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THE ENGLISH CONSTITUTION



THE
ENGLISH CONSTITUTION

BY
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TO THE
ANNALS

INTRODUCTION

IT gives me much pleasure to see my friend M. Boutmy's work offered to English readers in a trustworthy form. I have not thought it necessary to examine the translation with minute care, but I have seen enough of it to rejoice that the author has been so fortunate in his translator. It is anything but an easy matter to turn good French into good English ; in this case the task has been performed with excellent skill and judgment, and with close fidelity to the original.

The book seems to me to deserve a welcome in England on two distinct grounds. First, if we take it as a concise view of the development of the English Constitution on the social and economic side, it fills a place that is not to my knowledge exactly filled by any of our own books. And this alone might suffice to recommend it. But another quality may well give it a positive value, not only for students, but for masters in history and political science. We have here the frank and lucid record of the impression made by the peculiar

course of English constitutional changes on a foreign observer of exceptionally good intelligence and information. M. Boutmy has brought to his work not only knowledge of our language, but a careful study of the best authorities, and a mind singularly free from prejudice. He is not an appointed champion of either Romance or Teutonic origins, and he can admit that the main work of the French Revolution had already been done in England a century earlier. It is good for us to know what are the conditions that to a Frenchman of M. Boutmy's stamp appear to have been the really decisive ones in our history, and which features have struck him as most characteristic.

English readers, it is true, will not be ready to allow that even the fairest and acutest outside view can be faultless in the sense of proportion and local atmosphere. If home-bred institutions have their anomalies and abuses, they have also their "temperaments," as the publicists say, which are not to be found in books. We shall read M. Boutmy with our individual reservations and supplements, with doubts and may be with differences on this and that point. But the differences will be profitable. A book like M. Boutmy's is in many ways good for information; its farther and best purpose is to set the reader thinking.

F. P.

PREFACE

VARIOUS publications have lately done much to clear up the subject of the origin and early development of political institutions in England. The light thrown by Guizot on one division of the subject has not indeed grown dim. Recent writers have not observed more accurately than did the great historian, but their observations have gone further and deeper, a broader view of the whole has been obtained, and a more complete mastery of detail. My aim is to point out to the French reader the chief conclusions which contemporary research has either thrown into higher relief or confirmed by fresh documentary evidence.

Modern political England was formed in its essential elements during the period which embraces the eleventh and fourteenth centuries; the character and mutual relations of those elements took their fixed and final shape under the Tudors. Those five hundred years witnessed, so to speak, the unbroken development of a vigorous frame towards that solidity

of structure which marks the attainment of manhood. A comparison between the various phases of this first process of evolution and the corresponding stages of the process in France suggests more than one useful lesson.

The authors whose researches have given a new aspect to this period of history and to those events which led up to it have gone direct to the authorities, and have with their own hands turned over the pages of a multitude of original texts. Nothing can make up for the want of this. The political theorist, who merely draws from the stream, should be slow to dissent from, and cautious in objecting to, the conclusions of those writers who have gone to the fountain head. Still, professed students have, like other men, their passions and their prejudices, political or national as the case may be: they show too a special inclination to forsake the broad highway of history which their predecessors trod, for some narrow by-path which they have opened out for themselves and which they explored in the first instance alone or nearly alone. Lookers on who have no such personal reasons for leaving the beaten track do not always find in mere general reasons a sufficient justification for doing so. Freeman, for instance, delights in tracing out the beginnings of a quasi-republican monarchy, his political ideal, in the remotest possible past of English

history.¹ Gneist is inclined to refer all that he considers valuable to a Germanic origin. Augustin Thierry has made the separation between conqueror and conquered more deep and lasting than it really was, and has consequently overestimated the influence of the Norman element. Freeman and Gneist go to the opposite extreme; they agree in teaching that the English nation, as it exists now, is nothing but the Anglo-Saxon nation restored to its former inheritance; they hold that we can discern in the period preceding the Norman Conquest, not only the vague beginnings but the more or less definite features of that free government of which we are able to trace the development during a period which is, in a fuller sense, historical, and that the outlines of those features, rude indeed and few, but clear and well marked can even be recognized in the constitution of the old Germanic communities.

Distant surveys like these, with their ever-widening horizons, flatter the imagination, and are by no means to be treated with contempt. We may glean much political information by the study of society at a very early period, if our object is merely to trace general features of manners and disposition, and the first clearly marked lines which show the direction of the national character. Such investigations lead, on the other hand,

¹ Freeman, *Growth of the English Constitution*, ch. iii.

to deplorable mistakes when our avowed object is to discover in the remote past the details of well-defined institutions, to mark their systematic operation, and to prove how subsequent institutions have sprung from them by a process of elimination, addition, or elaboration.¹ Stubbs shows very clearly that the Germanic tribes described by Cæsar and 150 years later by Tacitus, had not as yet emerged from the inorganic stage, and that no conclusions can be drawn from political formations which, ill-defined and perpetually shifting, presented only some passing phase to the notice of either of those excellent observers.² Historical phenomena like these are merely floating clouds, which may resemble mountains in outline but must not be mistaken for them. Stubbs admits that the results of research in this direction are very "indistinct," that even ninth century testimony upon the subject of the Saxons in the land of their origin is vague and obscure, and that as to the Angles, the Danes, or the Normans at the time of their invasion, "we know nothing." His professions of ignorance or uncertainty are less explicit on the subject of the Anglo-Saxon monarchs, although he owns that "there is no subject on which we have less knowledge, than on the administration of public revenues before the Conquest." Certain institutions there are indeed

¹ See Dicey, *The Law of the Constitution*, pp. 12 to 18.

² Stubbs, i., c. ii., *ibid.* c. iii. c. vi.

about which he professes to be better informed, but these he robs of their character and value as original and local creations by what he himself says of similar institutions existing contemporaneously in other countries.¹ They are for the most part rudiments of organization, denoting a certain degree of civilization and a certain social condition ; the same surrounding circumstances have brought them into existence at almost the same moment in almost every country of Europe. The all important differences which have since revealed themselves in the political constitution of the various States are therefore attributable to more recent causes.

Freeman had need of far-fetched inductions and forced analogies to enable him to establish, not only the link of tradition but a species of identity between the Anglo-Saxon Witenagemot, and the House of Lords of to-day ;² Stubbs himself seems to have been over hasty in recognizing in the County Court, an institution which belonged to the period preceding the Conquest, the living germ from which parliamentary representation spontaneously sprang. Both Witenagemot and County

¹ Stubbs, i. 208. Similarly Stubbs refers to Carolingian models, various administrative institutions of Henry II., scutage, the assize of arms, the inquest of sheriffs, &c. (Stubbs i. 441, 591, 613.)

² "The House of Lords," he says, "represents or rather is the ancient Witenagemot."—*Growth of the English Constitution*, ch. ii. p. 62.

Court were already moribund in the eleventh century and the corresponding institutions which we find after 1066 differ in so many points from their so-called originals that we may set them down as new creations. It is clear that the latter owed their character far more to the great event which had just taken place, than they did to that ruined edifice, the plan and the materials of which were to some extent utilized in their construction.

One word in conclusion as to the proper treatment of the subject. The origins of a political constitution are to be found, either in a period very remote, or in one much more recent than those authors, whose arguments I am criticizing, will admit. What we must look for in the distant past are the original and deep-seated tendencies, the primitive leanings, of the national character; they are more easily traceable at a period when as yet the vicissitudes of history have not furrowed and broken up the surface of the ground; they explain the general direction, and measure the energy of those forces which are one day to set in motion a system of political machinery. As to the machinery itself, its beginnings and its modifications are nearly always due to causes more specific and more practical, more recent and nearer to hand. For my own part I believe that the constitutional and parliamentary system, of which England created for the world the original and great example, had its origin

in historical rather than in purely ethnical sources. It was rather the outcome of the needs which circumstances, and especially one great and fortuitous event, had created, than an inheritance handed down through successive generations from the period of the Saxon conquest. There is, in my opinion, too great a tendency to look upon the English nation as a race which, after the passing crisis of 1066, recovered, so to speak, its identity, regained its old self and its former spirit, and slipped back into the groove from which it had been wrenched by a violent shock. It would be more accurate to look upon it simply as a political society, which had in the eleventh century become so disorganized that its vital powers were well-nigh extinct, but which at the critical moment, felt the salutary shock of a military, economic and administrative revolution; and which again, less indeed through that revolution itself than through the slowly felt influence of consequent events, less indeed through the peculiar genius of each one of its component races than through the physical and moral conditions to which the people as a whole was made subject, acquired the structure and the form, which it has retained substantially to the present day.

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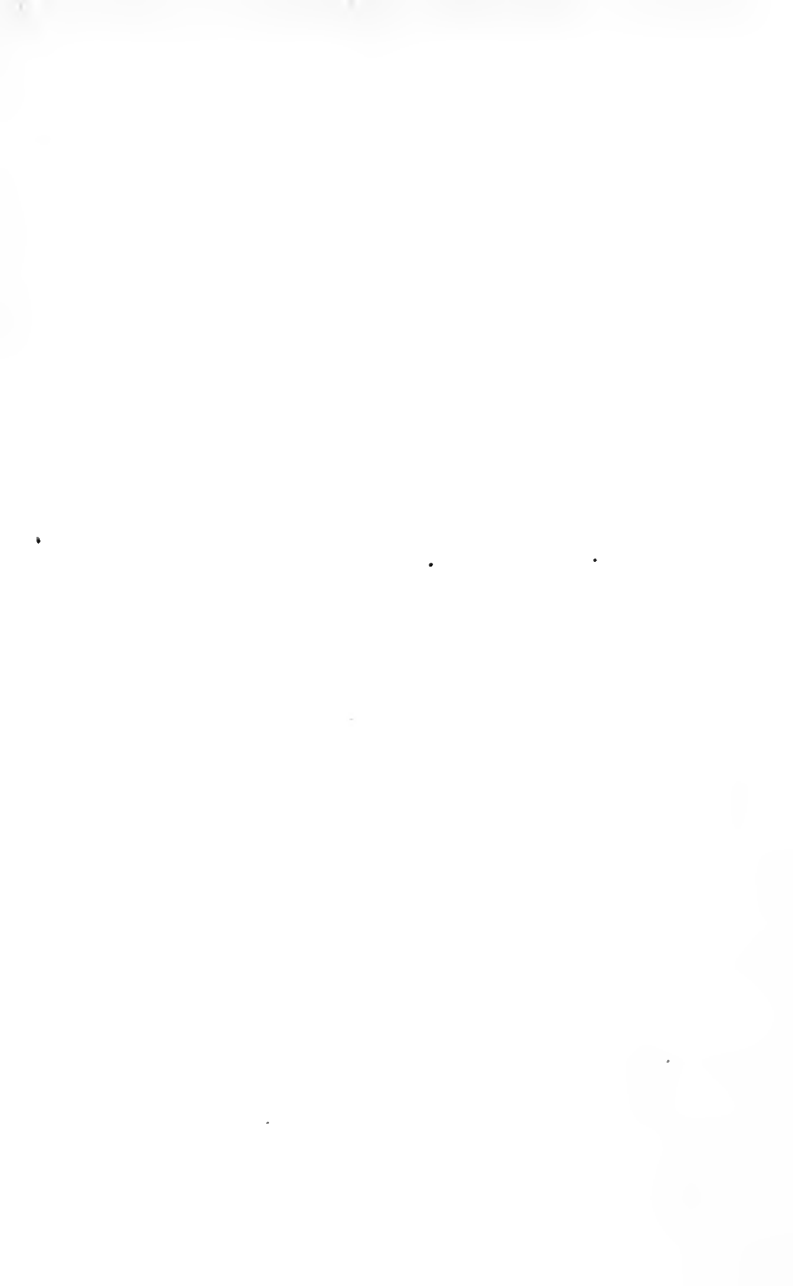
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THE ENGLISH CONSTITUTION



PART I
*ENGLAND IN THE ELEVENTH AND
SIXTEENTH CENTURIES*



I

*THE ADMINISTRATIVE MONARCHY AND
THE GREAT VASSALS*

THE GREAT CHARTER

IT was in 1066 that the line which the whole history of political institutions has subsequently followed was traced and defined. After, and in consequence of the invasion, monarchy and feudalism were confronted in England with conditions differing altogether from those which confronted them in France or Germany. The forces which the two powers brought into the field, their methods of marshalling those forces and, so to speak, their formation for attack and defence, the alliances which they sought, the claims which they raised and the rights which they insisted on, varied sensibly on one side of the Channel and on the other. From that exceptional state of things in England exceptional consequences have sprung. The institutions of the middle ages, profoundly modified by the fact of the conquest, produced, in some sort of themselves, national unity, the conception of the state, equality of taxation, equality before the law, self-government,

political liberty and its organs, at a date when no other people of Europe had even thought of those things.

Let us examine more closely and compare the England and the France of the eleventh century. On the Continent feudalism arose in part from the want of proportion between the vast extent of the Carolingian monarchy and the weakness of the administrative machinery with which the monarchy sought to control a still barbarous society. It was the result of the progressive disintegration, first of the empire, then of the kingdoms, still too bulky, of France and Germany. From their fragments sprang a large number of small states loosely bound together in a federation and acknowledging the nominal headship of one of their own number. In the eleventh century the French monarchy, despoiled of its domains and lending itself to the spoiler, all but disappeared in the midst of a feudal system which steadily grew in power and stability around it. The sovereignty, still from time to time exercised with guarded energy, degenerated rapidly into suzerainty. The dynasty which, under cover of the indifference of the great nobles, had seized the throne, was nothing more in fact than *prima inter pares*. It clung indeed to its high pretensions and disclosed them at intervals, but it was not to struggle openly on their behalf till two centuries had passed after the revolution of 987; it waited till *might* could succour *right*. Up to that time it was careful to avoid contests of which the issue was uncertain, and shrank from exposing itself to rebuffs calculated to weaken that

titular supremacy which it held in reserve for future use.

Nothing similar is to be found in the England of 1066. From the very fact of the conquest, the Teutonic idea of the general surrounded by his companions in arms, and even something of the Roman idea of the prince in relation to his subjects, reappeared more or less, side by side with the idea of the suzerain and his territorial vassals. The country which submitted to the Normans was in extent well within the administrative capacity of an eleventh century government. Four and a half times smaller than the France of our day,—for it did not take in Wales, nor as yet the three northern counties,—the territory of the kingdom did not exceed in its greatest length (from London to Newcastle) the distance from Paris to La Rochelle. The feudalism developed within this area was the result, not of a gradual and natural disintegration of the state, or of a series of spoliations submitted to by a helpless sovereign,¹ but of an apportionment carried out at the good pleasure and under the direction of a victorious prince, who had, and intended to retain, the upper hand. The way in which the distribution of fiefs amongst the companions of the Conqueror was managed, is significant. In France, the great fiefs, representing as they did duchies, counties, or marquisates created by the first Carolingians, consisted in each case of one unbroken stretch of territory. In England, the king more prudently

¹ Buckle points out that in France the great nobles held their domains not by grant but by prescription. Buckle, ii. 311. See also Hallam's *Middle Ages*, i. 158.

rewarded his chief vassals with estates scattered here and there through every part of the territory. He to whom fell the largest share had 793 manors scattered over twenty counties. Forty other Barons, the heads of their class, held manors in six, twelve, and even twenty-one counties.¹ It seems certain that no one of the seignorial jurisdictions, except those of the palatine earls, extended over the whole of the shire, and that the majority of them did not reach beyond the limits of the hundred.²

These facts enable us to form an idea of the scattered distribution of feudal holdings. Most of the great vassals were only able to gather any considerable armed array by the tedious process of despatching a summons into every district in England; while the forces at their command in each county were far inferior to the forces of the king's officer, the *vice-comes* or sheriff, under whose orders were ranged all the inferior tenants of the crown. Add to this that many of these scattered estates lay within range, nay, within the very grasp of the king, who was able through them to strike effectually at his insubordinate barons. The very multiplicity of their fiefs only laid the great nobles more open to attack at a number of points at once.

