankrupts nor Outlaws should be returned. One Goodwin, who had been outlawed, was returned for Buckinghamshire. The Return was refused at the Crown Office, and Fortescue was elected in his stead. The Commons as soon as they assembled unseated him, and declared Goodwin duly elected. This brought on a controversy with the King; and the Commons asserting their undoubted privilege to decide upon all elections, it ended in a compromise that neither Goodwin nor Fortescue should sit. Immediately afterwards, a member arrested for debt was liberated by a summary application to the Crown, and an Act was passed declaring the privilege of Parliament, and indemnifying the Sheriffs and Gaolers for setting free all members so committed to their custody. Moreover, when the King upon one or two occasions would take notice of speeches and proceedings in the House of Commons, they drew up a full statement of their privileges; and as he had referred to the freedom of speech asked and granted at the beginning of each Parliament, they distinctly affirmed that it was their right without any grant, and that their asking it was a mere form, and "words of manners only." He persevered in alluding to their proceedings, and they persisted in complaining of this as against their undoubted privileges.

But he on one occasion went much beyond this, and ventured to impose a duty on currants imported. One Bates, having imported without paying the duty, was sued in the Exchequer, where the Barons supported the King's right to levy the customs, and used arguments still more base and slavish than their judgment. The Commons took up the subject, and the King desired they would not interfere. They however maintained, in most explicit terms, their undoubted right to discuss every one grievance of the subject; and so effectual was their resistance, that when soon after he would have raised money by making victuallers pay for a licence to retail wines, he was obliged, by the representation of the Commons, to revoke his proclamation. It must be added, with some feelings of shame, that Lord Coke himself agreed with the Court of Exchequer in their judgment on Bates's case, though for very different and far less objection-

able reasons; and in his Book he distinctly condemns the case as decided against law. (2 Inst. 57.) The Court, too, over which he presided, declared the issuing of proclamations creating new offices to be unlawful, on the ground that the Crown had no power to alter the law of the land.

The authority of Bates's case and of Lord Coke's concurrence had encouraged the King to levy customs without Act of Parliament at the out-ports—the absurd distinction being taken by the Judges between these and the Port of London and Cinque Ports. But the Commons strongly remonstrated against this proceeding as wholly illegal, and refused all supply until these demands were withdrawn. The consequence was an interval of six years before any new Parliament was called; and, in the mean time, James was put to many shifts for obtaining pecuniary assistance. He was fain to ask loans from wealthy citizens as a favour; and, failing to get supplies from this source, he had recourse to his well-known expedient, the sale of Honours. He invented the order of Baronets, and sold the title for 1000*l.* About 200 were created, but not much more than half were at first so disposed of. One St. John, who had incurred his displeasure by writing a treatise recommending men not to advance their money by way of loan, was imprisoned by the Star Chamber and fined 5000*l.*—a striking proof that even now, when the Commons had their attention strenuously directed to the Royal claims, and were occupied in maintaining the privileges of Parliament and rights of the people, they were not yet prepared for laying the axe to the root of the great evil, the illegal proceedings of that court. They, however, obtained from him an unlawful order, probably through that arbitrary court, prohibiting the publication or sale of a work which appeared, written by one Cowell, and asserting in the most absurd terms the absolute powers of the Sovereign and the insignificance of Parliament by the constitution of England. It must be added that in all these struggles the High Church party uniformly took part with the Crown, and against the Parliament; and thus was begun that mutual enmity which half a century later overturned the Ecclesiastical establishment of the realm.

The attainders of individuals under the Tudors had formed the most hateful and disgusting part of their domination, and of the Parliament's pusillanimity. In James's reign the attacks

upon individuals were almost all grounded upon sound and just principles, and did great good to the Constitution. They proceeded not from the King, but the Commons, and not seldom were levelled at Ministers of the Crown. The right of impeachment had not been exercised since the Lancastrian Princes were on the throne. Now, all great delinquents were visited with its terrors. For the Commons impeached Mompesson of frauds and abuse, and oppressive use of patents he had obtained; Marshall, his accomplice; Barnet, a judge of the Prerogative Court, for corruption in his judicial conduct; the Bishop of Llandaff for bribery; and Middlesex for bribery and official corruption. It must be confessed that the Commons carried occasionally their privileges somewhat further. The grossest case of oppression on record in the history of Parliament, one not exceeded by any act of the most despotic of Princes, is Lloyd's; but religious zeal here mingled with their own privileges. The King was understood to be less warmly interested in his support of the Elector Palatine against the Emperor than suited the Protestant tastes of the Commons. This unfortunate gentleman, a Catholic, was represented as having used expressions disparaging to the Palatine and his wife—a charge which, if ever so fully proved, could in no conceivable way touch the privileges of Parliament. He was sentenced by a vote of the House to ride ignominiously on a horse with his face towards the tail, to stand in the Pillory, to be whipped from London to Westminster, to pay a fine of 5000*l.*, and to be imprisoned for life; and all of this iniquitous sentence he underwent, but the whipping.

This Parliament, the last in James's reign, closed with an open quarrel between them and the King. A remonstrance respecting his slackness in supporting the Palatine, his son-in-law, drew from him a severe reproof, in which he ascribed their freedom of speech to the Royal forbearance. The Commons took fire at this, and asserted in the loudest tone their absolute independence and supremacy. He was far from yielding; and dissolved them with a new reprimand—adding, however, that he should continue to govern by Parliaments. But as soon as they separated he committed several of the opposition leaders, among others Sir E. Coke and Mr. Pym, to prison.

While the Commons were thus establishing their power, and boldly facing the Crown, it is humiliating to think that the

Judges, from whom so much better things might have been expected, showed, with one single illustrious exception, the most base subserviency, and the most unblushing abandonment of principle. Being asked by the King if he had a right to stay any judicial proceedings as often as he deemed his interest or the prerogative of the Crown assailed, all, except Lord Coke, humbly testified their submission to his demands, and in a tone of meanness and an abject spirit yet more disgusting than the answer itself. Little wonder then is it that we find Fuller, a lawyer, committed to prison, and there kept till he died—his offence being that he sued out a writ of Habeas Corpus for a client detained by the Court of High Commission; or Whitelock and Selden threatened with the like fate, and averting it by humble apology, their offence having been the just and true opinion they had given their clients that certain acts of the Government were illegal.

Notwithstanding these illegal acts, and notwithstanding the shameful dereliction of their most plain and obvious duties by the Judges, the liberties of the people gained prodigiously in James I.'s reign. Now it was that the Commons first entered into a contention with the Crown for the vindication of their rights, and for the restoration of those securities to the lives and properties of their constituents, which had repeatedly been declared to be theirs by law in the various renewals of the Great Charter, and in the laws extorted from the Plantagenets. Now it was that the encroachments of those Princes, and the still further usurpations of the Tudors, were exposed, and the only fit and effectual means taken to restore the constitution and extend its spirit through its details. The greatest abuse of all, indeed, the powers assumed by the Privy Council in the Star Chamber and High Commission, continued; but its operation was closely watched; and all men saw that the conflict which had begun between the Crown and the country under the guidance of an unskilful Monarch, on the one hand, obstinate, perverse, presumptuous, but of limited capacity for state affairs, and the great men of the day, the Cokes, the Wentworths, the Pyms, must end sooner or later in a popular victory. The "universal fermentation," which Mr. Hume (Chap. XLV.) describes as about the beginning of the seventeenth century occasioned by the revival of letters, then first became operative in the diffusion of

knowledge among the people, at least among the bettermost classes, enlarged men's ideas, and by a necessary consequence led to discussions of political rights, and dissatisfaction with abuses of all kinds; and, fortunately for the cause of constitutional freedom, this was the very period chosen by the Stuart family and their infatuated adherents in Church and State for promulgating the highest notions of arbitrary authority, contemning all popular privileges, and setting the Sovereign above all human ordinances by a right claimed as inherent in the blood of Princes, and derived immediately from Heaven. The frankness with which these revolting doctrines were openly and explicitly proclaimed, although not at all greater than was shown by their Tudor ancestors, produced a far more strenuous opposition, because the age to which they were addressed was very differently instructed, considerable progress had even been made by the Parliament in an opposite direction, and the freedom of religious opinion inculcated by the Reformation was calculated inevitably to extend itself also to state affairs. It was another blessing derived from the same family, that their capacity was far inferior to their pretensions—that the unyielding obstinacy of their nature was supported by no skill, not always by adequate firmness in pursuing its object.

It was in these circumstances that the memorable reign of Charles I. began, and that the struggle between the Crown and the Commons descended to him from his father with that crown, and lined it with thorns.

In character he materially differed from his predecessor. More courageous, more manly, of more winning address, of less pedantic conceit, and, though not deficient in accomplishments, yet not priding himself on those which fit men rather for the contests of the college than for those of public life, he was, nevertheless, far less honest and sincere, more unforgiving, quite as selfish, and altogether as much imbued with the notions of his paramount rights and his contempt for those of the people. His private conduct was more pure, and his religious impressions more strong; but he as easily tolerated breaches of morality and decorum in others; and in religion he was as intolerant, with a leaning towards Popery, which was enlarged by an imperious and bigoted wife, and a profligate, unprincipled favourite (Buckingham), fondly cherished by him as he had been by his father,

recommended by none but superficial accomplishments and abandoned character, and who proved one of the chief banes of his early life.

His first measure in this warfare to which he was doomed must be allowed to have been as bad a one as was possible, for it was a trick; it deserved not the more respectable name of a stratagem. He caused the popular leaders to be named Sheriffs, that they might not be returned to Parliament; but the only consequence was their being chosen for other places. Thus, Coke, the avowed leader of the Opposition, was elected for Derbyshire instead of Norfolk, of which he had been named Sheriff. His next step was of more open violence, and according to the very worst example of past times, no longer safe to be followed. Digges and Elliott, two of the most distinguished friends of liberty, were cast into prison for words spoken in Parliament; for having taken part in the impeachment of the favourite. This ill-judged step was no sooner taken than retracted, on the House declaring they would proceed to no business until their members were released; and he was fain to confess that he had been mistaken. A peer too, Arundel, whom he had imprisoned, was released on the claim solemnly made by the Lords that none of their members could be arrested unless for treason, felony, or a breach of the peace. They gained another success on the important right of each Peer to have his writ of Summons, which had been refused to Bristol, and which was now issued on their remonstrance.

To screen Buckingham, whose fall he perceived was doomed, Charles now had recourse to a step which he repeated several times, in spite of the warning he each time received, that of dissolving the Parliament—the result inevitably being a new one afterwards elected with increased hostility towards the Royal authority which had put an end to the old. Money had been voted, but no bill passed; and he foolishly thought he might assess all his subjects to a loan of the amount voted, each according to the portion he would have paid if the subsidy had been enacted by law, requiring the names of those who refused their money to be reported before the Privy Council. This was followed up by pressing the inferior people to the Navy, and ordering only gentlemen to be committed by the Council. Five of these, including the illustrious Hampden, sued out their Habeas Corpus,

and the return being that they were detained according to the exigency of the commitment, the sufficiency of the return, and consequently the validity of the writ of commitment, came before the Court of King's Bench, the Judges of which, to their lasting disgrace, decided in favour of both. But the King was forced to call another Parliament, the third of his reign, and now was assembled that truly illustrious body to whose wisdom and fortitude we owe our liberties, in spite of the over violence by which its successors outdid its great example, and the inexorable tyranny of the faithless Prince with whom they had to deal.

Bent on his destruction, while yet the elections had not been finished, Charles, at the moment that he paid court to his subjects, by releasing persons from unlawful imprisonment, employed Commissions to raise money just as unlawfully, their orders being "to regard the necessity of the substance more than the form and circumstance;" in other words, the want of supplies for an impolitic war of the favourite's advising, rather than the illegality of robbing the people against law. The result was that famous proceeding, the Petition of Right, whereby the Lords and Commons obliged the King to declare the illegality of requiring loans without Parliamentary sanction, or billeting soldiers, or commitment without legal process, or procedure by martial law. When, however, they further required him to give up the right of levying tonnage and poundage, the infatuated monarch again had recourse to a dissolution, which was immediately followed by the imprisonment of opposition leaders. Elliott was prosecuted in the Court of King's Bench for words spoken in Parliament, and the Judges, as usual, servilely and profligately acquiesced, affirming the jurisdiction, and allowing a conviction—a judgment which was solemnly reversed by Writ of Error, as contrary to law, after the Restoration (1667). Other instances of judicial baseness were also exhibited on this occasion; but when the merciful King, the sacred Martyr, wished to have Felton put to the rack for the murder of his favourite, the Judges could not go quite so far; they declared torture to be illegal. A majority of seven to five soon after (1640) decided that the levying ship money was legal without consent of Parliament, in Hampden's case. But the Commons went a step further than their purpose required, as usually happens when in troublous times such strong measures are resorted to; they vi-

sited every word spoken or written in disparagement of their proceedings with the penalties of breach of privilege, thus at once declaring themselves above all censure, and founding their claim of absolute power upon a fiction of absolute infallibility. They even treated respectful petitions* as breaches of privilege.