¹ In the fourteenth century the domains of the great vassals were still very much dispersed. "Many a time," says Froissart, "it has happened when I rode through the country with him (Despencer)—*for the lands and rents of the English barons lie here and there and much scattered about* [car les terres et revenues des barons d'Engleterre sont par places et moult éparses]—that he would call to me and say, 'Froissart, seest thou yonder great town. . . .?'"

² Gneist, i. 123.

We should therefore be much deceived as to the condition, *de jure* and *de facto*, of the great Norman vassals in England, if we formed an opinion of it from the condition of the great French feudatories at the same period. Amongst the members of the Anglo-Norman baronage, the earls at this time held the highest rank. It would be altogether inaccurate to regard them either as the king's lieutenants or as feudal lords holding sway over whole counties. In the first place, there were many English counties without an earl;¹ in the next place, all earls did not necessarily bear the name of a county; they frequently bore the name of a town or simply their family name:² the difference is significant. The bulk of their estates lay, as a rule, in the district from which they derived their titles, though there were very early examples to the contrary.³

In that district, moreover, they did not exercise in any sense of the word, the authority of government.⁴ There was scarcely any variation from this rule except in the cases of the palatine earls of Chester and of Durham

¹ The Conqueror appears to have created only three English earls; a document of the time of Henry I. mentions only five. Stubbs, i. 360.

² Gneist, i. 114.

³ Documents show us that the domains of Simon de Montfort were scattered through the counties of Leicester, Northampton, Suffolk, and Berks. It was in the first of these counties that his estates were smallest. The whole formed what was called the "honour" of Leicester. The title of earl was attached to it. (See Bémont, *Simon de Montfort*, p. 35.) Three hundred years later, in the fifteenth century, the estates of the Earl of Oxford lay, for the most part, in Essex, those of the Earl of Norfolk in Surrey. Stubbs, iii. 528.

⁴ Stubbs, *ibid.* 530.

who, entrusted with the defence of the new political establishment against the Welsh and Scotch respectively, possessed within the limits of their counties the most extensive royal rights [*regalia*]. As for the others their titles were merely a badge of honour or a means of emolument. As a rule they carried the sword of the county, and claimed as their right one-third of the judicial revenues received by the sheriff or *vice-comes*. It is this fact which points most clearly to their connection with a definite administrative area, but it was a privilege not granted in every case, nor was it always hereditary.¹ In brief, the great English vassals were landlords, rather than territorial barons. They were often very influential men; they were in no sense sovereigns; the basis of sovereignty, the petty state consisting of a compact territorial unit, was lacking in their case; the title of sovereignty, an original delegation, real or fictitious, of the chief attributes of royal authority, was lacking equally. The simple fact that it was possible for King Stephen to create earls without territories, making them a charge on the royal treasury and endowing them with a sort of paid senatorship, marks the enormous difference which existed at the beginning of the twelfth century between the higher English baronage and the great French feudatories. The former continued to resemble closely the so-called *comitatus*, that is to say, the group of adherents whom the king rewarded by donations of money or lands, granted for life or in perpetuity. The personal tie was

¹ *Dialogus de Scaccario*, i. 17. Stubbs' *Select Charters*.

still the dominant factor¹ in England, at a period when feudalism in France was already appearing under the independent and fully developed form of a territorial hierarchy composed of local potentates, who were masters and almost kings in their fiefs.

Face to face with this baronage, so inferior in prestige and resources to the baronage of France and Germany, we find a monarchy exceptionally powerful and well armed when compared with the continental monarchies. There was an enormous disproportion between the forces of an Earl Warenne or an Earl of Hereford and those of a king of England, who was also Duke of Normandy, and, less than a century after, Count of Anjou, Maine and Lorraine, suzerain of Brittany and lord of Aquitaine; on the other hand the difference was almost nothing between a Count of Flanders or Toulouse and a Louis VI., the ever-harassed possessor of a slender territory, who gained loud praise from Suger by making the royal name feared "even in the heart of Berri." In England proper, the crown had from the first taken a position, the strength of which is indicated in more ways than one. We know that William I. held in demesne all the great towns of the kingdom, save those in the palatine counties.² He was able to complete without opposition the survey of landed estates throughout the country and to assess the taxes upon an accurate

¹ "Comites sibi creat" is the language of so late a document as the *Dialogus de Scaccario*, i. 17. Stubbs' *Select Charters*.

² It is remarkable that of 1,500 charters of towns which have come down to us, there are only forty-nine emanating from barons. Gneist, i. 115.

basis. He had exacted, not only from his own vassals, but from their vassals in turn, a direct oath of fidelity to his person. By doing this he had reknit over the heads of the feudal hierarchy the immediate bond of obedience between the subject and the crown. The rights of wardship and marriage which he exercised over the fiefs of his barons were more stringent than those exercised in any other country where the feudal system prevailed. He multiplied forests in an oppressive degree,¹ and kept in his own hands the jurisdiction over all hunting grounds whether within or without his demesne. His fiscal exactions were vexatious; those of his immediate successors became intolerable.² The

¹ Stubbs, i., ch. xi. 403.

² Two facts bring before us with peculiar clearness the vigour of the royal power in England. First, the private wars which the kings of France are careful to regulate, and are compelled to allow upon certain conditions up to 1330 and in 1353, disappear at an early date from the other side of the Channel. The great vassals keep the king's peace amongst themselves. They seldom take up arms except against the king, and that only when they are persecuted and oppressed, or when they hope to effect a change of dynasty. Secondly, no subject in England ever obtained the right to coin money bearing any other effigy than that of the sovereign. We meet with a solitary exception during the reign of Stephen, but it serves only to confirm the general truth of the statement: "*Tot reges vel potius tyranni quot castellorum domini habentes singuli percussuram proprii numismatis,*" says Henry of Huntingdon. This was clearly regarded as a mere usurpation which was put an end to with the restoration of order under Henry II. "*Publica moneta una et eadem erit in regno in argento percussa,*" says Matt. Paris. On the other hand, seignorial coinage continued in France up to the beginning of modern times.

barons rebelled and were worsted, their goods were confiscated and handed over to others.

In France we meet with no such excessive exercise of authority after the time of the first Carolingians, and no one of the kings could have attempted it, even at a much later date. In the middle of the thirteenth century, we find the distinction in full force between provinces "obedient, to the king" and "not obedient to the king" (*pays d'obeissance le roi et de non obeissance le roi*); the latter, in which the king had no real power, comprising all the domains of the great feudatories, nearly two-thirds of the France of to-day.

In England the monarchy, so powerful in itself, had enjoyed from an early date the advantage of an administrative machinery which was fairly perfect at a time when its rudiments only existed elsewhere. At the central point, the king's court with its two branches, one fiscal, the other judicial,¹ but both served by the same officials, gave a uniform impulse to the whole administration. In the counties the crown was represented by the sheriff, who was in no sense subordinate to the earl, as his title of *vice-comes* would seem to imply, but who depended directly on the central government. His relations with the earls, the prelates, and the barons of his county were the relations of an official with individuals of influence, but of doubtful sympathies, upon whom he keeps a discreet watch, and with whom he may be at any time forced into open rupture. He conveyed to them the royal ordinances, and the expression "the power and jurisdiction

¹ Hallam's *Middle Ages*, iii. 138.

of the king and the *vice-comes*" (*fortitudo et justitia regis vel vice-comitis*),¹ shows clearly that there was no intermediary between the king and his local representative. The great vassals had striven to appropriate this important office, at once military, judicial, and fiscal. In certain counties they succeeded in making it hereditary, but these cases of usurpation continued to be very rare. Almost everywhere the *vice-comites* or sheriffs remained royal functionaries appointed every year, and held closely in hand by the central government. From 1170 onwards it became the rule no longer to choose the sheriffs from among the barons but from among the officers of justice.² More than once the shrievalties were suspended and the duties of the office temporarily performed by judges, members of the king's court, two of whom administered as many as eleven counties. At every turn we find the king rebuking his sheriffs, removing them, driving them from office singly or in numbers. In the following century again, their authority was visibly curtailed but their activity was still ceaseless and multifarious. Later still, when the monarchy had found other agents, their privileges were systematically cut down. During the thirteenth century the sheriffs filled a position corresponding closely to that of the bailiffs (*baillis*) or seneschals, who in France administered the king's *demesnes*. But their administration was not, like that of the French seneschals, confined to a limited portion of the national territory; they were to be met with from

¹ Ordinance of William I. separating the temporal and spiritual courts. *Select Charters*, Stubbs, 82. ² Stubbs, i. 474.

one end of England to the other, and they made the presence of the crown felt in the remotest corners of the kingdom. They exercised in the name of the crown the numerous prerogatives entrusted to them, and their very disgraces brought home to every one the fact of its strength and compelled a recognition of its authority.

The creation of itinerant judges completed at an early date the administrative organization of the English monarchy. These officers formed a bond between the central and the local government: we find them in the reign of Henry I., less than half a century after the conquest. They were, as a rule, members of the king's court, and resumed their seats there when their circuits were finished. The Carolingian *missi dominici* were revived by the English monarchy in this institution, and in the matter of size, the kingdom lent itself better to the system than did the empire. In France they had long disappeared; the royal *enquêteurs* of Saint Louis in the thirteenth century were merely a short-lived institution destined hardly to survive that prince. In later times neither the journeys of the royal commissioners sent into the provinces and towns to collect the taxes, nor later still the expeditions of the masters of requests (*maîtres des requêtes*), bore the stamp of a regular system. These were simply special missions. The case was the same with the *grands jours*, that is to say, sittings of the judges held in those provinces so remote from Paris that they could not conveniently take their appeals to the parliament there. We might say, to borrow a legal phrase, that

the royal court of final appeal was "portable" [to be brought] in England, and "querable" [to be sought] in France. In England the court came to the suitors; in France they were compelled to go to it; and that fact naturally curtailed the limits of its activity and diminished its prestige. The position filled by the English justices in eyre was an important one. When they held their assizes in a county, no immunity, no baronial franchise excused attendance at their court. No individual, at all events in the first instance, escaped their jurisdiction. They decided on the spot, in the spirit of the high tribunal of which they formed part, appeals from the local courts. It is easy to estimate the extraordinary authority and prestige enjoyed by a monarchy, which had for its representatives in every part of the kingdom delegates of such eminence, who returned at regular intervals to take their instructions from the central government and imbibe the spirit of its policy.¹

A monarchy powerful and well served, a baronage feeble in comparison, these are two important features which place England in sharp contrast to the other European nations. A deeply-rooted and precocious sense of national unity is a characteristic no less remarkable and distinctive. Freeman, and after him Green, show that the first Teutonic invaders of Great Britain—the Jutes, the Angles, the Saxons, and even the Danes—sprang from the same Low-German origin; that they settled in one of the least thoroughly Latinized of the Roman provinces; that the slow progress of their

¹ Stubbs, i. 604, 605.

conquest, and the vigorous resistance with which they met, ended either in the extermination or the strict localization of the Celtic tribes, and the destruction of all landmarks of a former civilization, so that nowhere else do we find a race less mixed in blood or retaining in greater perfection its original type. Of the facts cited by these learned authors in proof of the peculiar character of the Saxon invasion, I note only two: first, that these heathen nations, though brought into contact from 449 with a Christian population more civilized than themselves, for the most part retained their paganism till about the middle of the seventh century (597-681), and that they owed their tardy conversion, not to the conquered race, but to missionaries from Rome or Ireland; secondly, that their language did not exhibit then, nor till after the Norman invasion, any appreciable traces of Latin influence, and that the Teutonic structure of its idiom was so firmly fixed that even now it is impossible to compose a complete English phrase from purely Latin elements. The Normans in their turn sprang from the same stock as the invaders who preceded them, and however French they had become in manners and language, there must have remained in them, so to speak, a certain German substratum in which, as in its native soil, the Anglo-Saxon seed took root and flourished rapidly and with unusual vigour.

I pronounce no opinion on the importance and the range of these race influences. In this case, moreover, another influence, and a more general one, intervenes and controls them,

It is only natural that the sense of common and independent interests should spring up and grow strong more rapidly in an insular than in a continental state. Frontiers traced by a river or a mountain can be, and as a fact often are, shifted. Nationalities divided by a barrier so slight and variable are consequently slow to detach and differentiate themselves. A sense of nationality may eventually condense and settle into shape, but it is only by an historical process and by the long-continued influence of common traditions. Where the geographical boundaries are indefinite, this sense is at first and for a long time remains wavering, tentative, and hesitating. On the other hand, a boundary so clearly marked and so permanent as is the sea acts as an incessant inducement to regard as final the separation of the peoples which it divides, and to look upon any particular group which it shuts off from the rest as forming a natural unit. The Norman barons, less than a century after the conquest, show an inclination to look upon themselves as one with the conquered people.¹ The followers whom the Angevin kings brought with them from the Continent, inhabitants of Touraine and Poitou, or even Normans fresh from Normandy, are not looked upon by the first settlers with hatred and suspicion, merely as new claimants to a share of the spoil; but the latter instinctively regard them, their compatriots of yesterday, as aliens, albeit

¹ Before the end of the thirteenth century the difference in dress between Normans and Saxons had disappeared.—*View of the Dress and Habits of the People of England*, Strutt, ii.

they both speak the same language and one which the Saxons cannot understand.

Hatred of the men from beyond Channel is conspicuous in the whole long series of complaints and remonstrances addressed to the kings ; and on the other hand a document from which I have already quoted, the *Dialogus de Scaccario*, testifies that by the end of the twelfth century the fusion of victor and vanquished was complete. "Sic permixtæ sunt nationes," says the manuscript, "ut vix discerni possit hodie, de liberis loquor, quis Anglicus quis Normannus sit genere."¹

The same document notices the frequency of mixed marriages between the two races, and the fact is all the more remarkable as, at the same period, marriage with an alien appears to have been regarded as in some measure a disgrace. Clause 6 of the Barons' Petition in 1258, demands that heiresses of noble birth shall not be so given in marriage as to "lose rank," or to "enter into a *mésalliance*." These are the nearest equivalents to the word *disparagentur*, and the explanation given in the context is characteristic.² "By uniting them," it goes on to say, "with men who are not natives of this kingdom of England." This tradition, it is well known, still obtains amongst the English nobility, who seldom marry outside their own body. A cosmopolitan nobility and an ultramontane clergy have proved the scourge of

¹ *Dialogus de Scaccario*, i. 10. Stubbs' *Select Charters*.

² Petunt de maritagiis domino regi pertinentibus, quod non maritentur ubi disparagentur, videlicet hominibus qui non sunt de natione regni Angliæ.—Petition of the Barons at the Parliament of Oxford. 6. Stubbs' *Select Charters*.

more than one continental state. In England, the nobility and the clergy may have been, as elsewhere, selfish, unruly, grasping and oppressive; but we find them from the very beginning, and, so to speak, in obedience to the destiny of their geographical position, imbued with a sense of nationality, at once deep-seated, narrow, and defiant, which brought with it this advantage that it limited the scope and checked the development of any spirit of caste, and which ceaselessly, though silently—as I shall explain more fully later on—sapped the foundations of the Catholic Establishment in England.

One circumstance in particular assisted the rapid development of this feeling of nationality; I allude to the long-established homogeneity of the different parts of the kingdom. Let us consider for a moment how France was divided for administrative purposes from the very beginning, and down to the end of the old *régime*. We find great provinces as extensive as ordinary kingdoms; Brittany, for example, was equal in area to more than a fourth part of England proper; several of the provinces were almost in the position of “sub-nationalities,” a distinct race forming the bulk of the population; several had been actual states and cherished the memory of a time when their rulers enjoyed independent sovereignty. Their re-union with the Crown was a gradual process; it was brought about in some cases by conquest, in many by marriage, inheritance, or treaty; in almost all, under terms which safe-guarded their ancient privileges.¹

¹ Under Philip the Long, Languedoc would not agree to a

The king having taken the place of the former lord, treated directly and separately with each province, whether for the granting or the method of collecting the taxes. The same lines of division appear in the national assemblies which began to meet at the end of the fourteenth century; the deputies were divided in the first place according to *class (ordre)*, but immediate subdivisions appeared in each class corresponding to *provinces* or groups of provinces.¹ And more than once, one or other of these groups, intent merely upon its own advantage, after securing some arrangement favourable to itself, would withdraw or take no further part in the proceedings, thus rendering abortive such measures as concerned the common interest. In short the existence of arbitrary power and a monarchy of great prestige clothed the country with the semblance of unity, but even in the seventeenth century the nation was still in embryo.² France was no longer a federation, and she

uniform coinage for the whole kingdom; she clung to her own standards and measures and rejected those used in Paris.

¹ Note particularly the assemblies of 1576 and of 1588. They were divided according to "governments." The same disposition was shown in 1483 at the assembly of Tours. In 1346 again, Hervieu notices a vote recorded according to provinces or according to "nations." The same thing occurs in 1349 in the case of the "langue d'oïl," distinct assemblies for the langue d'oïl and the langue d'oc were for a long time the rule.

² We know that Adam Smith mentions the freedom of internal trade, complete and of long standing as it even then was, as one of the highest advantages enjoyed by the England of his day. In France the kings made efforts to secure it, but they clearly did not think themselves strong enough to impose it by force. In 1621 Louis XIII. authorized the establishment of new custom

was not, as yet, an undivided people. We know that at the date of the wars of religion, la Noüe had contemplated the possibility of a dismemberment of the monarchy.¹

houses in certain frontier provinces which had been without them up to that time, but he gave those provinces the choice of placing them either on their external or internal boundary. Burgundy gave the preference to internal trade, and its customs line was drawn on the side of Franche Comté which then belonged to Spain. On the other hand, Saintonge, the district of Aunis, Guienne, Brittany, and Maine had their customs line drawn on the side of Normandy and Poitou, and so insured the freedom of their foreign trade. Later, when Colbert established the *grandes fermes*, he did not insist on union, he merely suggested it to the provinces, and we know that the only provinces which accepted his suggestion were those which formed the central northern group. No other fact could show more aptly that France was, even at that time, held together only by the very loose ties of a species of federalism, and that the sense of a common fatherland was not as yet strong enough to secure the unity of the State. Clement, *Histoire du Système Protecteur*.

¹ The history of the origin of the "intendants," those agents and types of French centralization, is full of meaning. Their office does not have its rise, as we might be led to believe, in the normal development of the administrative system. It belongs to a period of anarchy; it is a relic handed down to us, in an aggravated form, of a condition of things resembling a state of siege. Speaking generally, the first known form of the intendant seems to have been the commissioner who was sent in the sixteenth century into those provinces in which order had to be restored, as the colleague of the general in command. Hence the expression, "military intendants" (*intendants du militaire*) continued to appear in their commission. The office existed wherever disorders existed; it ceased with them, and was revived again when they revived, until in 1635 it took permanent shape, and we find it established in every part of the kingdom in spite of the absence of disturbance. The intendants exercised at first, as was to be

England alone of all European states enjoyed the good fortune of a homogeneous existence from the twelfth century onwards. She owed this advantage, in part, to the peculiar character of her administrative districts which she inherited from the Anglo-Saxons. Even the county, the most extensive of those districts, barely equals in area, on the average, half a modern French department or the tenth part of such a province as Brittany. Even if a county had claims of its own, it had not the requisite forces at command to support them. Several counties represented more or less exactly the settlement, not of a race, but of a particular tribe of invaders; occasionally they betokened the existence of some short-lived monarchy, rarely that of a nationality which had been practically distinct. Very few among the counties could recall the enjoyment of a separate political existence, as the perpetual revolutions, conquests, and readjustments of Anglo-Saxon times had obscured all memories of the past. The counties were subjugated at one stroke by the Norman kings, and no one of them, apart from the others, had the opportunity of bargaining for the maintenance or concession of

expected, "extraordinary," that is, almost unlimited powers. These become their "ordinary" powers a little later on. I know no more striking proof of the divided and fragmentary condition, politically speaking, of France so late as the beginning of the seventeenth century, than the fact that the king's agents in the provinces traced their origin, not from civil officers like themselves, whose powers had been gradually enlarged, but from commissioners not unlike the commissioners of the Convention, who came in the track of armies, as if to conquer over again. See Hanoteaux, *Les Intendants*.

peculiar privileges. Under these circumstances they became scarcely more than mere divisions for administrative and fiscal purposes, without individual character or interest.

They were not in any way analogous to the provinces of the old *régime*. Setting aside their violent and artificial nature, the departmental circumscriptions devised by the Constituent Assembly of 1789 to shatter the ancient framework of provincialism, present a truer analogy. After 1100 no trace of provincialism existed in England, while France had still seven centuries to wait, and then only reached the same result by dint of a revolution so violent that it swept away in its progress what remained of her local liberties. England, through a singular combination of circumstances, had attained territorial unity and the sense of nationality at the moment when, under the Plantagenet dynasty, she began to take her place in the general history of Europe.¹

Yet one more observation : throughout this territory thus welded together, and amongst this people thus set free from provincialism with its petty ambitions and selfish aims, we find prevailing at a very early period a uniform law and uniform customs. Towards the end of the reign of Henry II. all important local differences had disappeared. In this respect also national unity

¹ It is probable that the condition of England in this respect would have been nearly the same as that of France if England had been quicker to conquer Wales, Scotland, and Ireland, and so had been compelled, at an early period, to reckon in her political assemblies with the representatives of annexed but very dissimilar provinces.

was an accomplished fact. In less than a century the itinerant judges had placed it upon a definite and substantial basis. As delegates of one and the same court sitting permanently in London, as members from the beginning of that great council which was the nucleus of Parliament, as officers whose duty it was to second and enforce the king's high ordinances, and later as the official exponents of legislation and framers of the statutes which reflected its will, they carried with them into the provinces a loftiness, a breadth, and a continuity of doctrine which rapidly swept before it local usage and custom. The feudal and local courts themselves were too deficient in authority to harbour these customs for very long, and they disappeared at an early date to make way for the new organization of "justices of the peace," a body at once administrative and judicial, commissioned by the Crown for the whole of each county, and more influenced than its predecessors by the spirit of the superior courts. The itinerant judges on their travels hither and thither found everywhere after the century of disorder which followed the conquest an industrious and progressive community composed of races, classes, and individuals, all of whom were interested in getting their respective rights accurately defined. The body of jurisprudence elaborated by these high officials on their periodical circuits, and the mass of legislation prompted by them on their return to the king's side, were very considerable: they speedily embraced the whole range of social relations, and breathed into them gradually the spirit of uniformity. After the reign of Stephen, the three "codes,"

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West Saxon, Mercian, and Danish, which divided the kingdom among them, were heard of no more;¹ after the reign of Henry II., with a few strictly local exceptions, England possessed but one single customary law—the common law—one and the same for the whole land.

In France, the classification of “customs” [*coutumes*] was completed in the sixteenth century under Henry III. Two hundred and eighty-five (of which sixty were of first-rate importance) were found to exist, and this without counting the great division between the country of customary law and the country of Roman law (*pays de droit coutumier et pays de droit Romain*). In the fifteenth, sixteenth, and seventeenth centuries, when the kings annexed great provinces, all that they thought of doing, or could do, was to create a certain number of separate judicial districts, with a parliament over each. The subdivision and confusion were so great, and each district clung so obstinately to its own usages, that it seemed impossible to dispense with this intermediate stage; a more hasty centralization would have jeopardized everything. Unity in this as in other respects was in France a thing of very slow growth.²

¹ Stubbs, i. ch. xiii.

² We find the following passage in Portalis's preface to the “Code Civil.”

“France, like the rest of the great European States, has gradually grown to its present size by the conquest and the voluntary adhesion of different nationalities.

“The conquered populations and those who retained their freedom invariably stipulated in their capitulations and treaties for the maintenance of their own system of civil taxation. Experience

Hindered throughout a long period by the obstinate remnants of a feudalism which had become part of the daily life and instincts of mankind, unity was in the end compelled to take a strictly logical shape, an imperative and statutory form, and to owe its final establishment to express command and the exercise of force.

In England legislative unity was not formally imposed, since it met with no serious resistance: it crept in and diffused itself noiselessly in the unobtrusive shape of judicial precedent, and its development was blended with the development of men's needs and habits. Legislation was by no means complete by the end of the twelfth century, but unity of national law was, we may consider, established in 1200, thirty years after the definite institution of an itinerant High Court.

To repeat: a strong king, a weak baronage, a homogeneous kingdom—these are the three points brought out by this long analysis. We must keep them in view if we are to understand how it was that political liberty appeared in England at so early a date and clothed in its most perfect form—a national parliament—at a time when other countries were painfully elaborating the clumsy and complicated mechanism of States General and States Provincial. Let us examine for a moment

shows that a change of rulers is more easy to bear than a change of code.

“Hence the enormous variety of the systems of customary law (*coutumes*) which we find existing in the same empire. We might say with truth that France was nothing more than an aggregation of communities. As a country it was common to all, but the states which composed it were separate and distinct. There was one single territory, but various nationalities.”

this monarchy which we have described. We foresee that it will abuse its vast powers, and that this abuse will provoke a vigorous resistance. Elsewhere, when monarchy becomes absolute, it is at a period when those who govern have brought to perfection the art of veiling the arbitrary exercise of power, of qualifying it by various forms, of justifying it by many good services rendered to the State; while, on the other hand, the mass of the subject classes employed in peaceful avocations and with substantial interests at stake, have grown more tractable and ready to endure. These moderating influences were altogether wanting in the English community under the Norman and Angevin kings. War was then the only State service. The tribunals and the administrative organization were above all instruments of insatiable extortion. There was no excuse and no compensation for the savage tyranny of the Crown, and those who suffered by it were men with the unmodified natures and the unchecked passions of a primitive period. It required all this to rouse the strenuous resistance which founded the political institutions of England. Freeman considers that if John "Lackland" had possessed the virtues of a St. Louis, an end would have been made of English liberty. He might have added with more truth: "If John had possessed no more power than St. Louis." Where is the prince who can resist the temptations and the demoralizing influences of unlimited authority? The detestable rule of the first Norman and Angevin kings is due to no other cause. The abuse of overmuch power, the extreme violence of the manners of the time—these things com-

bined brought on in the thirteenth century the crisis which gave birth to the great charter.

The great barons who were kept in awe by the mightier forces of the English Crown had by nature no more to recommend them than had the nobility of the Continent. During the century which followed the invasion they were nothing more than a troop of hungry adventurers, turbulent soldiers, and licentious petty tyrants in need of incessant repression and chastisement. They appear in their true light under Stephen, and we can reckon up, so to speak, the frightful anarchy of that period by counting the number of "adulterine castles" which the barons built, and from which, setting authority at naught, they ravaged the open country. At the end of the period, small as the kingdom was, there remained no less than 375 of these castles to be destroyed. The barons were, as yet, far from having reached the point of common political action, and they had given no sign of the wisdom and generosity which were so conspicuous a century later. The surprising political intelligence of the rebels of 1215 was in no sense due to a natural gift or inborn fitness;¹ it was the slowly ripened fruit of necessity. Consider the case of these great barons with their estates dispersed throughout the country and confronted by a tyrannical monarch. The great French feudatories could shut themselves up in their states, and from thence, independently of each other, defy a

¹ In 1310 the ordinances were framed chiefly with the object of benefiting the nobles and in the interest of their class. Stubbs, ii. 329, 330.

suzerain whose power hardly exceeded their own. The great English vassals had not, properly speaking, states at all; they had only domains, and their suzerain was one of the most powerful princes of Christendom. Distance gave them no sense of security: a few days' march, and the king's army was at their castle gates. A few of them only—the great Northern and Kentish barons—could count to any extent upon local feeling. Nothing of the kind existed in the other counties. The object which the English feudatories aimed at, and the means which they employed, took their character from these exceptional circumstances. Their aim was not independence—such a claim would have seemed chimerical: it was to control, or at most to share in, that power their dependence upon which they took for granted.¹ Their means were not those of individual or local resistance, nor even of the resistance of their own class. If they wished to contend at an advantage with an adversary so superior in force to themselves, the barons had but one course open to them. It was necessary, not merely to unite, to make common cause, and to organize their own body, but to rally to them from one end of the kingdom to the other all who were exposed to the tyranny of the Crown; and no rallying cry would be listened to with attention unless it proclaimed the grievances of all alike. The resistance then

¹ If we read the petitions of the barons in 1215 and 1258, we shall be surprised to find on the one hand how much they were ready to submit to at the hands of the central power, and to observe on the other the boldness of the oligarchical system, by means of which they proposed to control that power and almost to absorb it.

had to be political if the victory, when gained, was not to prove barren; it had to be of necessity general, national, nay, even democratic, if the victory was to be gained at all. All this happened in 1215. Feudalism, in other countries, never failed to show itself what it essentially is—a dividing, a decomposing, and an oppressive agent: we see how in England it became, by force of circumstances, an agent of unity and of common political action, and the more or less interested champion of the oppressed. To use Hallam's fine expression, "The permanent threat of an over powerful monarchy neutralized the centrifugal force of the feudal system."

This is what imparts grandeur and originality to the mighty drama of which the first act ended with the great charter, and which reached its climax with the constitution of Parliament about 1340. It was then that a nation came into being, or rather took visible form, a nation ranged in compact order round its natural chiefs. This new power found in Parliament at once a means of action and a permanent organ, in which the resistance of 1215 took the pacific, regular, and continuous form of political opposition and control. It is thus that we must explain the peculiar characteristics which have made it from the beginning an institution original and unique in Europe. The absence of separate provincial traditions, privileges, and interests rendered the existence of anything more than one central assembly impossible. The necessary framework of States Provincial and the objects to be arrived at by means of them were both lacking: this means of

localizing resistance, and of dividing in order to govern, was denied to the English monarchy.¹ On the other hand, compare this Parliament with the French States General. Although these latter included nominally all classes of the nation except serfs, they did not meet in the same spirit nor with the same results as did the English Parliament.

In France each of these classes was separately summoned by the sovereign without the opportunity of previous conference and without the tie of common traditions. They quitted their isolation for the first time when Philip the Fair convoked them in 1302.² They were not at that time, nor did they ever become, capable of understanding each other. In England, on the contrary, all classes met again upon a footing of old acquaintance when Parliament was established at the end of the thirteenth century. More than once during the last hundred years had they stood shoulder to shoulder in the struggle provoked by the monarchy.

¹ In France it seems certain that the States Provincial, like the States General, were a creation of the monarchy. They only fell into disuse after the reign of Charles VII. Louis XI. submitted to them the treaty of Arras. *Revue Historique*, July-October, 1879.