The oppressions of the Star Chamber were multiplied at the same time. A greater number of punishments were inflicted, and severe ones, perfectly odious and revolting to the feelings of mankind, especially when compared with the station of the parties, and the nature of the charges, were more frequent than even under the Tudors. Thus not only the pillory, but whipping, slitting the nose, and cutting off the ears, were ordinary inflictions; and fines, so heavy as sometimes to reach 12,000*l.*, were exacted, of which the greater portion always went to the King, thus forming an important item of his revenue. Of the kind of crimes thus visited we may form an estimate from this, that one person paid 8000*l.* for having said "Suffolk is base born," and that Laud made Bishop Williams be condemned to pay the like sum, of which 3000*l.* went to himself as a compensation, for that Prelate having written a letter in which the Primate was turned into ridicule by a single expression. He was likewise imprisoned three years for the same jest, and for being so partial to it as to refuse apologising to the indignant metropolitan. For some libel on the Church Leighton was whipped, pilloried, had his nose slit and his ears cut off, and was condemned to prison for life; Lilburn was whipped and pilloried; and Pryme suffered two several inflictions, the second of which cut off whatever of his ears the former had spared.

The discontent occasioned by such proceedings, and the impossibility of obtaining the necessary supplies by all the violence to which he had had recourse, and with all the support he derived from an unprincipled bench of Judges, forced Charles to assemble Parliament, after an eleven years' intermission. It met in April, 1640, and, showing great moderation, united with as much firmness as had distinguished its predecessor, it was dissolved after it had sat three weeks. The increased rigour of his illegal exactions soon increased the prevailing discontent, in which his favour towards the religion of his Queen, and its professors, especially those in her service, entered largely; and after

* Parl. Hist., 1147—1188.

in vain seeking to evade the necessity he most feared by assembling a great Council at York of all the Peers, he was obliged by their advice to summon that Parliament which in a short time overthrew his authority and brought him to the block.

The first proceedings of this celebrated assembly were admirable in every respect, and marked by equal firmness and moderation. They passed a bill to secure the calling of Parliaments every three years, and prevent any interruption for more than that period of their authority: the Lords to issue writs if the Crown refused; the Sheriffs if the Lords refused; the Electors if the Sheriffs refused. This triennial bill likewise prohibited the King from dissolving without its consent, until it had sitten fifty days. The judgment in Hampden's case was then reversed; all levies of customs, and generally all imports, without consent of Parliament, were declared illegal, and strictly forbidden; all pressing of soldiers, unless in case of actual invasion; and as the crowning work, without which neither Parliament nor people could be safe for an hour, the Star Chamber and High Commission Courts were for ever abolished, by depriving the Privy Council of all jurisdiction in criminal matters, and confining it to the more necessary operations of police, and commitment for trial by due course of law. The King submitted to pass all these important bills, but he interfered with the debates upon them, and this was so far resented by the Parliament that no instance is known of that offence against privilege being repeated.

These were great and glorious achievements, and these must bound our praise of this renowned body. Their whole subsequent proceedings were framed, possibly intended, to alter the form of the Government, and not to protect it from attacks. The impeachment of Strafford alone of these violent acts leaves a doubt on the mind whether it were justified or not. The destroying him, and by attainder, was plainly without any excuse. The ruining him in the King's estimation, or rather the preventing his future employment by intimidating his master, was perhaps necessary from his talents, his courage, his influence with Charles, and the part he had since his apostacy openly and zealously taken against the people. His tyrannical and unconstitutional proceedings furnished a sufficient ground for convicting him of high crimes and misdemeanors. But the pretext that it was necessary to take his life because there was no other

way of securing the people against so powerful an adversary was exactly the reason which Henry VIII. would have given for destroying his victims; the manner of accomplishing his destruction was borrowed by the Parliament from the example of that tyrant; the right which they had to destroy him, if grounded on their fears of his power and talents, was no better than Henry's right to put any formidable opponent to death; and the shameful submission of Charles, contrary to every principle of duty and conscience, was exactly a counterpart of the subserviency of the Parliament to his despotic predecessor in passing his bills of attainder.*

The other acts of the Long Parliament are without excuse and placed beyond any question. The Act to prevent a dissolution without their own consent was an open and audacious assumption of supreme power, not by the people, but by a number of individuals, who thus made themselves absolute, and founded an oligarchy rather than a democracy in their own persons. It was passed with a truly revolutionary speed, being brought in upon the 5th of May, carried to the Lords on the 7th, and agreed to by them on the 8th; so that in three days the whole Constitution was changed, and the King's power became little more than nominal. The Bishops were then excluded from Parliament; and the King's assent to this was his last concession. What followed was done by main force, and on the eve of taking arms, or in the midst of that din which proverbially puts all law to silence.

The immediate causes of the rebellion were, *first*, the religious zeal, or rather fury, excited by the encouragement which the King and Queen gave to Popery, and which was greatly magnified, at least as concerned him. The alarm of the Protestants at the danger to their religion, not only drove many churchmen into the communion of the Puritans, but led the Parliament to the most preposterous assumption of privilege. Thus they treated as a question of privilege any alteration in the ceremonial of worship, declaring all "new-fangled ceremonies" to be a breach of their undoubted privileges. This was, of course, levelled at Laud, whose tendency towards Popery closely resembled that of a powerful body of the clergy

* Mr. Hallam falls into the great error here pointed out, in his remarks upon Strafford's case.

in our own times.—In the *second* place, a conspiracy was discovered of some leading persons in the King's party, to march the army to London and subdue the Parliament; the petition was even prepared, which the army numerously signed, praying to be heard by the Parliament; and Charles had the incredible folly to countersign it, but retracted before it could be acted upon, instead of keeping aloof from the movement until it could be successfully executed.—But in the *third* place, and which more than all the rest hurried on matters to extremities, he took the insane step of entering in person the House of Commons, and claiming the surrender of five members, the leaders of the party opposed to him, but who had the whole Commons and nearly the whole Lords for their followers. He had the day before desired the Attorney-General to prosecute them and a popular Peer for high treason, the charge being grounded on their Parliamentary conduct, in which they had all the Parliament for their accomplices. Even Mr. Hume, the staunch apologist of Charles and all the Stuarts, treats this step as an indiscretion beyond "the fondest wish of his enemies;" as a course entered on "without concert, deliberation, or reflection;" as an act "the prudence of which nobody pretended to justify" (Chap. LV.). Lord Clarendon confesses that this unwarrantable and infatuated act alienated the generality of those who were beginning to judge more favourably of Charles, probably alarmed by the growing violence of the Parliamentary proceedings. Dr. Lingard, who repays the favour of the Stuarts towards his Church by extreme partiality for them, admits it to have been a proceeding equally blamed by his friends and his enemies.* That it led immediately to the vote which vested in

* The extreme prejudice under which this able and respectable author writes is a great drawback to his work. His history is far more learnedly and carefully composed than any other of our country; and yet, owing to his partiality, it leaves unsupplied the blank admitted by all to have been left by Mr. Hume: for we meet in every one part of his narrative with the apologist or the advocate of the Pope and Popery. So Romish a history could hardly have been supposed possible to have been written in this country, and by a person of the most respectable character. As for the Stuarts, Mr. Hume, with all his prepossessions, and his habitual "love of kings and queens," must be admitted to have been very far surpassed by Dr. Lingard. The former had too masculine an understanding to let Mary's conduct pass unreproved. The latter carries his partiality to the Romish Queen so far that he not only acquits her of all knowledge of Darnley's murder, but of all belief that Bothwell was an object of suspicion, and of all blame respecting his mock trial and scandalous escape; nay, he cannot even bring himself to censure the marriage itself, looks upon it as quite a becoming thing for a woman to

Parliament the nomination of the Militia officers,—in other words, the command of the army,—cannot be doubted; and this was the commencement of the Civil War.

It is wholly beside the design of this work to follow the history of the great events which that war produced, or to contemplate the extraordinary display both of civil and military genius by which it was marked. A revolution which unsettled the whole finance of the state, and changed in almost all particulars the established order of things, could not fail to force as in a hotbed the talents and the virtues, as well as the vices and the weaknesses, which peaceful times and regular government either nip in the bud, or stint in their growth, or cast into the shade, when they chance to attain maturity.* But it is equally certain that in England, as in France a century and a half later, a vast majority of the people were averse to the change which overthrew the monarchy; that the republican party, utterly inconsiderable at first, was always a much smaller minority than in France; that the extremities to which the leaders went against the King found very few supporters among the people, and were disapproved by a majority of the Parliament itself, from which a military force in one day expelled two hundred of its members, leaving the minority in possession; and that the influence of the two most powerful motives which can affect the conduct of nations, religious fanaticism and terror, was required to make those violent proceedings be patiently borne. The hatred of the Church abuses in France supplied there the place of that fanaticism, and the terror was exercised in a much greater excess. But in both revolutions the success of a party was secured by similar means, and in both the indolence and timidity of the well-disposed enabled the enemies of the people to prevail. The same moral is to be drawn from both these sad tales alike. It teaches all men that he who permits injustice and cruelty to triumph, when by doing his duty to his neighbour he could de-

marry a few weeks after her husband's violent death, and seems quite satisfied that a Queen can be married by force: but, worse than all, he appears absolutely to be the apologist of Bothwell himself, and gives an account of his latter end wholly different from all other writers.

* They who are fond of representing as revolutionary the changes operated in our Government by the measures of 1831 and 1832 should reflect that there is wholly wanting, among other things, this one indication of a revolution. Hardly any men of talents have by that revolution been cast up to the surface.

feat them, shares the guilt though he may not share the spoil; and that the risk of being overpowered in the struggle for right is not an excuse for inaction which can satisfy any but the most callous feelings and the most easy conscience.

The abolition of Monarchy was complete—it was declared treason to give any one the title of King without Act of Parliament—the House of Lords, as well as the Crown, was set aside—and the supreme power, legislative as well as executive, remained vested in the House of Commons, now attended by less than a hundred members, and wholly under the influence of the army. A council of forty-one, three-fourths of whom were members of the House, was appointed for a year to preserve the peace, dispose of the forces naval and military, and represent the country with foreign states. A new seal, representing the Commons, was made and entrusted to three Commissioners; and an oath to be true to the Commonwealth was directed to be taken by all persons in office. Half the Judges took it; the others resigned; the former made it a condition that Parliament would engage to maintain the fundamental laws of the realm. To this the House agreed, and the Judges never seem to have reflected that the Kingly power runs through all the jurisprudence of England, from the foundation upwards. New writs were issued to fill up vacancies which had reduced the Commons to a seventh of their number, and 150 at length were found to compose the House; but it was seldom that fifty could be got to attend, and hardly ever 100. Five or six eminent loyalists were tried and executed, but the reign of the Commonwealth was little stained with blood. Their puritanical rigour made them denounce severe penalties against offences which no penal law can ever well or safely reach; acts were passed punishing incest and adultery with death, and fornication with three months' imprisonment—acts the severity of which, as might easily be foreseen, prevented their execution. But the public prayer for general reformation of the law was attentively listened to, and an important commencement was made of amendment in the system and in the practice of our jurisprudence. A full inquiry was instituted into financial abuses and frauds upon the revenue, especially in the management of forfeited estates. These must have been of importance, as in one year (1651) seventy individuals, chiefly of rank and fortune, were forfeited for their ad-

herence to the King. The year after, previous to the fatal battle of Worcester, which extinguished the hopes of Charles II., his followers were also attainted; 71 first, and then 682 were thus punished; all however being suffered to redeem at one-third of their value. The Catholics were persecuted, but only one suffered death. The Presbyterians had been far worse persecutors than the Independents, insisting on uniformity of worship. But the Independents showed fully as much rapacity, and it was reckoned that the income of Catholics in the hands of sequestrators amounted to above 60,000*l.* a year, though only two-thirds of England were included in this calculation. The rigour of their measures was not confined to the rich and noble; their violence descended to artisans, peasants, and menial servants.

The Long Parliament had naturally become unpopular, both from its duration of eighteen years, from the expulsion of a large portion of its members, and from its subserviency to the army and their chiefs. Cromwell's usurpation, therefore, was acceptable to the nation; but he had little other hold over the people than what their dislike of Parliament and the dread of his military power gave him. He collected about 120 men of puritanical and sanctified habits, chosen by himself from a greater number returned by different congregations, and to them he entrusted the whole Government. This ghostly body (commonly called Barebones' Parliament), how ridiculous soever in many of its proceedings, showed no little wisdom in prosecuting several important reforms, and correcting some glaring abuses; it also showed some disposition towards independence in the exercise of the powers conferred upon it. This of course displeased Cromwell, and on dissolving this body, and taking upon him the executive Government, under the title of Protector, as tendered to him by a party of its members, he proclaimed the Instrument of Government in forty-two articles, vesting the legislative power in the Protector and Parliament, no dissolution of which could take place, without its own consent, in less than five months. The Protector had the command of the army and navy; the power of making peace and war, with his Council's consent; the power of appointing the great officers of state, with consent of Parliament; and the successors of the Protector were to be named by the Council. The Parliament consisted of 460

members, chosen by the larger boroughs, exercising their former rights of election, and by persons in counties possessed of 200*l.* in any kind of property: 400 were for England, 30 for Scotland, and as many for Ireland. It met; and finding after five months' trial that the members were far from being very pliable to his wishes, he dissolved it, and alarmed by a royalist movement in the west, delivered over the kingdom to eleven Major-Generals for as many districts, who were commissioned to levy a tax of ten per cent. which he imposed on all royalists. He also continued a duty on merchandise beyond the time limited by law. Some refusing to pay this illegal impost were fined by the collectors, and sued them for damages. The Judges showed their wonted subserviency and pusillanimity, and Cromwell sent to the Tower the counsel for one party who sued. He also erected a High Court of Justice, by which several of his adversaries were condemned to death, and suffered accordingly. The Government was now a military despotism, and it is certain that nothing but Cromwell's brilliant success in all his foreign expeditions, and the dread of the Stuart family being restored, could have maintained him on his usurped throne.

After an interval of about two years he was obliged to call another Parliament; the Scotch and Irish members were submissively obsequious; the English so little disposed to obedience that he previously examined the returns, and by an act of violence excluded about ninety of them on pretence of their immorality. No one was suffered to enter the House, guarded by his sentinels, but those who had a certificate from his Council. The result was an obsequious assembly, which addressed him to take the title of King, and agreed to many amendments on the Instrument of Government. He refused the Crown, as is well known; but the amendments of the Instrument gave him the power of naming his successor, and of naming an Upper House of not more than seventy nor less than forty members. In virtue of this sixty-two members of the Lower were summoned to the Upper House. The removal of his principal supporters from the Commons weakened his influence in that House, and he was soon obliged to dissolve this Parliament, the fourth that he had so dismissed, and the last he ever called.

It has sometimes been considered by historians that the first form of Government under the Protector, that of the Instrument,

was republican, and the second, under the petition and advice, was monarchical; and Mr. Hallam is of this opinion. But except in the power of naming his successor, and the institution of the Upper House, the first was really as monarchical as the second. The Protector's death, and his son Richard's incapacity to hold his office, led, after an interval of eighteen months, during which the Government was at one time in the hands of a Council of general officers, to the restoration of Charles II., without any security whatever being taken for his constitutionally governing the kingdom, beyond the effect which his father's fate and his own sufferings might be expected to produce upon his mind.

CHAPTER VII.

GOVERNMENT OF ENGLAND.—THE STUARTS—REVOLUTION.

Reigns of Charles II. and James II. the same in a Constitutional view—Characters of these Kings—Policy of Charles—His Alliance with France—Escape of the Country from Subjugation—Clarendon's Profligacy—Revolution delayed by Charles—Popish Plot: Exclusion Bill—Alarming Change of Public Opinion on James's Accession—Base Conduct of the Lawyers—Selfish Conduct of the Church—James's Attacks on the Church—Banishments—Narrow Escape from absolute Monarchy—Revolution: it originated in Resistance.

THE history of the Constitution from the Restoration to the Revolution, although usually viewed as divided into two portions, the proceedings of Charles II. and those of James II., is in fact properly to be considered as one and the same; the course of events being uninterrupted, the proceedings of all parties being the same, and the conduct of the brothers only varying in the accelerated pace with which the more honest and bigoted of the two hurried matters to a crisis. The only real difference in the two reigns is, indeed, to be found in the personal characters of those Princes; the one indolent, careless, unprincipled, loving his ease rather than anxious about power, unless as it might secure him from interference with his pleasures, or save him from the equally ungrateful interruptions of business; not at all envying others their freedom so he might only enjoy his own;—the other a stern ruler, jealous of his prerogative from religious as well as political principle; a furious bigot from conviction; little averse to labour, and fearing no risk in the pursuit of his object; ever ready to sacrifice a temporal to an eternal crown, and though affecting much regard for his word, yet unscrupulous of breaking it when its strict observance stood in the way of his predominant passion. Though in religion Charles had gradually become a Romanist, he never was prepared to avow his conversion, or to make any sacrifice for his faith; his religious principles hanging almost as loosely about him as his private.

But James, though a rigid devotee, confined his self-restraint to matters of faith and the promotion of his Church, having lived at all times the same licentious life with which his brother and the rest of the Cavaliers, combining party feeling and personal indulgence, had debauched the English morals and outraged the feelings of the puritanical classes, even after their restoration to power.

It not only little suited Charles's habits to risk what he termed "going again on his travels," in order to battle for Prerogative and Popery, as James would have had him do; but he even would himself have preferred ruling by Parliaments as the easier course to pursue, could he only have found them reasonably tractable. He had no mind, as he told Lord Essex, to sit like a Turk and order men to be bow-stringed; but then he "would not have a set of fellows spying and inquiring into all his proceedings,"—and some laws which he found established he openly avowed his detestation of, declaring for example that he never would suffer any Parliament to be assembled under the famous Triennial Act of 1641. This was accordingly repealed. Still he tried how far he could go on amicably with such assemblies; and it was only when he found they refused him money, and would inquire into the public conduct of his Ministers, that he threw himself into the arms of France, made his power and influence wholly subservient to the profligate ambition of Louis XIV., received regular supplies of money from him to evade the necessity of meeting his people's representatives, bartered for this price at once the honour and the policy of the country, and entered into a shameless conspiracy both against the liberties of Protestant Europe and the free Constitution of his own kingdom. It is manifest that had the English Patriots in 1670 been apprised of his proceedings, the Revolution never ought to have been delayed an hour; the calling in of William at that time would have been on every principle equally justifiable; and the expulsion of the restored family would have been an act still more necessary for saving both the liberties of Englishmen and the independence of their country; for that which James's proceedings never even threatened, was absolutely sacrificed by Charles—the national security as against France.

For a long time doubts were entertained by many and affected by some of Charles's criminality; nor were these wholly re-

moved until the publication of a secret treaty entered into with Louis XIV. in 1669, made all further denial of the conspiracy impossible. He thereby stipulated for a regular pension of 200,000*l.* a year, equal in value to half a million at the present day, and 6000 men; in return for these means of both governing without Parliament and overpowering all resistance from his subjects, he became party to a plan of partition upon a scale not exceeded by the northern powers in the case of Poland a century later, and to whom indeed these infamous transactions may well be considered as having served for a model. France was to seize the larger portion of the United Provinces, while England should have the greater part of Zealand, with Ostend, Minorca, and part of the Spanish provinces in South America; a Bourbon prince occupying the Spanish throne, and abandoning part of the Spanish empire as the price of his quiet possession. It is worthy of observation, as fixing upon Louis XIV. still more incontestably the invention of the Partitioning system, that he had twice three years before entered into a similar scheme with the Emperor for dividing the Spanish dominions. The inequality of the conditions had made the Emperor abandon this notable project; he perceived plainly enough that while Louis was to occupy the Peninsula and the Dutch provinces at his ease, the Emperor would have no part of the spoil that he did not win by force of arms.

It was certainly fortunate for this country that the suspicions raised in Louis's mind by the vacillating conduct and apparent bad faith of Charles prevented the prompt performance of the conditions thus entered into. Had a well-appointed French army entered England, while abundant supplies of money supported the tyrant, he had only to keep on gratifying the Established Church with means of oppression towards the Dissenters, and to remain wholly inactive in his support of the Catholics, and his work of usurpation was complete. The abominable acts excluding all non-conformists from corporations, and preventing them from ever coming within five miles of any corporate town, had won prodigious favour in the eyes of the clergy; and Charles had no such bigoted zeal for the religion which he secretly had embraced, or rather which he was in the course of adopting, as to risk "going upon his travels again," by giving it open and offensive protection. Add to this, that he had shown a truly

regal facility of abandoning his oldest and ablest servants, when Clarendon was impeached, suffering him to be declared guilty of treasons that he never had committed, because he timidly or prudently fled from an accusation of high misdemeanors of which he was undeniably guilty. His sending persons to remote and even foreign prisons, where they lingered without a trial for years until his fall; his accession to the French Alliance, and his procuring for Charles pecuniary supplies to preclude the necessity of meeting Parliament; were crimes of a deep dye, how little soever they could give his profligate and ungrateful master a pretext for leaving him to his fate. His detestable conduct on the occasion of his daughter's marriage, when he besought the King to refuse his consent, and declared he had rather she were treated as a strumpet, or put to death for a conspiracy against the prerogative, than that the Crown were sullied by such an alliance, though it be an offence incomparably less heinous to the State, has more than all his other crimes fixed upon his memory the just scorn of all good men in after ages.

In carrying on his Government two things were to be remarked of Charles, in both of which he differed extremely from his brother, and accordingly prevented the Revolution from taking place in his time, towards which, however, all things manifestly tended. He showed much address and temper in avoiding difficulties, which he seldom if ever met in front or endeavoured by force to surmount; and he displayed no obstinacy nor even firmness in the pursuit of objects, which so careless and self-indulgent a nature little regarded. Thus, although it cannot be supposed that he gave implicit credit to the Popish Plot, and most likely disbelieved it altogether, he yet contrived to keep a certain neutrality through the whole of the excitement into which it threw the nation, and was able to take advantage of the reaction which succeeded when the wretches who had deceived the people so successfully, pushed their attempts a step too far, and accused those connected with the Royal Family. But his want of steadiness was apparent when, after issuing his declaration suspending the penal laws on the assumption of a prerogative to legislate absolutely in ecclesiastical matters, he was fain to withdraw it upon the anxious remonstrance of the Commons, alarmed, perhaps, more for their religion than their liberties. The extreme

unpopularity of the Duke of York on account of his religion had given rise to a bill for excluding him from the succession. Charles used all his influence against it, and succeeded in throwing it out when it came to the House of Lords. The Duke himself was fully resolved, had it passed, to have tried even the desperate extremity of civil war rather than submit to the law; declaring to Barillon, the French Ambassador, that there remained no other means but this of restoring the Royal authority in England. Yet so bent upon taking security against his bigotry were even those who chiefly opposed the Exclusion Bill, as Halifax, that they framed as a substitute for it another bill which entirely changed the form of the Government, providing that, on a Catholic succeeding, the veto upon bills should cease, all civil and military offices be bestowed by Parliament, and a Committee of both Houses sit during the prorogation. It may further be cited as a proof of the excess to which Anti-Catholic alarm was carried, that, early in 1680, the Commons passed a unanimous resolution declaring the Fire of London to have been the work of Papists, with a design of destroying the Protestant religion; and excluding from a seat every one who should accept any office under the Crown.