² I am aware that the States may have met previously, but I do not stop to discuss the point as I am anxious to confine myself to what is of real importance and productive of political results. See Hervieu, *États Généraux*.

In France the meetings of the States General, even at the time when their reputation was highest, that is, during the fourteenth century, were little more than accidental, they were a power in the State, and one frequently appealed to, but not an element of the constitution. Guizot's *Hist. of Civilization*, i. 191 ; iii. 275.

More than once had they realized that their joint interests were threatened, and that their combined rights lent each other mutual support. The efforts which they had made in common, were crowned by a memorable victory, and consecrated by a solemn instrument, framed by great nobles, with careful regard to the welfare of the humble and the poor. Memories like these endure and cannot be gainsaid. The articles of the great charter have little importance as authoritative and practical provisions; they have much as the evidence and symbol of collective and national action, as a pledge given by each class to all other classes; their great strength lies in their influence on the imagination. The country troubled itself but little to inquire whether such or such clauses, those, for example, which assured to its leaders some control over the course of government, were retained or not in the confirmations of the charter. The main point was, that the charter was confirmed, and that with it was perpetuated the memory of a day when all Englishmen had made common cause against oppression. Thirty-two ratifications succeeded each other, and yet the nation was neither indifferent to nor weary of them. Legend is not an accurate reflex of the reality which it portrays, but it is in itself a reality, and is often, of all realities, the most living and the most fruitful.

The force of sentiment is, after all, the guarantee of guarantees, the only substantial and solvent surety for undertakings written upon parchment otherwise empty enough. A single day's generosity sufficed to lead the English people to place trust and hope in the English

barons, and, in a manner, to endow the latter with a conscience, external to themselves, which checked their caprice and controlled their selfishness, and which even they came to mistake for their own internal and personal convictions. The oligarchical tendencies of the English baronage in the thirteenth and fourteenth centuries cannot be disputed, but they were powerless to cause a rupture between the barons themselves and the rest of the nation. We see how, in spite of the official division into lords and commons, Parliament has remained for centuries an Assembly, homogeneous and national to the core, where class rivalries have been as rare as the conflicts of local ambitions ; while the French States General have been nothing more than a place of meeting and contact for classes who were indifferent or hostile to each other, and for provincial delegations who with great difficulty raised themselves above the private interests of their constituents.

*THE HIGHER BARONAGE AND THE
PEERAGE*

It is now time to turn to the examination of the elements which have entered into the composition of Parliament, to observe how they are brought together there, and in what order they are distributed, what is the connection existing between the place which they fill in the nation, and the part which they play in the Chamber, and conversely, the influence thereby exercised on their mutual relations, and on their unequal growth within the body politic. A careful study of the local life of the middle ages is the only method of throwing light on these questions; England differed from the other countries of Europe, not less in her local life than in the position of her governing classes. The special feature above all that we meet with, is a rural middle class, a social force unknown in Continental states; the following stages may be noted in the process of its formation and development. The upper class gradually became divided, and the lower part moved downward for a time; it sank as it were into the nation, and mingled with the classes beneath it, then after endow-

ing the latter with equality in matters of law and of taxation it mounted again to a high position, carrying those lower classes upward in its train. Later we find this same class displaying more and more activity in obedience to the royal summons, and founding between the twelfth and fourteenth centuries, at the expense of the ancient county administration, the local self-government of our own time; we find it again when it had become too powerful to be kept aloof, taking its place in Parliament, where, thanks to its mixed nature, and its affinities with both, it served as a link between the higher nobility and the representatives of towns; and last of all we find that when in the sixteenth century, through the extinction of the ancient baronial houses a void was created in the ranks of the Upper Chamber, the class of which we speak stood ready to fill it, and that it has formed the stock from which the modern English aristocracy springs. The development of this class is one of the main facts in the political history of England. It is necessary to dwell upon it for a moment.

Almost immediately after the conquest, we find the Anglo-Norman baronage divided into two parts, and, so to speak, into two layers; the higher barons, *barones majores*, and the smaller vassals holding directly from the Crown, *tenentes in capite*, called also *barones minores*, a numerous, proud and self-reliant class. They were, it is to be noted, in the matter of tenure and jurisdiction, independent of the great barons. If they were not the equals of the latter they were not, at any rate, their subordinates; they owed them no service, they held of

the king alone. The only early marked differences between the two orders were, first, that the *barones majores* possessed domains considerably wider in extent (a barony containing $13\frac{1}{2}$ knight's fees); secondly, that they were summoned to the army and the king's council individually, while the inferior tenants were summoned in a body through the sheriff. These were differences in degree, not in kind.¹

Before long the character of each of these two parts of the baronage underwent a change, and the interval between them grew visibly wider. Yet the original unity of the baronial order was never entirely lost sight of, not even at a time when the greater barons had enjoyed for more than a century an exclusive right of admission to the councils of the sovereign, and when the lesser barons, classed confusedly with the inferior vassals in the category of simple knights, were in a fair way of becoming blended with the general body of landowners. When the knights were summoned to Parliament, their first impulse was to attach themselves to the barons, the first impulse of the barons was to welcome their advances; a little later on the two groups separated, and the knights took their seats with the representatives of the towns; they not only brought to their new colleagues the loftiness, the boldness and the tenacity of an ancient military class with its time-honoured traditions of command and discipline,² but they supplied them also with a natural channel of

¹ See Gneist, i. 290.

² We know that during the fourteenth century the House of

communication, and an easy means of good understanding with that higher baronage from whom they themselves had grown apart rather than broken away. Barons and knights were destined for a long period to remain the elder and the younger branches of the same family: an important fact which later on it will be necessary to consider again.

- Still, at an early date, as I have indicated above, the habits and proclivities of the higher and the lower baronage began to diverge. The lesser vassals were naturally less constant than the great barons in their attendance at the public assemblies, and they showed less alacrity in following the king on his campaigns. The management of their estates compelled to a greater extent their personal attention, and their absence from home in those times of violence and rapine exposed their property to dangers from which more powerful individuals were secure. As we shall observe further on they were compelled to purchase exemption by payments in money from personal attendance in the field. Their attendance at the king's council, where the presence of large numbers would be less desirable, was dispensed with upon easier terms, and the custom of summoning the inferior tenants-in-chief fell rapidly into disuse. For more than a century after the Conquest no mention is made of "the advice and consent" of this

Commons was led by the knights of the shires. The borough representatives, two or three times more numerous, merely followed their lead.

class in the preambles to the royal ordinances.¹ Only the great vassals, the bishops and the judges are mentioned, and they are mentioned with a regularity which proves their constant attendance. We find the throne of the Norman and Angevin kings surrounded by a body of men, the great officers of the palace, who were also at the head of the state administration, and a certain number of prelates and barons, whose capacity and judgment were highly esteemed by the king; this was the king's council. To this permanent nucleus were added upon important occasions, if, for instance, war had to be declared, an extraordinary subsidy to be furnished, or an edict to be promulgated, the remainder of the great vassals, lay and ecclesiastical. They then formed the "*magnum concilium*," the great council. The king insisted upon their presence; for their consent, which, in obedience to his august will,² they could not refuse, discouraged any local resistance to the execution of the measures agreed to; they themselves felt it to be to their own interest to attend, and so have an opportunity of discussing, and if possible, of diminishing, the burdens with which they were threatened.

¹ See Stubbs, *Select Charters*. Observe an even later instance, the writ of 1237. On this occasion the magnates alone seem to have been present, although the subsidy purports to have been granted by the knights and freemen as well. The latter represented their "villeins." In 1232 the villeins are mentioned with the rest as having granted the subsidy. It is clear that neither knights nor freemen were present in person any more than the villeins; the great nobles contracted for them.

² There is no instance under the Norman kings of the refusal of a subsidy. Stubbs, *Select Charters*, preface, p. 18.

These simple facts had most important consequences. The baronage was split up, and by a gradual process of expansion two distinct bodies were formed ; a resident provincial upper class, comprising all the petty tenants-in-chief of the Crown and the inferior barons, and a political aristocracy comprising all the great barons and the counsellors summoned by the king. And we can make out the exact point where the division took place ; the fact that they were accustomed to attend the sittings of the king's council was the distinguishing mark of that aristocracy ; the fact that they were summoned to it individually and by name became in time their official badge of dignity. It is important to bear this in mind ; for the attributes of nobility and the privileges at that time and in all countries alike accorded to the highest class, ceased abruptly at this dividing line. In England these privileges were from an early time made appurtenant to the high functions of the public councillor and the statesman ; they were strictly confined to the great dignitaries, and were never extended downwards to the rest of the barons, who, thrown rather in the direction of the class immediately below them, before long became merged in, and sank to the level of, the general body of freemen.

A seat at the council-board cannot be shared, nor public employment split up indefinitely. Nobility therefore in England became, like the peerage, strictly hereditary in order of primogeniture. It was attached to an office which could not be divided and passed to the eldest son only, in direct succession ; younger sons were in no way distinguishable from ordinary citizens.

Instead of an order made up of privileged families with a tendency to increase from generation to generation, by excess of births over deaths, England possessed merely a group of privileged individuals whose numbers tended naturally to decrease as direct lines died out, a group which but for new creations would as a matter of fact have become extinct. England owes her "isonomy," which is Hallam's boast, to a peerage, weak in numbers and established from the first as a governing body, which has, so to speak, confined its privileges to its own level, and so prevented their extending downwards in a lower and corrupt form to the whole of a particular caste distributed throughout the nation.

In France the feudal lords were, from the beginning, so divided in interest, and so widely scattered that their chiefs were never in a position, even if the idea had occurred to them, to form themselves into an upper aristocracy, and to claim a share in the government. The title and privileges of nobility, lacking this high prerogative as their basis, were driven to rest their claims upon the common-place circumstance of birth and descent. Not confined exclusively to the upper few, these privileges were extended promiscuously to the whole class of so-called "gentlemen" (*gentilshommes*), estranging and isolating it completely from the general body of the nation. Instead of a limited political aristocracy, we find in France an aristocracy of birth, whose immunities, attached in each case to the family name and descending to all the children, multiplied simultaneously with the junior branches, and weighed

down the lower orders with an ever-increasing burden.¹

The English have been saved a like calamity by their early-formed conception of the essential nature of nobility, and we find the original source of this conception in the fact that the English barons from the very beginning formed a state council, a body of political magnates. This fact it is which, for more than two centuries, has at once narrowed and raised the base upon which the aristocracy have rested their title, and has placed upon a sure foundation the equality of all other classes. By the fifteenth century, the swarming French nobility had secured in their exemption from taxes a privilege attached to birth which cut them off from, and rendered them odious to, the mass of the commonalty; in England at the same period the "isonomy" of classes and their relative continuity, had

¹ We must add that an aristocracy which (as in England) formed the Council of State, naturally looked upon nobility rather as the foundation of their high prerogative than as a title to exemption from public burdens. Such an aristocracy, thirsting for power or sated with the profits derived from it, appropriated only those privileges which could add to its prestige and influence; it could afford to despise those which were most calculated to excite the anger and envy of the nation at large. I refer especially to such as involved immunities from taxation. In France the advantages assigned to nobility were naturally fitted and adapted to a class which grew poorer as it grew more numerous, and which, without either influence or wealth to sustain its rank, sought eagerly for other marks of superiority; these it found in outrageous fiscal exemptions, in offensive privileges, in puerile distinctions, in a ruinous exclusiveness the infringement of which was penalized as derogatory.

become not less characteristic of the social system than were the unity of the kingdom and the solid establishment of the State.¹

¹ We know that in 1789 the proposal to create a chamber of high dignitaries met with the most strenuous resistance from the whole body of the French nobility, and above all from the country gentlemen. They instinctively felt that this selection of a political aristocracy would be followed, so far as they themselves were concerned, by loss of caste and a sinking to the level of the commonalty. Later, in 1814, M. de Villèle expressed the same sentiment when, criticizing the establishment of a house of hereditary peers, he asked how France could furnish two hundred individuals so superior to the rest as to merit this high distinction. It would amount, he added, to a suppression of the remainder of the nobility in favour of the two hundred chosen families. That which he dreaded as a calamity is exactly what has been taking place, since the middle ages, on the other side of the Channel, and has laid the foundation of civil and political liberty in England.

III

THE KNIGHTS AND THE BURGESSES

THE DECAY OF THE FEUDAL SYSTEM

WE have next to consider the position and progress in the counties of the inferior tenants-in-chief of the Crown. The first steps in the process of their development which strike our notice are purely feudal in character. Knights' fees, unknown at the period immediately following the conquest, were rapidly created, and by 1100 they existed in great numbers.¹ They were definite estates, to which the obligation of military service was specially attached, instead of being charged, generally, on the lands belonging to the manor. Hence, as happened also on the Continent, arose a well-marked distinction between two species of estates, one noble and the other inferior; the first held by military service, and subject, not only to strict rules of primogeniture, but also to the oppressive rights of aid, wardship and marriage;² the second held in "free socage"—this is the legal term—and exempt from the more onerous feudal obligations. Military tenure

¹ Stubbs, i. 283.

² Hallam, *Mid. Ages*, i. 179.

brought about a first process of fusion between the tenants-in-chief of the Crown, and the tenants of barons or sub-tenants,¹ the terms of the holdings being the same in both cases; on the other hand, it seemed calculated altogether to separate them both from the general body of landed proprietors, and to make of the knights a class by themselves, a species of equestrian order, at once overbearing and exclusive.

Other causes more powerful than the feudal spirit averted the danger. In the first place, England in the twelfth century was among the European countries, which possessed the greatest proportion of free men, that is, of free landowners—the two things being then identical—by the side of, and in addition to, the feudal knighthood. They consisted either of Normans of inferior rank who had come over with or rejoined their lords, or of original Saxon proprietors—there were many of these existing before the conquest, especially in the Eastern counties—who, restored to favour after a time with the new masters of the soil, had recovered their freedom and part of their estates. Various documents of the twelfth century show us these Saxons living upon the best terms with the Norman freemen and barons, allied to them by marriage, and very soon themselves aspiring to baronial rank.² The non-noble free landowners in England possessed as a class the numbers, unity, and stability which they lacked in France. The fact that their class originally supplied the principle of the classification of persons is only one proof of its importance. Bracton, writing in the thirteenth century,

¹ Gneist, i. 291. ² *Dialogus de Scaccario*, Stubbs' Select Charters.

distinguishes only two personal conditions—liberty and villeinage : other distinctions are to him merely subdivisions of no legal importance. The French jurist, Beaumanoir,¹ writing almost contemporaneously, divides the people into three classes : nobles, freemen, and serfs. In France, the class of freemen practically consisted of the burghers. It was with difficulty that the freemen who inhabited the rural districts avoided the forfeiture of their freedom : they only escaped by migrating to the towns.

To sum up : the non-noble free proprietors in England formed a powerful body well suited to attract to themselves the class immediately above—namely, that of the knights, and to absorb it or be absorbed by it if circumstances should diminish the distance between them. The junction of the two was not long in taking place ; the knights' fees, which were originally of considerable extent, began from the twelfth century to suffer frequent subdivision ; these partitions were effected chiefly in order to provide portions for daughters and younger sons, and the practice became so common that the legislature was compelled to interfere. The great charter (the version of 1217) prohibits the alienation of fees being carried to such an extent as to render what remained insufficient to bear the prescribed military burdens. This was another symptom of the growth of the division of property. In 1290,² the legislature abolished subinfeudations, and at the same time sanctioned the right, in the case of every man who

¹ Hallam, *Constitutional History*, i. 197.