In the whole history of human weakness there is no parallel to be found for the sudden change which speedily after came over the nation and its representatives. Whether the extremities to which they had been carried during the plot, or the violence which had been shown against the Duke of York, or the natural alternations of fickle and ill-informed men composing the multitude of all nations, or the shameful zeal displayed by the Established Church in vituperating the conduct of the late Parliament, or a part of all these circumstances, be the reason, certain is the fact, that hardly had the session closed when from one end of the island to the other there burst a cry loud and continual against all that the Parliament had done; and an universal disposition was disclosed to suffer whatever assaults upon liberty the prerogative of the Crown might make. The corporation of London, threatened with disfranchisement by a *quo warranto* issued against its charter, and aware of the habitual subserviency of the Judges, was glad to accept any terms that were offered, and submitted absolutely to the dictation of the Crown. The same base and pernicious example was followed in the other cor-

porate towns. The late King's death in the bosom of the Romish Church, and the ostentatious display of his religion by James going openly to mass in Royal state, failed to open men's eyes and alarm their religious fears. He ventured early upon calling a Parliament, and a revenue of 2,000,000*l.*, equal to 5,000,000*l.* at this day, was settled on him for life, with 700,000*l.* a year for supporting a standing army. An address on behalf of the Penal Laws was altered on a suggestion that its expressions might give offence to the King. A bill passed one House at least, and that the people's House of Parliament, declaring it high treason to make any motion for altering the order of succession—the very House which a few years before had passed a bill to exclude the reigning monarch for ever and bestow the Crown as if he had been naturally dead. It seemed a most superfluous plan which the profligate Sunderland had formed to dissolve the Parliament during the King's life, and trust to supplies from France in case any extraordinary occasion for them should arise. James, so lately the object of all men's dread and aversion, was now extolled for his courage, his adherence to his promises, his patriotic services to the country, his patience under the late persecution, which had forced him to reside abroad; so that he became now, to use Lord Lonsdale's expression, "the very darling of all men."

Meanwhile, notwithstanding his promise to rule constitutionally, and his pluming himself on being a man of his word, he began his reign by declaring permanent the customs which had been voted for a fixed time. He assumed the power of dispensing with the penal laws, and issued a "Declaration for Liberty of Conscience" on that ground, taking care all the while to gratify at once his own monarchical dislike of the Nonconformists and the Church's prejudice against that body, by joining in severely persecuting them. In Scotland, where the Crown's prerogative was always more restricted than in England, he suspended the penal laws, as he stated, "by virtue of his sovereign authority, prerogative royal, and absolute power, to be obeyed without reserve by all subjects;" and for these acts the whole country, both counties and towns, poured in their warmest addresses of thanks. The gratitude of the Spanish mob, actuated by their priests and fired with superstition, was never in our own day more eagerly displayed for the restored

blessings of despotic government than was that of the English people in 1686 and 1687 for the arbitrary rule of James II.

Now was exhibited above all the base sycophancy of the lawyers, rendered more disgusting by the learned garb in which it clothed the vile language of crouching slaves; their subserviency the more glaring as it was the more pernicious and the more infamous in the more elevated positions of the profession. Now were seen the Benchers of the Middle Temple first hailing with delight the earliest act of the tyrant's reign, his levying money without consent of Parliament, for which wholesome exercise of the prerogative those sages of the law humbly and heartily tendered him their thanks. Again, the raptures of the same vile body knew no bounds when James, spurning himself all bounds, assumed the full dispensing and suspending powers. They averred that the Royal prerogative is the very life of the law, gratefully thanked him for asserting it, declared it to be given by God, and beyond the power of any human tribunal or authority to limit, and vowed to defend with their lives and their fortunes the grand truth, *a Deo rex—a lege rex*. Then, too, were seen the whole twelve Judges, save only one, declaring the right of the King to dispense with penal statutes, most solemnly made for the purpose of restraining his power; a Pemberton wresting the rules of evidence, to the sacrifice of innocent persons hateful to the Court; a Jefferies campaigning in the north against all corporate rights, in the west against all dissenters from the doctrines favoured by the Prince, and causing streams of the purest and most innocent blood in the land to dye its furrows that he might do his profligate employer's butchery, pave the way for absolute monarchy, help the overthrow of the national religion, and meanwhile provide convicts to be spared by redeeming their lives or their exile with money to meet the cravings of a profligate and insatiable Court. A Parliament, however, seemed still wanting to give the Catholics their establishment in the form of law; and to prepare for this Regulators of Corporations were commissioned to examine all their titles and all their acts, and to new model their structure under the threat, amounting to inevitable certainty, of judicial sentence if they resisted.

Happily the moonstricken Prince had gone a step too far. He had done in a month or two what if a year or two had been con-

sumed in doing might have been unresisted. He had expelled the members of one college for being Protestants, named a Catholic principal of another, and prosecuted seven Prelates for representing against his Declaration appointed to be read in all Churches. The Church had mainly been the cause of his excesses. The declarations of the University of Oxford some years back against all freedom of discussion and in favour of absolute government, followed up by their slavish submission at his accession, and the zeal with which the clergy had everywhere taken his part, running down all his opponents, and especially the Protestant Parliament last held in his brother's reign, had not unnaturally induced him to believe that he might rely on their neutrality, if not on their help, in all his designs. In truth he had persuaded himself that there was no substantial difference between his faith and others; for he had been entirely converted to Romanism by reading the controversial writings of the English Divines in the school of Laud; and it must be admitted that, like a certain sect of the Anglican clergy in our own day, the bounds which separated that school from Romanism were very difficult to trace. However, he reckoned on their adherence in vain. Suddenly Oxford led the way in deserting him, as she had led the way in seducing him. The communication had now been opened with the Prince of Orange. James saw that he must fight for his crown; and though he prepared himself by the measure of drafting a great number of Irishmen into his army, men prepared to fight for any cause or any person, the precaution was taken too late; the Bishops were acquitted, even the Judges now venturing to do their duty; the army refused to quit the Church; the clergy rallied in defence of their benefices, and their pulpits, and their faith; the country declared generally against the King, and for the Prince. A convention first, then a Parliament, after much subtle discussion, which we have explained at large in the First Part (Chap. II.), declared the throne vacant, and setting aside James's children, as well as himself, except the two Princesses, Mary and Anne, who had gone over to his enemies, settled the succession to the Crown upon William and upon them, and it was afterwards further limited to the descendants of James I.'s daughter, married to the Elector Palatine. This Revolutionary arrangement, grounded entirely upon the will of the people in a state of resistance to their

hereditary rulers, is the whole foundation of the title by which the House of Brunswick now enjoys the crown. Cavils have sometimes been attempted as if there had been no actual resistance in 1689, and they are only worthy of those antiquaries who deny a conquest in 1066, and read conqueror, acquirer. There had been arms taken in almost all parts of the country; but especially and on a large scale in Yorkshire, Notts, and Cheshire. There was a foreign army in the country, for no other purpose than to put down all attempts on the King's part; his troops for the most part joined the Prince; and by resistance to James he was deposed.

The form of words used out of regard to tender consciences and legal niceties in the Acts of the Convention offering the vacant throne, and of the Parliament offering the sovereignty for William and Mary's acceptance, is wholly immaterial. The Abdication was known and felt by every one to be constructive, not actual; James was well understood to have returned to London as King, and never by any act or word to have resigned the Royal authority which he claimed by hereditary title. But the people had rejected him, and their representatives held him to have vacated the throne, because he had been guilty of acts which justified them in deposing him. Moreover, suppose he had formally abdicated, he could not prejudice his son's title to succeed upon the vacancy which his resignation made. But the same power—the will and voice of the people—which had pronounced the throne vacant in spite of James, set aside the title of his son; called to the succession William, who stood five or six off, and by the course of nature could not easily have hoped to succeed; and then made the Crown hereditary in the daughters of James, living his son, and afterwards limited it to a remote branch, excluding that son's issue.

Nothing can be more clear, therefore, than that the whole proceeding was Revolutionary; that the change was effected by the Resistance of the people to their sovereign; that his assent was neither obtained nor asked, nor in any way regarded; and that the supreme power having been forcibly seized by the nation, was used to install a new chief magistrate in the throne.

CHAPTER VIII.

CONSTITUTION OF ENGLAND.

Resistance the Foundation of our Government—Necessity of keeping this always in view—Security derived from the late Parliamentary Reform—Universality of the Mixed Principle—Apparent Exceptions—Only real Exception, Privilege—Evils of that Doctrine; its Abuse—Conduct of the Commons—Recent History.

Outline of the Constitution—Prerogatives of the Crown; Extent; Limits—Substantive Power of the Sovereign—Hereditary Principle—Errors on the Regency Question—King's Influence in Parliament—Lords' House—Claims of the Commons: Taxation; Elections—Peerage—Large Creation of Peers; Crisis of 1832—Prelates; Convocation—Judicial System—Independence and Purity of Judges—Security of the People—Parliamentary Superintendence; Meetings; Press—Vigour of the Executive—Resources of the Country called forth—American Government—Three Defects in the Parliamentary Constitution—Bribery—Power of Adaptation to Emergencies—Extraordinary Powers; Habeas Corpus Suspension; Alien Act; Restraint of Meetings—Errors of Bentham School on unconstitutional measures—Writers on the English Government.

THE National Resistance was not only, in point of Historical fact, the cause of the Revolutionary settlement, it was the main foundation of that settlement; the structure of the government was made to rest upon the people's Right of Resistance as upon its corner stone; and it is of incalculable importance that this never should be lost sight of. But it is of equal importance that we should ever bear in mind how essential to the preservation of the Constitution, thus established and secured, this principle of Resistance is; how necessary both for the governors and the governed it ever must be to regard the recourse to that extremity as always possible—an extremity, no doubt, and to be cautiously embraced as such, but still a remedy within the people's reach; a protection to which they can and will resort as often as their rulers make such a recourse necessary for self-defence.

The whole history of the Constitution, which we have been occupied in tracing from the earliest ages, abounds with proofs how easily absolute power may be exercised, and the rights of the people best secured by law be trampled upon, while the theory of a free Government remains unaltered; and all the institutions framed for the control of the executive government,

and all the laws designed for the protection of the subject, continue as entire as at the moment they were first founded by the struggles of the people, and cemented by their labour or their blood. The thirty renewals of Magna Charta—the constant and almost unresisted invasions of the exclusive right of Parliament to levy taxes by the Plantagenet Princes of the House of York—the base subserviency of the Parliament to the vindictive measures of parties, alternately successful, during the troublous times of the Lancaster line—the yet more vile submission of the same body to the first Tudors—their suffering arbitrary power to regain its pitch after it had been extirpated in the seventeenth century—the frightful lesson of distrust in Parliaments, and in all institutions and all laws, taught by the ease with which Charles II. governed almost without control, at the very period fixed upon by our best writers as that of the Constitution's greatest theoretical perfection—and, above all, the very narrow escape which this country had of absolute Monarchy, by the happy accident of James II. choosing to assail the religion of the people before he had destroyed their liberty, and making the Church his enemy instead of using it as his willing and potent ally against all civil liberty—these are such passages in the history of our government as may well teach us to distrust all mere Statutory securities; to remember that Judges, Parliaments, and Ministers, as well as Kings, are frail men, the sport of sordid propensities, or vain fears, or factious passions; and that the people never can be safe without a constant determination to resist unto the death as often as their rights are invaded.

The main security which our institutions afford, and that which will always render a recourse to the right of resistance less needful, must ever consist in the pure constitution of the Parliament—the extended basis of our popular representation. This is the great improvement which it has received since the Revolution. As long as the House of Commons continued to be chosen by a small portion of the community, and to be thus influenced by the feelings and the interests of that limited class only, the Government resembled more an Aristocracy, or at least, an Aristocratic Monarchy, than a Government mixed of the three pure kinds; little security was afforded for constant and equal regard to the good of all classes; and little security was provided against such a combination between the Crown

and the Oligarchy as might entirely destroy even the name of a free Constitution. The increased influence of the Crown from large establishments, the result of the burthens left by expensive wars and of extended foreign conquests, seemed capable of undermining all the safeguards of popular liberty, and threatened to obliterate all the remains of free institutions as soon as some bold and politic Prince should arise equal to the task of turning such an unhappy state of things to his own account. In 1831 and 1832 the Parliamentary constitution was placed upon a wider and a more secure basis; and although much yet remains to be accomplished before we can justly affirm that all classes are duly represented in Parliament, assuredly we are no longer exposed to the same risks of seeing our liberties destroyed, and the same hazard of having to protect ourselves by resistance; nor can any one now deny that the democratic principle enters largely into the frame of our mixed monarchy. This great change is much more than sufficient to counterbalance all the increase of influence that has been acquired by the Crown since the Revolution, including the vexations which unavoidably attend the administration of our fiscal laws for the collection and protection of a vast revenue, and the creation of a numerous and important body, always averse to struggle under the worst oppressions, and always the sure ally of power—I mean the vast and wealthy body of public creditors, whose security is bound up with the existing order of things.

The great virtue of the Constitution of England is the purity in which it recognizes and establishes the fundamental principle of all mixed governments; that the supreme power of the state being vested in several bodies, the consent of each is required to the performance of any legislative act; and that no change can be made in the laws, nor any addition to them nor any act done affecting the lives, liberties, or property of the people, without the full and deliberate assent of each of the ruling powers. The ruling powers are three—the Sovereign, the Lords, and the Commons: of whom the Lords represent themselves only, unless in so far as the Prelates may be supposed to represent the Clergy; and the Scotch Peers to represent, by election for the parliament, and the Irish, by election for life, the peerages of Scotland and Ireland respectively; the Commons represent their constituents, by whom they are for each parliament elected.

If it should seem an exception to the fundamental principle now laid down that the Crown has the power of making peace and war, and of entering into treaties with foreign states, operations by which the welfare of the subject may be most materially affected, it is equally true that no war can possibly be continued without the full support of both Houses of Parliament; and that no peace concluded, or treaty made, can be binding, so as to affect any interests of the people, without their subsequent approval in Parliament. The Sovereign, therefore, never can enter into any war, or pursue any negotiation, without a positive certainty that the Parliament will assent to it and support the necessary operations, whether of hostility or of commercial regulations; and thus the only effect of this prerogative is to give due vigour and authority to the action of the Government in its intercourse with foreign powers and its care of the national defence.

It is, however, a more serious infringement of the fundamental principle if either of the three branches assumes, under any pretence, a power of acting without the concurrence of the other two, and without the sanction of any known general law to which the obedience of the people may be required. The several branches of the system have each at different times endeavoured to exceed this limited and balanced power, and to exercise alone a part of the supreme functions of Government. The Crown long struggled with the Commons to be allowed the right of taxing; it assumed repeatedly the right to imprison individuals without bringing them to trial; it claimed the power of suspending laws or of dispensing with them at a much later period, and exercised this, at least in ecclesiastical matters, down to the period of the Revolution. The abandonment, or the prohibition by law of these dangerous pretensions, was the main victory of the people, both in the seventeenth and eighteenth centuries; the freedom of the Constitution was deemed to consist chiefly of the restraint under which the Sovereign was thus effectually laid. But the two Houses of Parliament, and more especially the Commons, have laid claim to certain privileges by no means consistent with the mixed nature of the Constitution, and repugnant to the liberty of the subject.

The judicial power exercised by the Lords as a supreme Court of Judicature in all matters of law, whether civil or criminal,

and a Court of general appeal in all equity suits, has never been deemed inconsistent with the liberties of the people. If indeed it were exercised, as by the letter of the Constitution it should be, by the whole body of the Peers, in like manner as their legislative and political functions are, great abuse must ensue, and wide-spreading oppression must be the consequence. But the Peers very wisely have in practice abandoned this right, and left their whole judicial business in the hands of some five or six of their number, professional lawyers, who have filled or continue to fill the highest judicial offices in the state. There have only been two instances of the Peers at large interfering in such questions for the last hundred years; only one within the memory of the present generation, and that nearly forty years ago.

Both Houses, however, claim to visit with severe punishment what are called contempts or breaches of their privileges, the Commons by imprisonment during the session, the Lords by imprisonment for a time certain, and by fine. Nor would this be objected to if it were confined to cases of actual contempt and obstruction, as by refusal to obey their lawful orders issued in furtherance of the judicial proceedings of the Peers, or of the inquisitorial functions of the Commons, or of any matter without the compassing of which either House could not proceed to discharge its duties. No court, from the highest to the lowest, can exist for any useful purpose if its proceedings may be interrupted by any unruly individual, or riotous mob, or if its members may with impunity be obstructed or threatened in the discharge of their duties; and it is absolutely necessary that such lawless conduct should be at once repressed by immediate punishment. But very different have been the powers of visiting contempts claimed by the two Houses, especially by the Commons' House of Parliament. They have punished summarily as breaches of their privileges acts which could in no way be construed into an obstruction of their functions, and which might most safely have been left to the ordinary visitation of the criminal law. We have in the course of the last two Chapters seen the latitude which they frequently assumed in classing whatever they disliked under the head of breach of privilege, and punishing it with extreme severity. In the time of James I. the Commons ordered a person who was charged only with having spoken disrespect-

fully of the Palatine, then an object of popular favour, to be led ignominiously in procession on horseback, with his head towards the tail of the beast, to be whipped from London to Westminster, to pay a fine of 5000*l.*, and to be imprisoned for life; and all but the whipping was executed upon this unfortunate gentleman. In Charles I.'s time they habitually voted any act which displeased them a breach of their privileges. In order to reach an obnoxious individual, whatever he did was declared against their privileges; thus to reach Archbishop Laud all "new-fangled ceremonies in the Church service" were voted contempts of the House. The same inordinate assumption of power under the name of privilege was in the next reign not unfrequent. The persons of members' servants too were held as sacred as those of members themselves. Nay, down to a late period, the last year of George II.'s reign, there are instances of members preferring their complaint in questions of private right to the House, instead of trying the matter by actions at law, and of the House treating the assertion of adverse rights as breaches of its privileges, and punishing the parties accordingly. Even in this day a libel on the House is treated as a breach of its privileges, as if any possible injury or obstruction to its proceedings could arise from prosecuting this as the King prosecutes it, and as every other person in the realm prosecutes attacks on his character.

It is impossible to deny that this power assumed by the Houses of Parliament, and especially abused by the Lower House, is an infringement on the whole principles of the Constitution, and a great violation of all the ordinary rules which ought to regulate the administration of criminal justice. In the *first* place the party wronged, or complaining of injury, not only institutes the trial without the intervention of a grand jury, but assumes to be the sole judge of the charge, to find the guilt, and to mete out the punishment. *Secondly*, the proceeding is of the kind most abhorrent to our laws; for the party is called upon to confess or deny the charge, and if he refuse to criminate himself he is treated as guilty. But *thirdly*, and chiefly, he is tried, not by a general law, previously promulgated, and therefore well known to him whose duty it is to obey, but by an *ex post facto* law, a resolution passed by his accuser declaring the criminality of the act after it has been done. This appears to be quite intolerable.

Any law, anyhow made, provided it be made calmly, and before the event occurs which it embraces, is far preferable to a law contrived and promulgated for the first time on the spur of the occasion, when the passions are heated by the offence done or alleged. If even an indifferent party, a court of justice, or a legislature, were to make the law by which the defence should be defined, and the accused convicted, in one breath, the grievance would be intolerable of such an anomalous justice. But how incomparably worse is the justice of the party complaining, himself making the law by which his adversary is to be tried, and pronouncing the rule, and the conviction, and the punishment, at one and the same time? I say nothing of the manner in which this proceeding precludes the Royal prerogative of mercy, because possibly breach of privilege, whether actual or constructive, is a case which ought to be exempt from the protection of the Crown. But the other objections are quite sufficient to make all considerate persons, all who are not, like one great party in the state, carried away by an undistinguishing love of party supremacy, and disregard of all the rules that should regulate judicial proceedings, agree entirely with the very sound and judicious opinions on this important subject, expressed in the resolutions of the Lords on the Aylesbury case in the year 1701. They declared that "neither House of Parliament hath any power, by any vote or declaration, to create to themselves any new privilege that is not warranted by the known laws and customs of Parliament; that the Commons by their late commitment of certain persons for prosecuting an action at law, under pretence that it was a breach of their privileges, have assumed to themselves a legislative power by pretending to attribute the force of law to their declaration, and have thereby, as far as in them lies, subjected the rights of Englishmen, and the freedom of their persons, to the arbitrary votes of the House of Commons."

In 1721 the Commons went yet further, for they committed to Newgate the printer of a Jacobite paper, merely because it was a public libel, and without pretending even to declare it a breach of their privileges; so that, by the same rule, they might punish any person for any kind of misdemeanor, without judge or jury.

I sincerely wish that I could perceive in the more recent

history of Parliament any disposition on the part of the Commons to recede from so untenable a pretension as the claim to declare at any time their privileges, and to add new chapters to their Criminal Code as new events arise. Not only did they commit Mr. Gale Jones to Newgate, on the flimsy and indeed ridiculous quibble that debating in a club a *question* concerning the parliamentary conduct of a member was in violation of the Bill of Rights, which forbids *questioning* in any court or place any member for his proceedings in Parliament (a provision plainly intended to prohibit all judicial proceedings or quasi-judicial proceedings against members for their parliamentary conduct); not only did they send Sir Francis Burdett, and a few years after Mr. Hobhouse, to prison for libels published against them, which the ordinary process of the law reached, and would have been quite sufficient to punish; but they afterwards assumed in 1836, and defended in 1837, the power of publishing whatever attacks on individuals they might think fit, and of protecting their agents from all responsibility, civil or criminal, for the act; a power never in modern times pretended to be exercised by the Crown, whose servants are responsible for all acts done by its orders. Upon the same memorable occasion they adopted a resolution reported by a committee charged to inquire into the matter, and in that resolution they asserted their unqualified right at all times to create new privileges, and denounce new acts as a breach of those privileges; so that as the law of Parliament now stands the two Houses are invested each with a separate and uncontrollable power of making laws as occasion may require, of grinding as it were a little new law as they want it, and to suit the particular cases which arise; nor is any limit but their own discretion assigned to this pretended right. It may be quite necessary to give them the right of removing and of summarily preventing all obstructions; quite right to let them visit, and severely visit, all misrepresentations in public of their proceedings, only made publicly known by sufferance; but to give them anything like the power of several legislation and jurisdiction claimed by both Houses, must be an infringement of the Mixed Constitution of the English Government. It is in vain to deny the origin of this claim, and the motive for preferring it. They dare not trust to the ordinary administration of the criminal law; they dare not go before an impartial judge and indifferent

jury; they dread the consequences of leaving the law to take its course; and therefore they must needs take it into their own hands, and at once make themselves party prosecuting, grand jury, petty jury, judge, and even law-giver, by one sentence forming the law, promulgating it, prosecuting for its violation, convicting the accused under it, he being their adversary, and sentencing him to suffer for the wrong done, or alleged to be done by him, to themselves.

Let us now shortly consider in what the Constitution of England consists, how its structure is preserved, and how its functions are performed, having generally surveyed the principles on which it rests, the sacred right of resistance, the separation and entire independence of its component parts, and the admission of the People as well as the Prince and the Peers to an equal share in its powers and prerogatives.

The whole Executive Power is lodged in the Sovereign; all the appointments to offices in the army and navy; all movements and disposition of those forces; all negotiation and treaty; the power of making war, and restoring peace; the power to form or to break alliances; all nomination to offices, whether held for life or during pleasure; all superintendence over the administration of the civil and the criminal law; all confirmation or remission of sentences; all disbursements of the sums voted by Parliament; all are in the absolute and exclusive possession of the Crown. An ample revenue is allotted for the support of the Sovereign's dignity, not only in a becoming but in a splendid manner, and his family share in due proportion the same liberal provision. To which is added a sum formerly unlimited, of late years restricted to 1200*l.* a-year, for the reward of merit, by way of gratuity or pension.

Such are the powers and prerogatives of the Crown; but they are necessarily subject to important limitations in their exercise. Thus the Sovereign can choose whom he pleases for his ministers, dismiss them when he pleases, and appoint whom he pleases to succeed them. But then if the Houses of Parliament refuse their confidence to the persons thus named, or require the return to office of those so removed, the Sovereign cannot avoid yielding, else they have the undoubted power of stopping the whole course of Government. So, too, if war is declared, or peace concluded, contrary to the opinion of Parliament, the

Sovereign has no means of conducting either operation, and his own inclination must be abandoned. We have before seen at large (Pt. II. Ch. II.) how there is often a compromise effected between the conflicting branches of the Government; and how, to avoid a collision, each giving up a portion of its demands, the result of the combined movement which the machine of the state pursues, is one partaking of the impulse which each has given to it.