² By the stat. "Quia Emptores," 18 Ed. I. c. i.

was not an immediate vassal of the king, to sell, even without the consent of his lord, the whole or part of his estate.¹ In either case the new owner became the vassal of the lord whose vassal the grantor had been. These measures helped to multiply the lesser tenants-in-chief of the Crown; on the other hand, as the domains of the knights changed hands and diminished in importance, the social condition of their holders became more like that of the ordinary free landowners, who, lately their inferiors, had come to be their equals in wealth. Neither class had actually sunk, for during the same period wealth in general, and consequently the profit drawn from landed estates, had substantially increased, so that the income derived from the half or a third part of a given property was probably equal in amount to its entire revenue at a former date. Both classes however were undergoing a levelling process which extended even to certain of the barons whose fiefs had been cut up by grants of dowries or other donations. The diminution in the number of baronies after the reign of Henry III. is a well-known fact.²

We find also that in other respects during the same period the modes of life and habits of the two classes no longer differed from each other. The knights, for the same reasons which made them slow to attend the

¹ In 1327 the right of alienation was extended even to the immediate vassals of the king. Stubbs, ii. 370.

² Matt. Paris, v. 617. Of ninety-eight baronies whose representatives had been summoned in 1300, fourteen were extinct at the accession of Henry IV., and thirty-three had lost the importance and dignity of hereditary peerages. Stubbs, iii. 16, 17.

king's council, showed, from an early date, the liveliest repugnance to service in the field, which, as the possessions of the Crown most exposed to attack were those which lay in France, implied almost always absence from England and a campaign beyond sea in some distant part of the Continent. The knights soon showed themselves intent on escaping this obligation, and when Henry II. offered to exempt them from it on payment of a tax, they accepted his offer with eagerness. This was the tax known as "scutagium" (scutage), and on payment of it the knights were permitted to remain at home. This method of commutation, however, left untouched the other burdens of military tenure, notably the oppressive and outrageous rights of marriage and wardship which existed in their most rigorous form only in England and Normandy.¹ Attempts were consequently made to avoid knighthood itself, the cause or occasion of so much hardship, and the formal act of admission to the order was purposely omitted or evaded. Ordinances insisting on the acceptance of the honour occur perpetually during the thirteenth century, a clear proof that it was submitted to with ill grace. The revival of the spirit of chivalry in the reign of Edward III. was merely an accident, a passing fashion. As early as 1278, we find the king ordering the sheriffs to impose knighthood, not only upon persons belonging to the knightly class, but upon every one whose income from real estate amounted to twenty pounds sterling, from whatever lord, and by whatever title, he might hold his lands. This direction was, afterwards, frequently re-

¹ Hallam, *Med. Ages*, i. 179.

peated, and it shows how far by process of time and stress of circumstances the two classes had mingled with each other, the richest of the free proprietors being promoted to the rank of knights, and knights who had suffered the partition of their estates sinking into mere landowners.¹ It is remarkable that in less than a century the principle of primogeniture already applied to the military tenures became the customary rule of the ordinary, the so-called "socage" tenures, Kent and a few other districts alone forming an exception. This shows plainly that the distinction between the tenures corresponded to no equally marked distinctions between the persons who held by them. It was to a great extent the same class which held land by these two titles, and to that class applied in both cases the same rules of succession. In short, from the thirteenth century the great majority of the knights seem to have acquired the tastes and habits of mere rural landowners.² The military organization prevailing at the end of the fourteenth century marked the end of this process of evolution. The gratuitous and compulsory military service charged upon knights' fees had disappeared, and the tax which had been substituted for it was no longer collected.³ The nucleus of the king's army, at any rate upon foreign service, was composed of restless

¹ Stubbs, iii. 545.

² As early as 1074, in the species of manifesto against King William I. put forth by the Norman barons, they speak with envy of the English, who are suffered to till their land in peace, and drink and feast, while their conquerors are compelled to serve upon the Continent. Stubbs, i. 291. *Nolens vexare agrarios milites.* (*Charter of Henry II.*) ³ Stubbs, iii. 540.

and warlike barons, who gathered around them men of like disposition with themselves and who sold to the king for hard cash the aid of their regiments of adventurers. Most of the original knights kept more and more aloof from these bands of *condottieri*. Many did not even bear the title of knights at all; they were esquires, gentlemen, "competent to become knights," in the words of an ordinance of 1446,¹ which directed the candidates for the shrievalty to be chosen from among them, in default evidently of men who had actually received knighthood. At the same time they bore arms, but they did so in common with other classes of the nation for the preservation of order in the counties. An ordinance enjoins that every freeman is to arm himself according to his means, some with mail coat, buckler, and lance, others with the simple doublet of mail. They formed a sort of home force²—a species of local militia which no longer rested on the old feudal basis, its duties being those of a civil police. It was especially its persistently warlike spirit and its attachment to the career of arms which, down to 1789, kept the French *noblesse* as a class apart from the rest of the nation. In England the military spirit had vanished except in the case of a few turbulent barons who were destined to destroy each other and to disappear from the scene before the beginning of the

¹ Stubbs, iii. 547.

² By the terms of the Statute, 25 Edward III., ch. 8, it is made illegal to lead the militia out of its own county, unless in case of urgent necessity certified by Parliament, or to lead it out of the kingdom under any circumstances whatever. Gneist, i. 289.

sixteenth century. It might be said that, from the end of the fifteenth century, the bulk of the old English knighthood was nothing more than an upper rural class, to which belonged upon an equal footing with each other all the more important free landowners. Le Pogge¹ describes them at the period of which we are now speaking as given to agriculture, selling wool and the produce of their herds, thinking it no disgrace to grow rich by such means, and acknowledging wealth as the test of nobility. We see how very near the truth it would be to affirm that the feudal system in the strictest sense of the term has never existed in England. In the first place no opportunity occurred for the creation of great provincial "satrapies." Of the two other political elements of feudalism, the first—the baronial jurisdiction—was narrowed in its development, feeble, and short-lived; it only very rarely went beyond the limits of a manorial court, and it never attained the competency or dignity of a high tribunal;² at an early date it yielded to and was swept away by the king's courts, and the fourteenth century, so to speak, knew it no more. The remaining element—the military fief—was, in the same century which witnessed its creation, exempted from the obligation of military service: this exemption was granted in consideration of a special money payment which before long lost its name and disappeared in the general mass of civil taxation.³ According to Coke, scutage was not levied after the eighth year of Edward II. The remainder of the

¹ Le Pogge, *De Nobilitate*. ² Stubbs, i. 399. ³ Stubbs, ii. 522.

burdens, those which were purely fiscal, charged upon the military tenures, were already looked upon as obsolete in the time of James I. In the reign of Charles II. they were finally put an end to by means of a money commutation, and all tenures, without exception, were reduced to the type of ordinary free proprietorship, known as "socage." After 1660, military feudal estates no longer existed in England.

The civil elements of the feudal land system were equally quick to emerge and take a modern shape. The end of the fourteenth century witnessed the commencement and rapid growth of the practice of letting land to farm, which became general at the beginning of the sixteenth century, and which was, from the very outset, a form of tenure absolutely free from all feudal characteristics: it depended on purely economic relations, and by the terms of its instruments freedom of contract was recognized as the basis of agreement.¹ Certain extreme rights which have been reserved to landlords do not in any sense belong to the middle ages: the most stringent of them are a late invention of the landed aristocracy, and date from the eighteenth century. Copyhold tenure is frequently referred to as an evidence of deeply-seated and persistent feudal sentiment. Those who so refer to it have been misled by appearances. Copyholds were, according to the theory lately current, grants of land of a revocable nature made by the lord to his serfs, and burdened with a great variety of charges which exhibit types of nearly all the feudal obligations known to French law. These grants were held before long to

¹ Pollock, *Land Laws*, 139.

confer a formal and perpetual title, and by the end of the sixteenth century they covered a third of the whole kingdom; many of them survived as late as the middle of the nineteenth century without the legislature troubling itself to amend their imperfections. If, however, we consider that the same persons frequently held both copyholds and freeholds—that is, lands of free tenure;¹ that copyholds in many cases belonged to great nobles; that the time had long passed since their holders formed to any extent a class by themselves; that the peculiar burdens imposed upon them had been so effectually diminished as to afford no obstacle to agricultural progress; and that the system has always been treated as an object of temperate criticism, never as a grievance, we shall recognize the fact that, even as regards copyholds, the feudal system has only survived in legal technicalities, and not in facts of political or social importance.²

As for the mixed elements, at once civil and political, of feudalism—I mean primogeniture and entails—they met with no better fate. The system of great estates

¹ The statutes relating to the property qualification of members of Parliament and county magistrates make no distinction between freeholds and copyholds; the income derived from land, which they require, can be drawn indifferently from estates of either tenure.

² The persistent retention of feudal terms and ceremonies proves, even in the case of copyholds, that the institution had, in reality, ceased to be feudal. If no one objects to the preservation of obsolete forms, it must be because they hurt no one, and because, beneath its disguise, the thing itself has undergone such substantial modifications as have fitted it to the needs of modern society.

owned by noble families which exists at the present time is in no sense a legacy of the middle ages, but a creation of the last century. It is now more than 350 years since freedom of testamentary disposition became the rule (subject to a restriction which was to disappear in 1660), and the rule of primogeniture was confined to cases of intestate succession. It is now nearly 500 years since the ingenuity of jurists found a means of emancipating real property by collusive legal proceedings, and practically secured to owners of estates very extensive powers of alienation.¹

¹ It is instructive to follow, even in the middle ages, the efforts of Parliament to establish and maintain the system of entails, and the invariable failure of these attempts shows clearly the direction and influence of public feeling. All the English jurists, common law judges, equity judges, and lawyers show by turns their hostility to these restrictions upon free disposition. In each century their fertile ingenuity suggests fictitious interpretations and collusive proceedings which nullify all statutory prohibitions. In this work they showed no less energy than did the French jurists in adding to the royal prerogative. Very soon after the conquest freedom of testamentary disposition ceased to exist, and primogeniture was the universal law of all tenures. Under Edward I. the famous statute "*De donis conditionalibus*" put a stop to freedom of alienation in the case of all fiefs of a certain description, and attempted to create perpetual entails; but lawyers found, in time, more than one way of eluding it, and the Courts lent themselves willingly enough to their artifices. We need not describe here in detail the expedient of "common recoveries," or that of "fines," or finally, the crowning fiction of "uses." The effect of "uses" was, so to speak, to strip from the legal property in the land the substantial enjoyment of it, preserving the former in name and form, and creating under this disguise an estate which possessed all the actual advantages of ownership, but which was free from feudal responsibilities, and was neither recognized

England has been before all other countries a country of free ownership, of moderately-sized and small estates.

by the common law, nor subject to its prohibitions or penalties. It seems that more than half the land in the kingdom had come to be held by this title, that is to say, it had escaped from feudalism and was subject to the incidents of modern ownership. Lands held upon "uses" could be sold, devised, or apportioned, though, as a matter of fact, they generally devolved upon the eldest son. This system lasted till the reign of Henry VIII., its weak point being that lands so held escaped confiscation, and thus it became the object of the Crown to bring them again within the operation of the common law. The Act of 1535 was intended to abolish "uses," but they had grown so indispensable that hardly had they been suppressed than they reappeared in substance, and, under another name, that of "trusts," were again assisted by the connivance of the Court of Chancery. Meantime, the agitation caused by their threatened abolition forced the hand of the legislature, and in 1540 formal sanction was given to freedom of disposition by will. This, as first granted, was only partial, but it was made complete and extended to all real estate by the statute of Charles II. which abolished military tenures. The end of the seventeenth century saw feudal ownership finally moulded into the shape of modern civil ownership. The point to be remembered in this lengthy statement is, that with very few exceptions, under the systems which were nominally most restrictive, real property in England has always been capable of division and alienation, of being acquired by those whose good management has supplied them with the means of adding to their estates, or of falling into the hands of men who, grown rich by commerce, aspire to a position in their county. Mr. Brodrick mentions the frequency, during the fifteenth century, of litigations relating to land, as a proof that real property in England has long been distinguished by the ease with which it could be alienated or divided. Assuredly a country can hardly be suspected of attachment to fendalism which has shown itself so intent upon destroying the political effects of the feudal system, and so ingenious in warding off its economical results.

The present system of *latifundia* and settled estates only began to flourish after the Restoration : it is based not upon the law but upon social custom, and is the outcome of a deliberate policy on the part of the upper classes. But in this case again the courts were not slow to limit the effective operation of entails to the life of a person in being *plus* a period of twenty-one years—less than was allowed in France under the *ancien régime*. Modern entails have developed within the narrow space marked out by the legislature and the judges, who have insisted that each generation shall be given the opportunity of reconsidering the arrangement made, and of restoring absolute ownership in case it thinks fit to do so. The fact that a perpetuity is in many instances created is owing solely to the wish and choice of successive beneficiaries. In our own days a series of statutes has freed the owner for the time being from the observance of those covenants in his settlements which are at variance with political economy, and has finally restored to him (though only for the benefit of all parties interested under the settlement) the chief rights which his position as a *quasi* usufructuary forbade him to exercise. It is beyond question that the state of things which grew up during the last two centuries was unconnected with the feudal system which preceded it ; it was the effect of a great aristocratic conception which finally provoked a democratic reaction, both being entirely modern in their causes and novel in their spirit.

In our survey of the various elements which entered into the composition of Parliament, the towns remain to be considered. The growth of the towns in England

was distinguished by certain peculiarities. In the first place, the great centres seemed to have formed more slowly than in France. In England, liberty, a certain degree of prosperity, and opportunities of acquiring wealth were all to be found in the rural districts. Residence in the towns was not the only mode of bettering their lot which was within the reach of the lower classes. City life, therefore, presented fewer attractions than it did elsewhere. Even in the time of Charles II. no very populous cities existed except London, and still less did any such exist in the fourteenth century. Moreover, England was not in any sense a manufacturing country: she was an agricultural, and above all, a pastoral country, dependent to a great extent upon the wool trade. The great majority of her cities were mere country towns;¹ their inhabitants in their manners and pursuits differed in no degree from the other inhabitants of the county. The great towns, almost all of which were directly subject to the king, escaped those struggles between the count, the bishop, and the citizens which fill the history of the French communes. No rival influence had opposed the grant of royal charters to the towns; the burghers had no grievances to prejudice or exasperate them against the neighbouring barons or knights, but, on the contrary, reposed in both a full and ungrudging confidence. Lastly, the townsfolk enjoyed frequent opportunities of contact with the nobility of the district,

¹ Nine-tenths of the cities of medieval England would now be regarded as mere country towns, and they were country towns even then. Stubbs, iii. 595.

for the towns were, by the general system of administration, placed so far as related to inspection of the militia and the election of citizens and burgesses, under the same authority as the county, and were compelled to send representatives to the county court whenever the itinerant justices held their assize. It is to be observed that in 1360 justices of the peace appointed for the whole of a county had jurisdiction given them over such of the towns as enjoyed no special immunity. The conclusion is clear. There was nothing in England which answered to the "third estate" in France—a class, that is to say, both isolated and close, composed exclusively of townspeople, enjoying no commerce with the rural population (except such as consisted in the reception of fugitives), and at once detesting and dreading the nobility by whom it was surrounded. In England the contrary was the case. The townsfolk and the other classes in each county were thrown together upon numberless occasions; a long period of common activity created a cordial understanding between the burghers on the one hand and their neighbours the knights and landowners on the other, and finally prepared the way for the fusion of the two classes.

IV

LOCAL SELF-GOVERNMENT AND THE LANDOWNERS

THE PARLIAMENT

WE seem so far to have made but little progress towards the question of Parliament, but we are gradually working our way round to it. While the knights as a class seemed to be losing ground when deprived of their military character and feudal rights, and were mixing gradually with the class next below them, both classes were, as a matter of fact, improving their position and strengthening their claims to consideration by dint of active usefulness and services rendered to the State. Their movement upwards and their reappearance upon the scene may be ascribed to the operation of those agencies of royalty, the itinerant courts. It was this apparent instrument of centralization in the hands of a power still poor in means and experience which called into being local self-government in its modern form, and prepared the rural middle class for the part which it began to play a century later on the political stage. The first Norman kings had already restored to activity an old Anglo-

Saxon institution, the county court. This court, which the prelates, earls, barons, and free proprietors were expected to attend, in addition to the reeve and four inhabitants of each village, presented those democratic features which are found in so many institutions of the middle ages. Its functions were many and various; it was at once a court of criminal and of civil jurisdiction, a registry for the transfer of lands, the place of publication of royal ordinances, and an office for the receipt of taxes. This system, so powerful and so concentrated in appearance, was not long in betraying its shortcomings. To begin with, those of the great barons who enjoyed independent jurisdiction were exempted from appearing at the ordinary meetings of the shire moot. The knights, too, from an early period and in a great number of cases, obtained dispensations from attendance, and the towns were careful that a clause conferring a like immunity should be inserted in their charters. Robbed of its better elements, the county court was, in addition, almost emptied by the general reluctance to attend. The system of itinerant judges, as remodelled in 1176, brought it fresh life. These high functionaries, the trusted agents of the king's court, came into the counties with most extensive powers. They were enjoined by their commissions not to suffer themselves to be thwarted either by the immunities of the barons or the franchises of the towns. When they held their assizes each town deputed twelve burgesses to appear in company with the other classes which formed the county court, and the greatest nobles attended there, at all events by deputy. The whole population of the

locality, nobles and commoners, from country and town, were thus brought together. Moved by this powerful influence, the county court and the hundred courts reached their zenith in the thirteenth century, and no doubt contributed in a singular degree to hasten the fusion of races and classes. In proportion however as the number of their members increased, these courts became less fitted to discharge the complex duties which grew with the growth of the administration. Administration by an assembly is no more practicable than is government by a club. Consequently, the king's justices while allowing the county court to exist in name, soon came to look upon it as nothing more than the place of election of the various commissions to whom the transaction of business was practically entrusted. It is not difficult to imagine of what men these commissions would consist. The judges generally speaking bore no good will to the barons, and they mistrusted the sheriff, whose authority was in a certain sense in rivalry with their own. As strangers in a county they had need of local help, and they were in no position to organize a resident bureaucracy. They were compelled then to have recourse to the neighbouring knights, the only class independent and enlightened enough to yield them effectual aid; as a matter of fact we find the judges using the knights more and more as their coadjutors and sharing with them the powers withdrawn from the sheriff or the county court. It is impossible to trace in detail the endless process of transfer. The assessment and collection of taxes, the arming of the local forces, the duty of administering the oath of the

peace, the local investigation of crimes and misdemeanours, the selection of the grand jury, the voice in legal decisions obtained through the petty jury, all these in turn were entrusted to commissions of knights working for the most part under the direction of the itinerant judges. The greater part of these powers had belonged previously to the county court, and the sheriff; in 1215 the latter also lost his jurisdiction as the king's representative in criminal matters, which was transferred to the judges of the high court, and by the end of the same century he had become little more than an officer carrying out the decrees of the itinerant judges and enforcing their orders.

We can trace without difficulty the effect of this revolution. The energies of the knights were no longer concentrated in the county court. As a class they ceased to be subject to the sheriff, no longer recognizing in him the direct representative of the royal authority. Other officials of higher rank, the immediate agents of the Crown, had intervened; they had appealed directly to the knightly class, had ousted ancient authorities in its favour, had claimed its co-operation, guided its energies towards a thousand different objects, and inaugurated a vast progressive movement of which they, the judges and the knights, were finally the sole exponents. In England it was centralization which inaugurated decentralization and self-government. In 1360 the process of evolution was to culminate in the institution of justices of the peace, nominated by the Crown, and chosen from among the same local class, that is the knights. These justices, summoned in the first instance to replace the sheriff in the performance of certain police

duties, were perpetually receiving fresh powers ; criminal jurisdiction was conferred upon them as extensive in principle as that of the royal courts ; their quarter sessions superseded completely the jurisdiction of the county court, and they were finally entrusted with the whole local administration, the care of roads, bridges and prisons, the execution of the labour laws, the supervision of parish business and the relief of the poor. We observe, moreover, that where knights were not forthcoming for the discharge of all these new services, administrative and judicial, thus thrown upon their order, the Crown called in the assistance of the other landowners, and that this process of substitution became the rule as the services themselves multiplied, and the knights diminished in number. Thus the whole body of the free landowners, squires and gentlemen as well as knights, took part in the administration, and in the following centuries we find them energetic, busy, and laborious, discharging without reward or assistance the ever-increasing duties of a vast bureaucracy. In the fifteenth century the process of assimilation was so complete and had extended so far amongst the free landowners that the Crown was forced to protect the important offices which had formerly appertained to the old knighthood against invasion by men of no position. By a series of enactments belonging especially to the period of the three Henries, property qualifications were required in all cases ; they were required for the office of juryman, for certain ranks in the militia, for the commission of the peace, for a Parliamentary vote, and for a seat in Parliament. The establishment of a property qualification

signifies that the distinctions of birth and pedigree no longer hold good, and that others have to be sought for in wealth. In the case which we are considering it was the ownership of extensive landed property which afforded a sound principle of selection and supplied the basis of a claim to certain privileges : the first, extremely onerous in its nature, consisted in the unpaid discharge of all local duties ; while the second, the privilege of sharing in the government, was justified by the first and immediately consequent upon it.

The class to which I refer, so conspicuously non-feudal in character, had, in fact, won a position for itself by the close of the thirteenth century. Regarded with gratitude on account of its performance of many local services, and courted by reason of its numbers and influence by kings and nobles, it received, as was inevitable, its summons to Parliament. Once there, it is not surprising that it held aloof from the military chiefs, men steeped in the unruly and turbulent spirit of the middle ages. The landowners were penetrated by a spirit altogether different and modern in its character ; they were the keepers of the king's peace, they held their powers by royal commission, and under the exact terms of statute law. They were in advance of their age and practically belonged to a future state of society. It is thus that we must explain a fact peculiar to England, the formation of a second chamber largely recruited from one class, the landed gentry, who would in other countries have ranked with the nobility and have practically followed their lead. An institution of this nature could never have arisen on the Continent, where, under ill-organized

monarchies, capable neither of utilizing nor controlling them, the nobility had remained so feudal and so warlike, so little inclined to consider themselves as agents of the State and the law, so ignorant of civil obligations imposed by statute, so confined within themselves, so jealous of their privileges—in a word, so little fitted to furnish from within their own ranks the accredited representatives of the nation at large.

We are now in a position to understand how the English Parliament was formed. The nucleus of that body, the first crystal to which the rest have adhered, was the *magnum concilium*, composed originally of the great ecclesiastical and lay vassals. I do not concern myself to decide by what title the former sat there, whether by right of a fief or a barony, or in their spiritual capacity. The fact, far more conclusive than their exact legal position, is that they belonged for the most part to the great feudal families, that they all held estates baronial in importance and character and subject to the same services and taxes as the estates of their lay colleagues,¹ and that they were commonly treated as “barons like the rest” (*sicut barones ceteri*).² These two orders of magnates, attracted to each other by so many conditions common to both, constituted by themselves up to the middle of the thirteenth century, the great

¹ Taxes on fiefs held by the clergy were voted with taxes on fiefs held by laymen. Taxes on spiritualities were voted or granted separately. Stubbs, ii. 173, &c.

² It is remarkable that the position of the clergy as an element of the common council was not defined by the great charter apart from that of the other tenants *in capite*. Stubbs, ii. 169, 194.

council of the sovereign. The memory of joint efforts protracted through a long period averted the danger of a sharply-defined separation between the nobility and clergy, such a separation as appeared in France with the "States General" and continued uninterrupted till 1789. Here again the early growth of a political aristocracy involved results of inestimable value.

About thirty years after the regular establishment of itinerant courts, the knights who, as a class, had gained in position through the acceptance of important duties and the performance of important public services in connection with local administration, and who were at the same time supported and recruited from the upper ranks of the landed gentry, were on the eve of achieving their entrance to Parliament. They did not seek admission there but gained it by the force of circumstances. So large, so compact, so active a body had they become that neither king nor barons could afford to neglect them, but both chose rather to seek them out and invite and urge their co-operation. In 1213, during the struggle which resulted in the great charter, it was the king who took the first step, and for the first time our knights chosen from each county were summoned for the express purpose of conferring with the monarch upon affairs of State. In 1215 the great charter seems to have neglected the principles of election and representation, and the reign of John was followed by a lull in the dispute. There was a return to the ancient methods of procedure, and the great council remained comparatively aristocratic till 1254, when the struggle between the Crown and the baronage

broke out afresh. Each of the rival parties felt the need of securing allies from the other classes in the nation, and on this occasion two knights were summoned from each county and sat with the proctors of the parochial clergy, who were themselves called upon for the first time to send representatives to Parliament. Till then only the abbeys, priories, and cathedral churches had been required to send representatives to attend in company with the bishops. The part assigned to these new comers was as yet very humble ; their business was to listen, to acquaint themselves with the resolutions of the great council, and to publish them in the counties and parishes. They seem to have taken no part in the deliberations ; they were dismissed before the end of the session and left the weightier matters of which they had no cognizance to be debated by the great lords of council alone.

Be that as it may, both knights and clergy in varying numbers, irregularly and at long intervals, are found in attendance at several of the subsequent Parliaments, in 1261, 1264, 1270 and 1273. In 1295 the custom of summoning two knights from each county had become fixed, and by the same date a special form of summons was in use for convoking the delegates of the parochial clergy. From that time forward no Parliament was formally constituted without a summons addressed to each of these two classes. During the same period another element had been admitted to the assembly. The principal towns, those especially which possessed charters, had been convoked in 1265 by Simon de Montfort ; thirty years later a royal ordinance called

upon them to send two inhabitants, citizens, or burgesses, as representatives, and after that year they received regularly a summons to Parliament. The year 1295 is therefore a date of capital importance. The beginning of the fourteenth century found Parliament consisting of all the essentials of a truly national assembly, and representing even more completely than at the present day (for certain elements have been lost by exclusion or disuse) the various components of the English nation.

How different this from the state of things in France where, during the greater part of the middle ages, both the rural districts and the parochial clergy were practically unrepresented. The difference however will appear still greater if we observe in what manner the elements enumerated above separated from each other, grouped themselves together, and fell into their places within the Parliament itself. At the outset the burgesses held their sittings apart; on the other hand the knights of the shire joined themselves to the barons, a natural state of things when both represented feudal and rural interests. The clergy voted their subsidy apart. We find this threefold division in 1295 and again in 1296, in 1305 and in 1308; and we find it also in the French States General at the same period. Before long, however, another arrangement prevailed. The bonds of sympathy were strongest on the one hand between the barons and the prelates accustomed for two centuries to deliberate together, and on the other between the knights and the burgesses, both the creatures of election, chosen or proclaimed simultaneously at the

county court, where they had often sat side by side under the presidency of the justices in eyre. A method of distribution in agreement with these tendencies began more and more to prevail. After 1341 the heads of the clergy (save on certain rare occasions) maintained their union with the lay nobles and formed with them the House of Lords, and from the same date the two other classes were grouped together by a corresponding process. The knights and the burgesses formed the House of Commons and, except in a few rare cases, none of which occur after the fourteenth century, were never afterwards separated. As for the last element, the parochial clergy, they too formed part of the House of Commons; but instances of their attendance soon become infrequent and finally cease altogether. Their poverty and the cares of their ministry compelled their absence; they also felt themselves more at home in their own special assemblies, the convocations of York and Canterbury, which they attended as a sort of Lower House upon the summons of their primates. The custom grew up accordingly for the Church's share in the subsidy to be voted in Convocation, not in Parliament. Thus from the middle of the fourteenth century the House of Commons was deserted by the clergy, and the secular representatives of the counties and boroughs were left to themselves and masters of the situation. The heads of the clergy were still powerful in the House of Lords, where abbots and priors were twice or thrice as numerous as bishops, and they viewed with indifference the disappearance of the plain parish priest from the House of Commons, the future greatness and supremacy

of which they could not as yet foresee. We thus find the English Parliament complete in all its component parts in 1295, and organized and grouped fifty years later in accordance with three principles which mark a radical difference between it and the French States General. These three principles are :—

I. The division of Parliament into two Houses, a division which crossed and partly obliterated the lines of demarkation between the classes, while in France, on the contrary, those lines were emphasized by the fact that each of the three orders formed a separate House. In England no order sat alone ; in each House two orders sat together, an arrangement which precluded the dominance of any narrow spirit of class.

II. The coming together in the English Lower House of the urban element and a rural element of ancient standing, wide influence, and exceptional energy which had belonged originally to the baronage. It was chiefly the want of such an association as this which caused the weakness of the French “third estate,” a purely urban body made up of successful civilians, borough magistrates or lawyers, men unconnected with any interest in land, and strangers to the profession of arms. Failing the existence of an agricultural middle class, that third estate never succeeded in bridging the gulf which divided it from the *noblesse*, it remained shut up in its isolation, swayed alternately by timidity and violence, the common vices of every new class which has neither allies nor traditions to support it.

III. The predominantly lay character of this supreme body. One branch of it contained no ecclesiastical

representatives at all ; in the other branch these representatives were mingled with the secular element, they sat only by virtue of a secular title, the baronial fief appurtenant to bishoprics and to certain abbeys, and were thus imbued to a very high degree with national feeling and the spirit of a civil community.

V

THE TUDORS.—THE EXTINCTION OF THE FEUDAL NOBILITY.—THE FALL OF THE ROMISH CHURCH.

MODERN ENGLAND

THUS Parliament has existed in its present form since the middle of the fourteenth century. A second stage in the political evolution of England began with the Lancastrian, and was completed with the Tudor period. The composition of the various classes of society, their places in the social scale, and their relative importance in the State, underwent at that time a profound change. A fresh system of stratification, so to speak, was established which was to remain undisturbed by all subsequent shocks, and which formed the foundation upon which modern England was built up. Two facts above all gave its final form to the character of political society, and, in spite of two revolutions, made their influence felt as far down as the vast industrial and rural transformation which was accomplished in England in the eighteenth century: these were, the

extinction of the feudal nobility and the fall of the Romish Church.

Nowhere did the nature and composition of the baronage change more often than it did in England. We have seen the band of marauding soldiers who had crossed over with, or immediately after, William I., thinned by war and confiscation and recruited afterwards from new arrivals who were for the most part descended from ministers and high officials of the Norman and Angevin kings. This nobility of judges and administrators had its traditions of order and government, and gave its tone to the legal and armed resistance organized by the great vassals in the thirteenth century. It was under its inspiration that the barons made common cause with each other, became alive to the existence of interests wider and more general than their own, rallied the whole nation to them, and constituted themselves a political aristocracy.