If it cannot on any account be affirmed that the Sovereign has full and independent powers of action, so it cannot any more be affirmed that he is not without power, and very considerable power, in the state. If he can find any eight or ten men in whom he reposes confidence, who are willing to serve him, and whom the Houses will not reject, he has the choice of those to whom the administration of affairs shall be confided. When he has obtained a ministry, on many important points they are likely to consult his opinion and wishes rather than bring matters to a collision with him. Many modifications of the measures of Parliament are likely to be adopted rather than come to a rupture with him. The vast patronage at the disposal of the Crown, and the great revenue allotted to meet the Sovereign's personal expenses and those of his family, are a source of individual influence which must arm him with great direct power. His opinions, if strongly entertained, like those of George III. on the American war and Catholic question, his wishes and feelings, if deeply entertained, are thus certain to exert a real influence upon the conduct of public affairs, and with even the most conflicting sentiments of the people and the Peers, secure a sensible weight to his views in the ultimate result. This is the spirit of the Constitution, which wills that the individual Monarch should not be a mere cipher but a substantive part of the political system, and wills it as a check on the other branches of the system.

Of all the Sovereign's attributes none is more important than his independent and hereditary title; nor can a greater inroad be made upon the fundamental principles of the Constitution than the bringing this into any doubt or any jeopardy. Hence, in the event of his infancy, illness, or other incapacity, it is a serious defect in the system that no general law has provided for supplying his place, because this leaves the question to be discussed and debated each time that the Royal authority fails, and

in the midst of all the passions sure to be engendered by the adherents of contending parties and the advocates of conflicting opinions. There can be no manner of doubt that Mr. Fox's opinions in 1788 were far more in accordance than those of Mr. Pitt with the spirit of a constitution which abhors all approach to election in the appointment of the Chief Magistrate. Yet that precedent, followed as it was by Mr. Perceval's ministry in 1811, in both instances, from the mere personal views of the parties and their hostility to the heir apparent, has established it as the rule of the Constitution, that in the event of the Sovereign's incapacity the two Houses of Parliament shall always legislate to choose the Regent and define his powers, as well as to provide for the custody of the King's person. This is a complete anomaly in our form of government, and it perpetuates the risk of the worst mischiefs arising as often as the incapacity occurs, by providing that the whole of the subject most exciting to all classes shall be discussed during the greatest heats which that excitement can kindle. Of the same Parliament which in its wisdom has declared itself the best judge in its own cause, and has resolved that the law of its privileges, the measure of its prerogative, shall be taken from occasional decisions made for the purpose of each case, it may be pronounced worthy and in exact consistency to refuse settling by a general law the manner of supplying any defects in the Royal authority, of preserving the prerogative of the Crown, and to leave the rule for special, and partial, and inflamed consideration as often as the incapacity occurs. As it has dealt with Parliamentary privilege so has it dealt with Royal prerogative, according to the factious views of the hour, and with no regard for the wellbeing of the Constitution.

The most important check upon the Royal authority is the necessity of yearly meeting Parliament, and of having recourse to it for the means of carrying on the government. The power of the sword is really only given for a year to the Sovereign; the only means which he possesses of keeping the army and the navy together, and enforcing the strict discipline required, flow from an act passed yearly and for a year each time. There are many branches of the revenue which in like manner are only granted for a year—in fact all save that portion which is mortgaged to the public creditor. If then a King were to retain

the troops on foot without a Mutiny Bill, and to levy the revenue not voted by Parliament, not only would the soldiery be released from obedience to their commanders, not only would the people be released from their allegiance, and justified in resisting the Crown, but the courts of law would refuse to aid the ministers by either suffering soldiers to be tried by courts martial or requiring the subjects to pay their taxes. No soldier needs fear punishment for his disobedience, no person needs pay any of the taxes beyond those mortgaged to pay the interest of the national debt. Thus it becomes absolutely impossible for the Crown to govern without assembling a Parliament, or to govern without a general good understanding with the Parliament so assembled. Besides, whoever should remain in any office of trust under the Crown while illegal attempts were making, much more, whoever should aid in making them, would as soon as Parliament met be impeached by one House and tried by the other; and although the Crown might pardon him, it could not prevent his trial and conviction.

Over the Parliament, thus essential to the administration of public affairs, the Sovereign no doubt has great influence. He can at any moment dissolve it, provided the Mutiny Bill is passed and the necessary supplies are granted; and thus, by appealing to the nation at large, he can defeat any factious cabal which an oligarchy not faithfully representing the body of the people might contrive for enslaving the Prince. There is even some risk of this power being abused, by the Royal influence being first employed to excite a popular clamour against particular men or particular measures, and then advantage being taken of such delusions in an immediate general election. The shortening of the duration of Parliaments affords the best security against this hazard, because if the Parliament has only been assembled during a short period of time the Sovereign is less likely to encounter another general election.

The Lords, who form the upper and permanent branch of the legislature, may be considered as representing not merely themselves, but also their powerful families and immediate connexions, and in some sort as representing all the greater landowners in the country. We have shown (Part II. Chap. VI.) how great a tendency the habits and the interests and even the prejudices of this important assembly have to make it a conser-

vative body, ever ready to fling its weight into the scale of the existing Constitution, and to prevent matters coming to extremities between the Crown and the people. Its veto upon all the measures that pass the Commons, the weight derived from its judicial functions, its general superiority in the capacity and learning required for excelling in debate, its more calm deliberation on all questions, unbiassed by mob clamour, its more statesmanlike views of both foreign and domestic policy, give the Upper House an extraordinary influence on all questions of national concernment. But to these sources of weight, the elements of the Natural Aristocracy, must be added the influence and indeed the direct power bestowed by vast possessions, as well as illustrious rank; and against this can only be set the popular connexion of the other House and its tenacious adherence to certain privileges with respect to the Lords. I allude particularly to the exclusion of the latter from the originating of any measure of supply, and from all alterations upon any financial measure sent up from the Lower House. Although the Lords have never abandoned their claim to originate and to alter money bills as well as the Commons, yet in practice they never assert the right, and we may therefore take it, that by our Constitution the Commons alone can begin any measure of supply, and that the Lords have no power to alter it as sent up to them, but must either accept it wholly or wholly reject it.

It seems quite clear that this exclusive right of the Commons is wholly useless to them, while it greatly tends to impede public business, by loading the Commons with Bills which might be considered in the Lords while they have nothing else to do, and occasioning Bills to be thrown out in their last stages, and then introduced in the Commons and reconstructed, in order to meet objections taken in the Lords. That the Commons gain nothing whatever by this pretension is clear; and nothing can be more absurd than citing the case of the Upper House's judicial functions as a parallel one; for in that instance the Commons cannot interfere at all, the whole matter beginning and ending in the Lords; whereas the assent of the Lords to a money-clause is just as necessary as to any other part of a Bill. The claim is grounded on mere violent and factious excitement; on mere romantic and poetical declamation; on views consisting of exaggeration; of confounding things like as if they were identical,

or substituting one idea for another, or a determination to act unreasonably and according to fancies and figures of speech, not solid arguments. It must be remarked, too, that the Commons, after treating this exclusive privilege as of paramount importance, as the safeguard of all its other privileges, have suffered it to be broken in upon once and again; as when it withdrew from the absurd pretence that a prohibition being enforced by a pecuniary penalty could not be touched by the Lords, because it was a money-clause.

Another point, on which the Commons claim the exclusive right to begin measures, relates to the election of its members. They hold that the House cannot part with this to any other body; and further, they will not suffer any Bill touching it to begin in the Lords. Yet nothing is more certain than that, as far back as 1770, they abandoned this exclusive right altogether, transferring the whole judicature touching elections from themselves to a Committee, authorized by an Act of Parliament, to which of course the assent of both King and Lords was absolutely necessary. It is equally certain that this and the subsequent statutory amendments of the Election Law have proved among the most useful, as they were among the most necessary improvements in the practice of the Constitution. Nor does any one now doubt that a further delegation of the judicial power in dealing with contested elections, such a delegation as should transfer it wholly from the Committees of the House to independent and impartial Judges, would be a still more valuable improvement in the constitution of Parliament.

No reasonable doubt can exist that the most perfect arrangement of the mutual rights of the two Houses would be that of entire equality; and that neither ought to have the exclusive right to originate or frame any law. In discussing certain measures there would naturally be a greater weight attached to one House than the other, a greater deference shown to its opinions, and a proportionable reluctance to reject its propositions. Thus the Commons, as representing the numbers of the community, as well as a portion of its wealth, would naturally be listened and deferred to, upon all questions of public burthens, whether on the property or the labour of the people, and on all questions touching the elections of their members. The Lords would, in like manner, be more listened and deferred to on matters affect-

ing the judicial system and the privileges of Peerage. Nor can it be reasonably doubted that this mutual deference would be far more surely and far more readily accorded by both Houses, if neither persisted in setting up claims so fanciful and so preposterous as those which we have been considering—claims inconsistent in themselves, and wholly repugnant to the fundamental principles of a mixed Government.

The Crown is the fountain of honour, and can alone confer any rank or precedence. The unlimited power belongs to it of creating Peers; and of these no less than twenty-six, the Prelates, enjoy their Peerage only for life. The power, indeed, exists of creating temporal Peers also for life; but it has never been exercised further than by calling up the eldest sons of Peers, an operation which adds to the numbers of the House only during the lives of individuals. Twenty-eight Irish Peers sit by election for life, and sixteen Scotch during the parliament. The only restriction upon the power of creation refers to the Irish Peerage. No addition can be made to it in a greater proportion than that of one to every three peerages that become extinct.

This prerogative has upon several occasions been exercised to influence the proceedings in Parliament. Lord Oxford carried a question of importance in the Lords by a sudden creation of twelve peers, in the reign of Queen Anne. Mr. Pitt greatly extended the influence of the Crown in the House of Commons, and diminished the importance of that body, by transferring many of his adherents among the landed gentlemen to the Upper House. In recent times the Government, of which I formed a part, backed by a large majority of the Commons and of the People out of doors, carried the Reform Bill through the Lords by the power which his late Majesty had conferred upon us of an unlimited creation of Peers at any stage of the measure. It was fortunate for the Constitution that the patriotism of the Peers prevented us from having recourse to a measure so full of peril. I have always regarded it as the greatest escape which I ever made in the whole course of my public life. But were I called upon to name any measure on which the whole of a powerful party were most unanimously bent, nay, which attracted the warmest support of nearly the whole people, I should point at once to the measure of a large

creation of Peers in 1831 and 1832. Nothing could possibly be more thoughtless than the view which they took of this important question. They never reflected for a moment upon the chance of their soon after differing with Lord Grey and myself, a thing which, however, speedily happened—never considered what must be the inevitable consequence of a difference between ourselves and the Commons—never took the trouble to ask what must happen if the Peers, thus become our partisans, should be found at variance with both King, Commons, and People—never stopped to foresee that, in order to defeat our oligarchy, a new and still larger creation must be required—and never opened their eyes to the inevitable ruin of the Constitution by the necessity thus imposed of adding eighty or a hundred to the Lords each time that the Ministry was changed. I have seldom met with one person, of all the loud clamourers for a large creation of Peers, who did not admit that he was wrong when these things were calmly and plainly stated to him—these consequences set before his eyes. But I have often since asked myself the question, Whether or not, if no secession had taken place, and the Peers had persisted in really opposing the most important provisions of the Bill, we should have had recourse to the perilous creation? Well nigh twelve years have now rolled over my head since the crisis of 1832: I speak very calmly on this as on every political question whatever; and I cannot, with any confidence, answer it in the affirmative. When I went to Windsor with Lord Grey I had a list of eighty creations, framed upon the principles of making the least possible permanent addition to our House, and to the Aristocracy, by calling up Peers' eldest sons; by choosing men without any families; by taking Scotch and Irish Peers. I had a strong feeling of the necessity of the case in the very peculiar circumstances we were placed in. But such was my deep sense of the dreadful consequences of the act, that I much question whether I should not have preferred running the risk of confusion that attended the loss of the Bill as it then stood; and I have a strong impression on my mind that my illustrious friend would have more than met me half-way in the determination to face that risk (and, of course, to face the clamours of the people, which would have cost us little) rather than expose the Constitution to so imminent a hazard of subversion. Had we taken

this course I feel quite assured of the patriotism that would have helped us from the most distinguished of our political antagonists; and I have a firm belief that a large measure of reform would have been obtained by compromise—a measure which, however hateful at the moment to thoughtless, reckless men, become really more eager about the mode of obtaining it than about the object itself, would afterwards have proved satisfactory to all. My opinion of Lord Grey's extreme repugnance to the course upon which we felt we were forced, has been confirmed since he read the above passage.