This was one transformation; a century and a half later all had been changed both in form and substance. Feudalism had been apparently established; it was based on the rule of primogeniture which had become the general custom, and on enactments designed to preserve intact both the reversionary rights of the overlord and the military and pecuniary burdens incidental to the tenure. We know now that the whole organization proved a failure in the end. Chivalry threw its dazzling veil over a society in which selfishness, covetousness, and cruelty existed no less than during the preceding age, and in which those vices were no longer

redeemed by occasional outbursts of heroism. At the head of this society stood the higher nobility greatly reduced in numbers. The old baronies had been split up into petty estates or accumulated as the appanages of certain families connected by blood or marriage with the royal house. The repeated subdivisions of their baronies obscured and nullified the territorial titles of the peerage; as a collateral result the purely formal element of the peers' dignity, the fact of summons to the council or of creation by the king was held to confer a sufficient title, and with this theory was combined the principle of hereditary succession which was then gaining more general acceptance. We can fix approximately on 1295 as the date when a summons to the House of Lords began to be looked upon as the evidence of a hereditary right, a right which tended naturally to exist by itself and apart from any question of tenure. In 1387 the process of evolution seems to have come to an end; that year witnessed the first creation of peers by letters patent.¹ It was at this period that the House of Lords received the organization which it has preserved down to our own time.

On the other hand the great appanaged houses, allied as they were by blood to the Crown, split up before long into two rival factions, each of whom attached themselves to the rival pretenders to power. It was no serious conviction of the legitimacy of their leader's claims, no sincere affection for his person, which threw these two divisions of the nobility into conflict with each other. Self-interest in its coarsest sense, unbounded

¹ Stubbs, ii. 182; iii. 437.

lust for plunder, an instinct of hatred which sought but a pretext to be let loose, were the thinly disguised motives of all their enterprises. During the whole of the long period which stretched from Richard II. to Henry VII. the barons played a bloodthirsty game of war and chance, conspiring, betraying, slaughtering each other in battle, beheading on the morrow of each combat those whom the fortunes of the day had spared. The House of Lords was nothing but a temporary halting place for the faction which for the moment had succeeded in banishing the other, while at its head a *de facto* king, recognized it may be by the acclamation of a city mob, invoked for form's sake a right in which no one seriously believed. In face of these rival and shifting factions the House of Commons, the only permanent and broadly national authority, began by force of circumstances to exercise to some extent the function of an arbitrator.¹ It was only to that body that the assertors of rights so disputable could look for even a precarious recognition. Diffident as yet and undecided, viewing with astonishment these unsought additions to its power, the House of Commons for more than a century exercised a preponderant authority. Its archives became stored with precedents; its records were adorned with repeated assertions of right; its procedure was improved by the introduction of liberal methods; these were no doubt mere forms and did not contain within themselves the substance of political liberty (as the experience of the next century under the rule of the Tudors showed clearly enough), but they preserved its machinery

¹ Stubbs, ii. 307.

in working order and ready to hand against the arrival of a favourable day. The right of settling the actual terms of an enactment instead of merely suggesting its aim by complaint or petition, the privilege of voting taxes of all kinds, of controlling the expenditure of public moneys, the initiative of the Commons in relation to supply, their voice in the nomination of officers of the State—in a word, all the vast future prerogatives of the Lower House, made their appearance during this period ; some of these took at the time their final shape and provided well-marked types to which the rest in their turn were to conform.

Meantime the merciless conflicts between the great nobles had produced the result which might have been easily foreseen. The Wars of the Roses which filled the second half of the fifteenth century furnished the barons with an arena in which their instincts of violence had freer play than ever ; it was they who, under the pretext of dynastic interests which had ceased to exist, of their own free choice prolonged the struggle. Altogether unlike the Italian *condottieri*, the English barons showed no mercy to their own order ; they massacred and exterminated each other freely, while they were careful to spare the commonalty. Whole families were extinguished or submerged in the nameless mass of the nation, and their estates by confiscation or escheat helped to swell the royal domain. When Henry VII. had stifled the last movements of rebellion and had punished, through the Star Chamber, those nobles who were still suspected of maintaining armed bands, the baronage was reduced to a very low ebb ; not more than

twenty-nine lay peers were summoned by the king to his first Parliament.¹ The old Norman feudal nobility existed no longer; the heroic barons of the great charter barely survived in the persons of a few doubtful descendants; their estates were split up or had been forfeited to the Crown. A new class came forward to fill the gap, that rural middle class which was formed, as we have seen, by the fusion of the knights with the free landowners. It had already taken the lead in the House of Commons, and it was from its ranks that Henry VII. chose nearly all the new peers. A peerage renewed almost throughout, ignorant of the habits and traditions of the earlier nobility, created in large batches, closely dependent on the monarch who had raised it from little or nothing and who had endowed it with his bounty—this is the phenomenon which confronts us at the end of the fifteenth century. Nothing strikes me as offering in a *political* sense a closer resemblance to the House of Lords under Henry VIII. than the Senate of the first Napoleon, composed as it was for the most part of new men, the creations of the sovereign. In the days of the Tudors England was no stranger to those “mushroom

¹ Gneist, *Verfassungsgeschichte*, 476. It has been somewhat rashly inferred from the ordinance convoking the first Parliament of Henry VII. that at that time not more than twenty-nine temporal peers were left. The number of peers in that category who had a right to a summons does not appear to have fallen suddenly so low. Green (ii. 14) points out that the number of peers at the accession of Henry VII. was the same as at the accession of Henry VI.; a notable decrease, however, had long since taken place. Forty to fifty lay peers is the almost unvarying number under the Lancastrian kings. Stubbs, iii. 412.

peers " of whom the despot spoke so scornfully ; throughout the whole period the House of Lords was full of them. But Napoleon's vision was bounded by the present. The haughty oligarchy who two centuries later were to play the part of guardian to the English monarchy and to fashion the cause of political liberty into an instrument fitted to their own ends, were the direct descendants of these humble dependents of the Crown. So great is the virtue of time and the hereditary principle !

A no less radical change was brought about in the position of the higher clergy. Immediately after the conquest William had elaborated a system of ecclesiastical jurisdiction distinct from the jurisdiction of the temporal courts. To the clergy were given courts of their own which took cognizance of the crimes and misdemeanours committed by members of their body, and the result of this immunity was to form them into an autonomous and distinct society. All clerical persons met on the summons of their archbishops in the Convocations of Canterbury and York, where they framed statutes for the regulation of their order, and from an early period granted by a separate vote the taxes affecting spiritualities (tithes and oblations). The Church was not merely independent ; she had a voice in the affairs of the laity, her chiefs being members of the Great Council. Canon law was developed with astute comprehensiveness ; all matters involving a religious element, wills, marriages, and finally all informal contracts fell within the province of the spiritual courts. As a natural result wealth followed influence, and it was

generally computed in the middle ages¹ that the clergy owned a third part of all the lands in the kingdom. The congregations, particularly the Cistercians, possessed revenues which might vie with the revenues of a State. The Church, too, profited from bounties which knew no limit, and it was her subtle genius and her example combined which first suggested to the lawyers of the day a method of attacking the feudal land system. The Papacy was naturally tempted to lay its grasp on that redoubtable organization and those immense resources. In no other country have the pretensions of Rome shown themselves more exorbitant, her greed more insatiable, her interference more rash. On two occasions, under William I. and under John,² circumstances lent a colour to her claim to treat the English kingdom as a fief of the Holy See. We find her levying direct contributions from the clergy, sometimes even from the laity, skilfully multiplying appeals to the *curia*, appropriating the right of nomination to a vast number of benefices and bestowing them upon Italians, creatures of her own.

The same words would describe pretty accurately the position of the Church in other countries. The point to be remarked in the case of England is the peculiarly resolute and successful spirit of resistance manifested by the laity. We should err however in regarding this spirit as simple in its nature and operation; it supplied an outlet to that national feeling, the deeply-seated

¹ Notably in 1380.

² Stubbs, i., ch. xii. The tribute imposed upon John was, as a matter of fact, paid as late as 1333.

causes and the peculiar vigour of which I have already described; this feeling was present and potent everywhere, it lent to everything its form or its substance, and it could not fail to blend its own hostility to foreign interference with the hostility of the civil power to the Papacy and of the secular to the ecclesiastical authority.¹ Various circumstances added to the strength of this feeling and assisted it in the struggle. The great ecclesiastical dignitaries, as we have seen, belonged to the same class and sometimes to the same families as the great lay vassals: they made common cause with the latter and took a foremost place in the struggle at the period of the great charter. They, like the lay barons, felt the pressure of that species of external conscience which united all Englishmen in hatred of oppression and in mistrust of the foreigner. All, or nearly all, of them acted rather as statesmen than as heads of a separate body; rather as Englishmen than as princes of the Roman court. The House of Lords, where they preponderated greatly over the lay peers, may perhaps have shown less complacency than did the Lower House towards attacks directed against the Church, but they

¹ The prohibition of gifts of land to religious houses appears as early as 1217 in the great charter. But it is at this time nothing more than a precaution designed to preserve the feudal basis of military organization. The sequestration of the Papacy by Philip the Fair seems to mark the beginning of an intense feeling of hostility on the part of the English to the See of St. Peter. It is clear that their national pride, ever watchful and on the alert, saw fresh cause to suspect and mistrust a power which had become a tool in the hands of a mighty neighbouring State. Green, i. bk. iv., ch. 2, 149, &c.

were not less ready to join in passing laws designed for the defence of civil society. A species of pre-anglicanism seems to have pervaded all the higher clergy, and not less beneficial was the fact that the lower clergy did not sit in the House of Commons; voluntarily or by the order of their chiefs they had withdrawn from it, and deliberated by themselves in their Convocations which were, both by nature and in form, purely ecclesiastical assemblies. Deceived by the strength of their position in the Upper House and in the Great Council, the prelates looked upon their own presence there as all-sufficient, and considered it wise to prohibit their clergy from appearing in the Lower House, where, being fewer in number, they might be out-voted by the laity. Thus the prelates persistently declined all right of representation in the House of Commons and established the custom of disposing in Convocation of all matters which concerned the Church. They felt that by so doing they were better able to marshal their forces, and in the interests of the whole body of which they were the heads to force their own terms upon the king. It is impossible to over-estimate the consequences of their mistake. Neither the name of the Church, nor her authority, neither the influence of her enlightenment, nor the resources of her ingenuity, were present as active forces in the assembly which was destined to become in a greater and greater degree the embodiment of the national spirit. The prelates allowed this spirit to gain strength and boldness, to struggle and prevail, while at each stage of its development the clergy were felt to be ignorant of the aspirations of the people and indifferent

to their efforts. The Church ended by counting for nothing in the hopes and aims of a nation which had remained for the rest deeply religious; or rather the nation had grown accustomed to see in her only the abuses from which she profited, the vast privileges which it was so natural to grudge her, her complicity or, at least, her common interest with Rome. This explains the continuously progressive movement, first of resistance to the Church, then of active hostility to her, which appeared in Parliament at an early date and continued down to the sixteenth century. The great revolution which then took place was only the final downfall of an edifice the walls of which had long been battered and undermined.¹ That catastrophe had been announced, and the way for it prepared, by innumerable ordinances and statutes aimed, some against mortmain, some against the encroachments of the spiritual tribunals, others against appeals to the Roman *curia* or against the interference of the Pope in the nomination of bishops. Wicliff and the Lollards,² in the fourteenth and fifteenth centuries had stirred up popular opinion against the higher clergy, the movement thus created was in the first instance encouraged by the Government, and was checked but not crushed by the persecution which followed. The

¹ See Stubbs on the reigns of Edward II., Edward III. and Richard II. The whole fifteenth century abounds in complaints of, and in measures of resistance to, the influence of the Roman court and the clergy. In 1341 the seals are for the first time entrusted to a layman. In 1371 Parliament demands the appointment of laymen as ministers.

² The *De Dominio Divino* dates at latest from 1368. Green, i. 447.

Lancastrian kings were favourable to the Church, and during their reigns the Roman court resumed the nominal exercise of many prerogatives of which previous legislation had professedly deprived it ; but it exercised them for the most part in form merely and at the pleasure of the Crown. Thus the spiritual power was retreating and waning throughout the fifteenth century. The fall of the old baronage left the Church without an ally, and face to face with an all-powerful king ; it left her without a voice in a Lower House which regarded her only with mistrust, and hopelessly outnumbered in an Upper House which was packed with the dependants of the Crown. What wonder that she yielded when the hand of the Eighth Henry lay heavy on her ?

The ten years interval between 1530 and 1540 saw the accomplishment of this important revolution. The king in anger with the Pope severed England from the See of Rome, declared himself the supreme head of the Church, the guardian and defender of the true religion ; the assemblies of the clergy could only be held by his permission and their canons had no authority without his sanction ; the king in council constituted the supreme court of appeal in matters spiritual, and even heresy fell within his jurisdiction. Cranmer appears to have maintained that the Crown alone without the necessity of any ordination could create a priest,¹ and even after the abandonment of that extreme opinion, it was generally admitted that the bishops received investiture from the monarch and that their dignity was held at his pleasure only, and was determined at once by the demise of

¹ Burnet, *Hist. of the Ref.* (Ed. 1829). vol. i, pt. i, pp. 579, 580.

the Crown. Accordingly when Henry died fresh commissions were taken out by the archbishop and his suffragans.¹ The revenues of the bishops were cut down, they no longer appeared as great nobles, and nothing was left to recall their ancient baronial rank. The same period² witnessed the confiscation of the estates of the convents and abbeys, and their apportionment by the Crown amongst its creatures, the new nobility. All the chief laymen were more or less interested in the maintenance of a new order of things which had endowed them with so much wealth. An analogous state of feeling showed itself amongst the French peasantry after the partition of the national property in 1789. Their fear lest a restored dynasty should reverse so revolutionary a measure commended and excused in their eyes a series of detestable governments, and transmitted to their descendants an instinctive hatred of all that recalled the old *régime*. In like manner the unconscious impulse of selfishness and avarice supported and strengthened the new Church which Henry VIII. had created; personal and family interests fenced in and fortified the Protestant faith against any re-invasion of Roman doctrine. From the end of the sixteenth century the high ecclesiastical dignitaries, but lately a majority in the Upper House,³ were compelled to sit as a minority there and witness the rapid growth of the lay peerage. The Church of which, after the king and by his good pleasure, they were the heads, was no longer in the true sense of the

¹ See Macaulay, *Hist. of Eng.* i. 55—57, and authorities there quoted.

² 1536—1538.

³ Hallam, *Constitutional Hist.* i. 78.

words the ancient Apostolic Church deriving her authority from tradition and not owing her existence to the law though subject to legal limitations. She had been, so to speak, founded anew by an act of the secular power, and it was from this that she derived her claim to the obedience of English subjects. Although the clergy preserved their landed endowments and continued to take their tithe, they bore from this period the features and characteristics of an official priesthood. There was nothing about them which recalled the Church of Anselm, Becket, or Langton, or even of Arundel and Beaufort; they more nearly resembled the French clergy as the Revolution left them, a subsidized priesthood, subject to the State and the law, and closely controlled by the civil power. The English priesthood were destined to fall far lower still, for they could not, as the French clergy could, claim connection with the Roman See, nor were they supported by the consciousness that they shared in the greatness and the dignity of the Catholic establishment. Macaulay gives us¹ a graphic account of the humiliations suffered in the seventeenth century by the English clergy, especially by the inferior priest, whose life was a series of privations and hidden sufferings, and who thought himself fortunate if he married a waiting maid. However that may have been, those abuses and dangers which the laity instinctively dread whenever the Church enjoys simultaneously spiritual prestige, political weight and the authority inseparable from vast territorial wealth, were definitely averted at the time of the accession of Elizabeth. The work of

¹ Macaulay, *Hist. of England*, i. 327.

destroying the ecclesiastical power, initiated in France by the Revolution of 1789, was not spared to England, but in her case it was accomplished in the middle of the sixteenth century. The monarchy which undertook the task was the same which, following out the results of the Civil War, completed, three centuries before it was completed in France, another work of 1789: I refer to the overthrow of the old feudal nobility, and the setting up in their place of a middle class corresponding politically and socially to the modern French *bourgeoisie*.