We have now considered the House of Lords in its constitutions and functions, composed of Spiritual and of Temporal Peers. The Prelates sit, and have always had seats in that House as Barons, each holding his see by the tenure of a free-barony. But the Clergy, as a separate body in the State, had an assembly of their own, called the *Convocation*, summoned by the Archbishop's writ under the directions of the Crown. There was one for the province of York, which never was of any importance, and one for that of Canterbury. The Convocation consisted of the Bishops, who formed the Upper House; and the Deans and Archdeacons, proxies for the Chapters, and two for each diocese, elected by the Parochial Clergy; these formed the Lower House. The Convocation was hardly ever consulted except on granting a supply, and enacting Ecclesiastical Canons. In the reign of Henry VIII. and Elizabeth, it was consulted on questions touching the religion of the State. Thus, in 1533, it approved the King's Supremacy then enacted by law; and in 1562 it confirmed the Articles of Religion. However, by the Statutes made in Henry VIII. and Elizabeth's reign, and above all by the Act of Uniformity in Charles II.'s time, the power of making canons without the King's leave was first taken from the Convocation; the Thirty-nine Articles, and the articles respecting residence, became fixed and incapable of alteration except by the Legislature; and the doctrine gradually became established in the Courts of Law, that no canons whatever, unless confirmed by Parliament, could bind the Laity. Even the subsidies which the Convocation granted were confirmed by Parliament, and thus were assumed to be ineffectual of themselves. At length, in 1664, the taxation of the Clergy ceased in Convocation altogether, since which time all classes of the people have been taxed in common by the Parliament. At the time of the Revo-

lution, 1688, the Jacobites, for factious purposes, with the restless Atterbury at their head, before his flight and attainder, endeavoured to claim for the Convocation a right to meddle with Church questions, and some countenance was even given to those agitators by the Commons referring the form of the Liturgy for their consideration. The answer to all their arguments was the King's absolute power of adjourning and proroguing them, which he was free to exercise at all times because he no longer had occasion for their votes to obtain supplies. In the early part of Queen Anne's reign the body was suffered to sit more than it had done for many years; it became notorious for violence of faction; it was soon, however, defeated by a prorogation; and since 1717 it has never sat for the transaction of any business whatever. Summoned as a matter of form at the beginning of each new Parliament, it is immediately prorogued as soon as it carries up an address to the Throne. The existence, therefore, of the Convocation is now nominal merely.*

The Crown has the absolute power of appointing all the Judges, with the three exceptions of the Judges in the Ecclesiastical Courts, who are named by the Archbishop and Bishops; of the Vice-Chancellors of the Universities, who exercise a local jurisdiction over the students and tradesmen in the University towns; and of the Borough Magistrates, who exercise local jurisdiction by their Charters of Incorporation.† It is greatly to be desired that such anomalies, especially the appointment of the Dean of the Arches and Judge of the Consistorial Court of London by the Archbishop of Canterbury and Bishop of London, respectively, should cease; and I must, in justice to these Right Reverend Prelates, observe that they were willing, in 1833, to give up this patronage if Parliament could have been induced to make a proper provision for those high legal offices. It must likewise be added that the patronage has never been

* It is singular that Mr. Hallam, in his able and learned work, should have fallen into the vulgar and hurtful error of considering the Church as a corporation. "It is the first corporation in the realm," says he, Chap. xvi.; again, "the clergy have an influence which no other corporation enjoys," *ib.* The Church is not even synonymous with the clergy—it is all the faithful in communion with the Church according to the definition in the Thirty-nine Articles themselves; it is also a collection of corporations clerical, for each chapter is a corporation aggregate, and each parson is a corporation sole. The consequences of Mr. Hallam's notion are most hurtful in considering questions of Church reform.

† The lord of the manor of Havering-atte-Bower in Essex has the right of appointing Justices of the peace within that manor.

abused, the most eminent practitioners in the Courts Christian being invariably chosen, as they ought, to fill such important places.

Though named by the Crown, care is taken to make the common law Judges independent. Soon after the Revolution their places were made to continue during life or good behaviour; they are irremovable except by a joint address of the two Houses of Parliament; and as this only enables the Crown without compelling, each act of removal is like a statute, requiring the concurrence of the whole three branches of the Legislature. The power has never been exercised;* and at the accession of George III. the judicial independence was rendered complete by providing that the office should not be vacated on a demise of the Crown. The highest of all the Judges, though only clothed with a civil jurisdiction, the Lord Chancellor, holds his place during pleasure. But the analogy of the Common Law Bench has been followed in the case of all the other Equity Judges—both the Master of the Rolls, the Vice-Chancellors, and the Masters in Chancery, holding their offices during life and good behaviour. The Judicial Committee of the Privy Council is also placed in a somewhat anomalous position, although quite consistent with the fundamental principle which views the Sovereign as the authority appealed to in all Admiralty, all Consistorial, and all Colonial cases. The members of that High Court, therefore, though irremovable from their judicial stations out of the Council, may be removed from the Privy Council, and thus cease to form part of the Judicial Committee. It is, however, to be observed, that no emolument nor any rank is attached to the place; and, further, that no Privy Councillor is ever removed without grave reason for his removal. Nevertheless, it would be more satisfactory if some means could be devised of making these important judicial functionaries wholly independent of the Crown in name, as they undoubtedly are in fact.

An additional security is taken for the pure appointment of Judges by the very proper practice now become established, of the Chancellor, who is in fact the Minister of Justice, appointing

* Nearly forty years ago the House of Lords inquired into the conduct of Mr. Justice Fox, an Irish judge, accused of partial and unbecoming conduct in his judicial office. The inquiry was of considerable duration, and what might have been the result we are left to conjecture; the learned judge having resigned his office. Another Irish judge, Mr. Justice Johnstone, who had been convicted of a private libel, would also have been proceeded against, had he not resigned.

the Puisne Judges without any communication with his colleagues; he first of all takes the King's pleasure upon the nomination. This excludes, generally speaking, all political interference; and it is greatly to be desired that the same high officer, and not the Secretary of State, should fill up the successive vacancies in the Scottish Bench. The important office of Justice of the Peace is conferred by the Chancellor, generally on the recommendation of the Lord Lieutenant, or rather the *Custos Rotulorum* in each county. But once put in the Commission of the Peace, it is the practice not to remove any Justice without a conviction in a Court of Criminal Judicature.

The purity of the Bench is still further guarded by the statutory provisions disabling the Judges from sitting in the House of Commons. The Master of the Rolls and the Consistorial Judges are still exceptions to this rule. The Vice-Chancellors and the new Judges in Bankruptcy, the Judge of the Court of Admiralty and the Masters in Chancery, have all in later years been forbidden to sit in the Lower House. The chiefs are sometimes members of the House of Lords; and this is in a certain degree necessary for the perfect exercise of its judicial functions. But the feeling is so strong and so general against Judges mingling in the strife of political party, that we rarely have any example of these great legal dignitaries taking part in the struggles of faction.

If the other parts of the political fabric which we have been surveying are well entitled to great admiration, surely there is no portion of it more worthy of an affectionate veneration than the Judicial system. It is by very far the most pure of any that ever existed among men; its purity in modern times is not only beyond impeachment, but beyond all question. In the utmost violence of faction, in the wildest storms of popular discontent, when the Crown, the Church, the Peers, the Commons, were assailed with the most unmeasured violence, for the last century and upwards no whisper has been heard against the spotless purity of the ermine; or, if heard for an instant, it has been forthwith drowned in the indignant voice of reprobation from all parties, and has only served to destroy the credit of the reckless slanderer who emitted it.*

* The shallow, violent, and unprincipled Junius never certainly recovered his ignorant assault on Lord Mansfield; that and his equally vile calumnies against the Duke of Bedford deserved equal reprobation.

The possession of such a system is invaluable to any nation; but in a free constitution which requires large power to be lodged in the irresponsible hands of the people, it is absolutely essential to the existence of order in union with liberty. The Judicial power, pure and unsullied, calmly exercised amidst the uproar of contending parties by men removed above all contamination of faction, all participation in either its fury or its delusions, held alike independent of the Crown, the Parliament, and the multitude, and only to be shaken by the misconduct of those who wield it—forms a mighty zone which girds our social pyramid round about, connecting the loftier and narrower with the humbler and broader regions of the structure, binding the whole together, and repressing alike the encroachments and the petulance of any of its parts. When Montesquieu invented his epigram, so often cited since, that the fate of the British Constitution would be sealed whenever the Legislature became more corrupt than the Constituents, he overlooked a topic more fruitful of sound and valuable truth, if not easily lending itself to glittering figure; he might better have pronounced the Constitution eternal while the Judicial portion of it remained entire.

We have now contemplated the structure of the British Constitution; and we may cast our eyes for a moment upon the rights which it secures to the people, and the advantages it gives to the administration of their affairs. This we shall best do by considering those privileges which in less free countries are withheld from the people, and those facilities which in more popular Constitutions are found wanting to the Government.

By the choice of their representatives—by the power vested in the great landowners and other high dignitaries of the country—by the constant transaction of all public business in Parliament—by the unbroken publicity given to all Parliamentary discussions—the people, both of the higher and the middle ranks, have a real voice in the management of their own affairs; a real control over the conduct of their rulers; and, indeed, a great weight in the selection of the public servants. It is much to be lamented that the working-classes have not, generally speaking, their share in the administration of affairs; and this might most safely, and indeed beneficially, be entrusted to them. But as

far as regards their rights and liberties they have the most full protection of the Constitution. The meanest person in the country cannot be oppressed without his wrongs becoming known in Parliament and to the whole community, even if the unhappy expense and complication still involving all legal proceedings should prevent him from having the full benefit of the Judicial system. This is one of the prime distinctions of England; that the Houses of Parliament, beside transacting the regular public business of the Nation, are ever open to hear the petitions of the people, and the grievances of individuals; nor can the most insignificant member of either stand up in his place to prefer a complaint of such wrongs from the meanest subject of the Crown, without having a patient and even favourable audience. It is inconceivable what a confidence this inspires in all good men, and what a terror it strikes into those who would vex or oppress them.

It is needless to enumerate the important checks on Royal authority and Ministerial abuse which this Constitution provides. The people cannot be taxed to the amount of a farthing without the consent of the whole Parliament; there cannot be raised one man to serve in the Army, and but for the barbarous practice still adhered to of impressment, there could not be raised a man to equip the Navy, without the sanction of the same three powers; nay, as no war can be carried on without that concurrence, impressment, how harsh and clumsy a method soever of recruiting, may be strictly said to depend on the will of Parliament. Above all, for every act done by the Crown there must be a responsible adviser and responsible agents; so that all Ministers, from the highest officers of state down to the most humble instrument of government, are liable to be both sued at law by any one whom they oppress, and impeached by Parliament for their evil deeds.

The right of Public Meetings to consider state affairs is possessed in an almost unlimited extent by this people. It is only restricted by law when it exceeds all fair, useful, and legal bounds, and is made the means of intimidating the constituted authorities, terrifying the peaceable and well-disposed, and preparing the forces and the approach of rebellion.

The right of Printing and Publishing is subject to no further restriction than that of attending public meetings. No previous

licence is required either for putting forth a book or carrying on a journal; men are only called upon to afford the means of discovering their persons, in case they should pervert the press to the purposes of private and personal malice, or should make it an engine for exciting to insurrection and other crimes. It is to be lamented that the law in this respect is still defective, by withholding the right to prove the truth in prosecutions for public libel; and by not making a distinction between the author and the publisher, so as to favour the declaration of all writers' names and discourage anonymous publication. The leave to prove the truth in all cases, whether of public or private prosecution, should be confined to the real author alone.

The security of personal liberty is not only made complete by the Courts being open to any parties who have been unlawfully arrested, but by the severe penalty inflicted on all the Judges who refuse a writ of Habeas Corpus. It is the only instance known in the law of any country, of an action being allowed to be brought against any Judge for his judicial conduct. For oppression and corruption of other kinds, our Judges may be removed by the joint address of the two Houses, or they may be impeached by the one House and tried by the other. But for withholding, even for an hour, this remedial writ, the great security of personal liberty, they may be sued as common wrong-doers.

Let us now for a moment consider how far these privileges are made consistent with a sufficient vigour and unity in the executive administration of affairs. It must be admitted that the more popular constitution of the United States is exceedingly inferior in this important particular to that of England.

The Government cannot be carried on with us for any length of time, unless the Ministers of the day have the support of a decided Majority in both Houses of Parliament. An attempt, attended with most mischievous consequences, was lately made to govern without such a majority. It led to so great public inconvenience, and was attended with so much discomfort and discredit to those who made it, that we may safely conclude the first experiment of this kind will also be the last. Hence the Government can always reckon on a general support of its measures; and can both carry on hostilities, if unhappily this recourse should be unavoidable, form alliances, and enter into

negotiations with sufficient confidence. Extravagant grants of money will not be obtained; unjust or impolitic measures will not be supported; but the Government which flies not in the face of public opinion, may be well assured of receiving the sanction of Parliament to all its important measures.

The large revenue placed at the Sovereign's disposal, makes him in a great measure independent in all ordinary transactions. He is not thereby enabled to govern without Parliament; but he is not reduced to the condition of a cipher, a pageant, or a dependant. He has influence enough to make his opinions and his inclinations felt in all the operations of the state.

The participation of the people of the upper and middle classes in all the affairs of state, the complete publicity given to all the measures of Government and of Parliament, and the full discussion out of doors which they undergo, knit the governors and the governed closely together, and enable the former to call forth all the resources of the country. See the vast armies at sea and on shore which our scanty population has at different times maintained! Mark the endless variety of our settlements in all the most remote quarters of the globe! Above all, reckon the hundreds of millions which have been levied within the last hundred and fifty years from the people, and levied with hardly a remonstrance!—and then confess that for producing a strong government there is nothing like a popular constitution—that no despot, be he ever so absolute, has any engine of taxation that can match a Parliament! If it be said that the American Government can as well call forth the resources of the people, I have very great doubt if the national representatives, and especially the President towards the end of his first three years, would inflict a heavy excise or a grinding income-tax upon the people, as our Parliament has so often done; and I have no doubt at all that such an infliction would very speedily lead to a termination of hostilities, without any very great nicety about the terms of the peace. The English people are so ruled that if once war is entered into there is quite sufficient resistance from the Government and the Peers to an importunate desire of peace which might put the interests of the state in jeopardy, or fix a stain upon the national fame.

The three principal defects in the structure of the House of Commons, and which might be removed, though it is hardly

possible to remove altogether the greater evil of bribery, are the too great numbers of the House, the lopping off all close or nomination boroughs, and the substituting in their place some two or three score of small towns, the inevitable scenes of corruption.

1. The number of 658 is preposterously large. Though seldom above five-sixths attend, yet the meetings are far too numerous for calm discussion, and even for orderly demeanour. The number of speakers, too, protracts indefinitely the debates, and obstructs all business, so that, the whole session being spent on a few subjects, chiefly of a party kind, towards the end of it, when men are exhausted, and when no considerable numbers remain in attendance, the most important measures pass without any consideration, and oftentimes some of this description are thrown out by the obstinate opposition of a few men, who profit by the period of the expected prorogation, in order to threaten delay, and thus cause useful bills to be given up. The Local Courts Bill, the Irish *nullum tempus* Bill, and others, were put off for a year by this unworthy species of warfare in the session 1842; and some measures which did pass, as the Imprisonment for Debt Bill, and the Bankruptcy Court Bill, were greatly mutilated. Party has seldom been productive of a worse evil than its throwing out one of the most valuable improvements in the Reform Bill of 1831, that original measure having reduced the numbers of the Commons from 658 to 500.

2. The want of close boroughs, or some substitute for them, is an undeniable evil, and greatly obstructs the course of public business. However opposed these boroughs may be to constitutional principle, there being no means of placing great Government functionaries in the House of Commons is a serious evil. I more than once adverted to this in 1831 and 1832, when the Reform Bill was before the Lords. I agreed with the Duke of Wellington, who foresaw serious difficulty in carrying on the national affairs in such a Parliament as was proposed, unless indeed we adopted the French plan of allowing the Ministers to speak in the two Houses, or at least in one of them, without seats and voices. Soon after I had a practical illustration of my argument, which confirmed these apprehensions. The Attorney-General was thrown out of a popular place by a cry which the Dissenters raised on some temporary matter, and

he remained excluded the whole session, when the accident of a Scotch Judge making a vacancy on that Bench removed the Lord Advocate, and the Attorney-General succeeded to his seat. Many important measures for the amendment of the Law were thus postponed for a whole year. But it may at any time happen that a Chancellor of the Exchequer, for conscientiously performing his duty by propounding an unpopular tax, or a Crown lawyer by repressing smuggling, or prosecuting sedition, shall find no popular constituency ready to choose them for their members, and thus the whole Government may be paralyzed.

3. The small boroughs of 200 to 400 voters are multiplied by the late Reform, and this is anything rather than an improvement on the elective system. Those places are unavoidably the haunts of bribery, hotbeds of every species of corruption. They fall into the hands of some jobbing attorneys, who traffic in them under the specious pretext of being paid their long bills.

If we endeavour to prevent bribery altogether, we may fail. But if we would much lessen its amount, what can be more obvious than the remedy of dividing the country into electoral districts, as France is? It is certain that bribery is confined to the towns, and to those, generally speaking, of a moderate size; that in hardly any of the very large ones does it prevail at all; that in none of the counties is it known. The right course, it should seem, is to choose the members not by towns and by counties, but by districts composed of town and country together. Nor can there be any valid objection to thus blending the town with the country. Nay, were there even an objection, it must be a very formidable one to counterbalance the mighty benefit of putting down the pest of corruption which now threatens our national morals, as well as the purity of our Parliamentary system and the existence of our free Constitution; nay, which makes many good men, in balancing the advantages of a free and an absolute government, hesitate which to prefer while they find that a popular Constitution can only be purchased by the ruin of all morals.

We have now been contemplating the English Constitution in its structure and in its operation during ordinary times. But its admirers commend, and in some sort justly commend, its powers of adaptation to existing circumstances. Thus the most im-

portant rights have occasionally been suspended, or have been subjected to great restraints, almost amounting to total suspension. The right of public meeting was at an end during the greater part of the war which ended at the peace of Amiens. It was afterwards suspended for a few months in 1820. On these occasions no one denied that circumstances might require and so justify this restriction upon the right of meeting; the only question raised was upon the amount of the danger which was said to threaten the Government; an amount which I and others contended did not then justify resorting to so extreme a course.

The same remark applies to the suspension of the Habeas Corpus Act, as it is incorrectly termed; but that act * only enforced and improved the subject's common law remedy, by giving it in vacation time, by extending the power of issuing the writ to all judges, by subjecting to heavy penalties those who withheld it, by prohibiting imprisonment beyond the seas, and by providing that all gaols should be delivered of prisoners at each assizes or sessions. The measure adopted frequently in William III.'s reign, again in George I.'s, and afterwards in George III.'s, was a power conferred on the Government of detaining and imprisoning persons suspected of treasonable and seditious designs without bringing them to trial. This is a far worse measure at all times than the restriction of public meetings; but the exercise of the power is at least under some check; for a Bill of Indemnity is always required to secure the Government which has used such power of imprisonment, and as this bill must be carried through after the alarm has passed away, possibly when a new ministry is in office, they who have occasion for it are exposed to considerable risk if they have at all abused the power temporarily bestowed. I have conversed with ministers who had been parties to such proceedings, and I have invariably found in them a very natural, may I add also, a very wholesome, aversion to the whole plan.

The restraints upon Aliens during the last war may be ranged under the same head of extraordinary remedies. Nothing could be more unconstitutional, nothing more liable to abuse; and, accordingly, we have more than once had occasion in the course of this work to note the cases of grievous oppression to which the powers of the Alien Act were occasionally perverted.

* 31 Car. II., c. 2.

In these discourses upon the frame of our Government, and especially in the latter portion of them, I have frequently used the term *constitutional;* notwithstanding the disfavour in which it is held by political reasoners of the Bentham school. They regard it as a gross absurdity, and as the cant language of the "factions," whom they hate. They say that the word has either no meaning at all, or it means every thing and any thing. A thing is unconstitutional, say they, which any one for any reason chooses to dislike. With all deference to these reasoners, the word has a perfectly intelligible meaning, and signifies that which it is always most important to regard with due attention. Many things that are not prohibited by the law, nay that cannot be prohibited without also prohibiting things which ought to be permitted, are nevertheless reprehensible, and reprehensible because contrary to the spirit of the Constitution. Thus the Sovereign of England is allowed by law, like any other person, to amass as much money as he pleases by his savings, or by entering into speculations at home and abroad. He might accumulate a treasure of fifty millions as easily as his brother of Holland lately did one of five; and he would thus, beside his Parliamentary income, and without coming to Parliament for a revenue, have an income of his own equal to two or three millions a year. This would be an operation perfectly lawful and perfectly unconstitutional, and the minister who should sanction it would be justly liable to severe censure accordingly.

So we speak with perfect correctness of a law which is proposed being unconstitutional, if it sins against the genius and spirit of our free Government, as for example against the separation of the executive from the legislative and judicial functions. A bill passed into a statute which should permanently prohibit public meetings, without consent of the Government, would be as valid and binding a law as the Great Charter, or the Act of Settlement; but a more unconstitutional law could not well be devised. So a law giving the soldiers or the militia the power of choosing their officers, or a law withdrawing the military wholly from the jurisdiction of the Courts of Law, would be as binding and valid as the yearly Mutiny Act. But it would violate most grievously the whole spirit of our Constitution. In like manner letting the people choose their Judges, whether of the Courts of Westminster, or Justices of the Peace, would be as unconstitu-

tional a law as letting the Crown name the juries in all civil and criminal cases.

For these reasons I can on no account agree with the objections, holding as I do that the phrase is perfectly logical and correct in the strictest sense possible.

NOTE.—It is unnecessary to observe that the authorities mainly to be consulted by such as would well study the Constitution of England and its History, are the Statute Book and the Parliamentary Writs; the decisions of our Courts of Justice; and the text writers upon our Jurisprudence. Next to those are the Debates in Parliament, since they have been printed. But there are excellent helps to this study in the works of learned authors professedly treating of the subject. Those of Blackstone, with the political writings of Locke, and the controversial ones of Brady and his adversaries, may be named among the older ones. Of late years Mr. Hallam and Lord John Russell have both made very valuable contributions to the learning of this most important subject. It may even seem to some presumptuous, and to others superfluous, for me to have treated at so great length a matter on which they had written at large; but their treatises, however valuable, have one great defect in common—they begin with the Tudors. Now it is quite undeniable that the foundations of our Constitution were laid many centuries before the fifteenth. Nor can any one hope thoroughly to comprehend it who has not gone back to the earliest times. I have never been able to understand why those able and learned authors have both begun with Henry VII. If, in discussing the Constitution of France under the old Monarchy, we are obliged to trace it from the earlier times, and instead of going back to Louis XIII. we go even to the kings of the first race as a matter of course, examine the successive steps by which the States General and Provincial were first convened, and afterwards disused, and by which the Parliaments rose to an importance they never lost, surely it is still more necessary to trace the History of the English Constitution from the foundation of that structure which has never been destroyed or impaired, but always been fortified and improved; to examine, for instance, the origin and growth of our Parliament, which continues the Legislature of the Realm at this day, as we have examined the origin and growth of the French States, which had long before the Revolution ceased to exist at all.

I was very desirous that my learned and esteemed friend, Lord John Russell, should have undertaken this portion of the present work, he having expressed a far too favourable opinion of the preceding por-

tions of it; an opinion which I am too conscious it owes much rather to private friendship than its own merits. Nor was it until I found it impossible to prevail upon him, in consequence of his other important avocations, that I finally undertook it myself.

Among the writers who have thrown any light upon this subject is not certainly to be mentioned M. La Croix. His superficial and inaccurate work is still worse upon the English than upon the other constitutions. A sample of the learning which he brings to bear upon it may be given; and it will suffice to show that, at any rate, some novelty is to be found in his pages. "No son," says he, "can succeed to his father's estate without the written permission of the Archbishop of Canterbury, who derives immense revenues from this relic of the feudal law."—ii. 293. "The Lord Chancellor has the superintendence of all hospitals, and is protector of all paupers. To him application is also made to have an interpretation of the true spirit of the law."—ib. 295. "In the villages the lords of the place, formerly called barons, have police courts for regulating sales and transfers."—ib. 287. "The justices of peace are in some sort the delegates (sub-délégués) of the sheriff."—ib. 296.

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