We can now perceive how it was that the English, though subject for a period to arbitrary power, were able to rid themselves of it without the aid of a political, economic, and social revolution analogous to the Revolution which took place in France. As far back as the sixteenth century England enjoyed those essential reforms which France was still looking for in 1789, which she bought so dearly in the end, and which she has even to some extent failed to secure, the rush which succeeded a long period of repression having hurried her somewhat past the goal. Three paradoxes sum up the whole matter. An all-powerful monarchy in co-existence with a barbarous state of society gave England a Parliament which was at once the representative of a homogeneous kingdom and the agent of a liberal polity. The transformation at a very early period of the great feudatories into a political aristocracy imposed on them equality in matters of law and taxation and saved them from the invidious privileges which belong to a nobility of birth. The early development of centralization in the persons of the itinerant judges

at a time when the establishment of a resident bureaucracy was impossible, taught the country to administer its own affairs, and called into being, elaborated and made permanent, a system of self-government by the local aristocracy. A little later, as a consequence of the Wars of the Roses, the lawless traditions of ancient feudalism had, with its last representatives, disappeared; the Church had taken a subordinate place in the State and had become subject to the civil authority; and the House of Commons, on the removal of the two great powers whose natural office it was to counteract the weight of the Crown, had, for at least a century, enjoyed a decisive and predominating influence.

That a society in a political sense so advanced should not have escaped despotism shows clearly how limited are the capabilities of institutions taken by themselves, and what it is idle to expect of them apart from the men by whom they have to be worked. England was already, so to speak, fully equipped with institutions; the relations to each other within the Constitution of the great political factors had been effectually settled; the machine was there, but the workers were wanting. Among the spiritual peers, nobly-born prelates,¹ statesmen, members of the council, and diplomatists had been supplanted by obscure theologian scholars, men who were content to live in the unnoticed enjoyment of their emoluments.² Among the temporal peers, courtiers

¹ Macaulay, *Hist. of England*, i. 326.

² It is remarkable that, since the Reformation, no English prelate has filled an important political office, while in France the most distinguished prime ministers have been churchmen.

and upstarts, greedy of titles and wealth, and bound to the throne by their acceptance of its bounties, had taken the place of great nobles ambitious only of power. The foremost among the new nobility were, as was natural, men who would have played an active part in the House of Commons, and that body lost in consequence its ablest and most prominent members. Thus the men who composed each estate of the realm had died out, and the State was like some factory where the foreman and the gang trained to work each great machine had perished in an accident. Chance substitutes had been hastily secured; they stood aghast at such complicated mechanism, made awkward attempts to handle it, and found it in the end both easier and safer to yield blind obedience to the master. This went on for a hundred and fifty years. The machine was there, nevertheless, with all its parts complete; it was ready for handling and challenged experiment, and so served by degrees to exercise, embolden, and discipline a new body of workers.

It has been remarked that the Tudor century was in form far more "parliamentary" not only than the century which followed it, but also than the century which preceded it. It was a period of abundant, almost over-abundant legislation. The actual centre of government was the king's council; the more important measures were agreed on there, but they all received the sanction of the two Houses and were clothed by them in statutory form. The Tudor kings were willing enough to submit their measures to Parliament, where they felt generally secure against opposition; they knew that that assembly was ready to yield to and even to anticipate their wishes.

Thus the very weakness of its members helped to preserve the parliamentary institution, and to secure its continued activity. Under the rule of that despotic dynasty Parliament enjoyed in appearance all its rights; the machine was waiting intact and in working order for some one to set it again in motion. The consideration of these facts explains how it was that in the end liberty was so swift to reassert herself.

When the estates of the realm had once recruited their ranks despotism could no longer exist. It fell in 1648, recovered itself, and fell again and finally in 1688. It was the peculiar feature of these two revolutions that, in order to establish the free government which followed them, no political machinery had to be created, no fresh relation established between the various authorities in the State, no change effected in the social hierarchy, no recognized privileges done away with. All that was necessary was already in existence, all that was lacking was the will and skill to start the machine. If we examine these two great crises we find neither the antagonism of classes at war with each other, nor the insatiable hatreds born of abuses too long endured, nor the grandiose theories of enthusiasts exasperated by a protracted denial of reform. The two revolutions left behind them, not indeed such positive progress as it is the business of the publicist to chronicle, but rather a new vitality born of those elements from that time forward fixed and unvarying of which the great authorities of the nation in their reformed shape were composed.

The true revolution commenced its silent work at the

moment when the revolution of physical force had been accomplished. The whole of the eighteenth century and the first thirty years of the nineteenth century were taken up by a process of radical transformation both economic and social, the shock of which was felt in every division of the State. It was the double swing of one and the same oscillation. Its first movement served to develop during a century the most tyrannous of oligarchies, humbled the monarchy, and finally reduced public liberty to helplessness. Then by a kind of recoil specially appreciable after 1832 it attacked the supremacy of the aristocracy, aided by the vast but slowly-moved forces of the commercial and working classes, and developed a democracy which seems destined as time goes on to set its mark upon every institution.

The following chapters will be devoted to this subject, which I propose to take up again and treat in its entirety. At the point which we have now reached, there is one fact in our conclusion which it is important to seize upon, and which has perhaps lacked hitherto the elaborate demonstration which it deserves; it is that England, in advance of all other nations, had completed the growth of her body politic, that she had been the first to rid herself of the substance of feudalism while retaining certain of its forms, and that she bore even under the Tudors all the characteristics of a fully developed modern community, possessing clear conceptions of "State" and "Law," equipped with the whole machinery of representative and parliamentary government, and acknowledging the supremacy of the civil power.

PART II

*ENGLAND IN THE SIXTEENTH AND
SEVENTEENTH CENTURIES*

I

GENERAL VIEW OF THE SUBJECT

THE THREE REVOLUTIONS

ENGLAND is at this moment (1887) passing through one of the great crises in her history. The radical party have forced the last barrier which shut off Parliament from the lower classes. Universal suffrage exists in fact though not in name, and although the thing itself has been more or less skilfully disguised under a number and variety of electoral qualifications. How will the new sovereign make use of the powers which have been given to it? One thing we know already beyond any doubt, that it will attack the administrative and judicial authority of the aristocracy in the counties, and that the attack will be specially directed against the present methods of holding and transmitting landed property. The English in their turn are to pass through the ordeal of agrarian legislation. In Ireland the ordeal has already begun, and there it is taking the shape of a compulsory buying out of the great landowners. It is freely stated that those privileges which are threatened are a remnant of feudalism and that the land system

and the irresponsible management of county matters are survivals of the middle ages. This is altogether a mistake ; hardly anything feudal has existed in England since the days of the Tudors, with the exception of a few technical forms, words merely, not facts. The abuses which it is sought to reform—the excessive concentration of estates in the hands of a few, the arbitrary character of the jurisdiction wielded by the local aristocracy—do not date from so far back ; they are the results of the great revolution which took place in the eighteenth century.

That revolution is for the most part ill understood. Historians do not always refer to it, assuming apparently that the work had been completed by the two revolutions of the seventeenth century. These latter are marked, as no doubt they ought to be, with red letters in the English calendar, but they were not alone in deserving that honour. They prepared the way for everything ; they effected nothing.

History is an echoing vault, the assassination or the expulsion of a king raises a clamour which fills it and reverberates through it. The eighteenth century was disturbed by no noisy catastrophe of this sort ; it was poor in subjects of tragic interest. The middle class comedy which occupied the stage was purely commonplace and was remarkable down to its very last scene only for the excessive mediocrity of its characters and its incidents. It was during this period, nevertheless, that political society was reconstructed to its very foundations, and that the constitution took the complete and final form under which we know it now. In the

seventeenth century the way was cleared; in the eighteenth the goal was reached. From Elizabeth to Charles II. and William III. society witnessed no change in the relation of its classes to each other; no fresh movement was added to the machine of parliamentary government. From William III. to William IV. the reverse was the case. During that interval one class disappeared entirely and another rose in its place; the whole economy of society was upset, and the government which that society obeyed underwent a transformation not less complete. It operated at last by a system of mechanism almost unknown to the preceding age.

Let us consider for a moment the principles and rights upon which a free government is based. The most important of these were not specified in the instrument itself which recorded the triumphal results of the Revolution of 1688; those which were specified were not accompanied by any practical guarantee nor supported by any positive sanction. The press, to take first the commonest means of constitutional action, was still subject to a censorship which was not to be removed till 1695, and then for reasons altogether unconnected with freedom of opinion.

Associations and meetings for religious purposes, those of Catholics, at all events, were treated with a severity which, far from diminishing, went on increasing after 1688. Political meetings seem to have found no place among the customs of the time; the first recorded instance of such a meeting occurs in 1769.¹

During the eighteenth century the representative

¹ Buckle, *Hist. of Civ.* (3rd ed.) i. 394.

system was becoming every year more restricted and more perverted through the use that was made of rotten boroughs. The Habeas Corpus, the bulwark of personal liberty, dates from before the Revolution, viz., 1679. The principle that the judges held their office for life or during good behaviour was only secured by the Act of Settlement in 1700, and was only to come into force on the accession of the new dynasty. To turn again to Parliament, the publication of the debates, that first condition of liberal government, was and remained forbidden. The Houses sat with closed doors, and down to the year 1771 the reporting of debates and votes was carried on indirectly or by stealth, and was more than once visited with punishment.

All the constitutional barriers against the arbitrary power of the Crown and personal government date from the eighteenth century. At the present day it is a settled principle that no department of the State is managed by the king in person; he only acts through the agency and at the initiative of a minister. This point was in no sense settled by the events of 1688; William III. was in the full sense of the term his own minister of foreign affairs. At the present day the king is no longer present at the meetings of his ministers. They debate, combine their views, and come to a decision by themselves. He has only to deal with measures already determined in all their details, and as to which his cabinet have already, without his assistance, come to an agreement. This point was in no sense settled by the events of 1688. Queen Anne attended regularly the meetings of her cabinet, stated her wishes, and

when necessary anticipated opposition by abruptly closing the sitting.¹ At the present time the monarch's right of veto has fallen into disuse. This point was in no sense settled by the events of 1688. The right of veto was exercised during the whole reign of William III. and as late as 1707.

In the present day ministers are members of the two Houses and are responsible to them. This point was in no sense settled by the events of 1688. Ideas upon the subject were so vague that in 1700 Parliament believed that it was securing its independence by excluding ministers from the House of Commons. This impolitic measure was repealed in 1705. It was only in 1739 that the irresponsibility of the Crown and the responsibility of ministers² were for the first time recognized in a public debate. In the present day, ministers together form a homogeneous cabinet. This point again was not settled by the events of 1688. The whole of the eighteenth century witnessed the formation of cabinets where men of different opinions sat side by side, and often as late as George III. the caprice of the king brought into the cabinet and maintained there some favourite who was a member of the Opposition. This was the position of Lord Thurlow in various successive administrations. The principle that the members of a cabinet must be of the same political sentiments was not to be fully established till after the beginning of the present century.

Should we be correct in saying that the two great

¹ Hardwicke, *State Papers*, ii. 482.

² Hallam, *Mid. Ages*, iii. 232, note.

crises of the seventeenth century have contributed nothing directly to the political constitution? Assuredly not; in the first place, they broke through the monarchy of divine right which had grown up with Anglican theocracy; they substituted for it a monarchy which was the result of circumstances and the creature of contract, and which, called into being by a revolution, seems, so to speak, to have been connected from its birth with the political liberties then reasserted, and from which it has never since been separated. Again it was owing to these events that the monarchy took the form of a parliamentary monarchy, that is to say, that in matters relating to the executive, the actual control and the final decision was given to Parliament. After events have all followed from this, but only in process of time and by the aid of an economic and social transformation which was the special achievement of the eighteenth century. For example, was this parliamentary monarchy to be aristocratic or democratic? A Parliament can be either. Which class was to enjoy the largest share of power? What share or what compensations were to be reserved to the less favoured classes? Was not merely the final decision but also the initiative to lie with Parliament? in other words, was Parliament to be a mere committee of control, or was it destined to become a governing body? In the latter case, by what steps was it to attain its object? How was it possible to reconcile the principle of national representation, the prerogatives of the Crown, the requisite promptness, secrecy, and continuity necessary for the transaction of public affairs, the dignity and independence of statesmen,

and the responsibility of ministers to Parliament? All these problems of first-rate importance still left unsolved after 1688 were only worked out by a gradual process during the course of the eighteenth century.

Two words suffice to contrast the revolutions of the seventeenth century with the revolution which, beginning about 1760, ended in 1832. The first were purely political, the second was both political and social. The peculiarity of a social revolution lies in the fact that it is preceded, developed and brought about by a change in the relative proportions of the wealth and prestige enjoyed by the various classes of the community and by the various members of each class. The task of such a revolution is to effect a species of proportionate adjustment of power or political influence and to bring them into correspondence with the altered distribution of economic forces and moral claims. The two revolutions of the seventeenth century had nothing of the sort to accomplish. They proceeded on complaints urged by the *whole nation* against the oppressive encroachments of the Crown; their object was to maintain intact the ancient provisions of the Constitution, to protect them against untoward innovations, to discover and set up again the buried landmarks of authority and to see that that authority was guaranteed in the future. In a certain sense and in their original impulse they only aimed at restoring the ancient law of the land. They met with no opposition except from the high-handed duplicity of princes; and the only change which they had to bring about was that of one dynasty for another. The revolution in its radical sense was not then needed

and did not in fact take place. We may say with sufficient accuracy that its first beginnings appeared only after the Restoration, that it grew and ripened during the first half of the seventeenth century, that it burst forth after 1760 in the shape of an agrarian revolution which can be compared to nothing but that "transfer of property"¹ on a gigantic scale in the opposite direction which was to take place thirty years later in France. The revolution in England was consummated by a twenty years' crusade against the revolution in France, and it ended by concentrating all political power in the hands of a singularly exclusive rural caste, and that at a moment when a powerful industrial class, after a rapid growth of less than half a century, had become the dominant economic factor. Throughout a whole period we find what almost amounts to two distinct nations living side by side within the same kingdom and yet holding distinct economic theories and enjoying almost distinct civil rights, the one dispensing government and law, the other, so to speak, outside the legal pale. The day, however, came at last when the urban and manufacturing classes, who had gained the ground which their rivals had lost, asserted their claim to a share of power and infused a fresh spirit into the national policy.

Taine, *Origines de la France Contemporaine*.

II

COLONIZATION, COMMERCE, AND INDUSTRY BEFORE THE EIGHTEENTH CENTURY

IN order to view these changes comprehensively and distinguish their real causes, we must start farther back in our subject, with English society under the Tudors, at the moment when it was settling down almost into its modern shape ; we must make a thorough examination of its structure, and trace the variations of shape and fashion which successive events impressed upon it down to the beginning of the eighteenth century. The divisions of the various classes, the spirit which animates them, their mutual relations, the means of passing from one to another, the amount of wealth, well-being, and liberty enjoyed by each respectively, their privileges and their spheres in the State, their positions in reference to the Crown and to Parliament, all these deserve at any rate a passing notice.

The historian never escapes completely from the impressions of the present ; it is in vain that he tries to dispel them ; he feels their influence continually, and, in spite of his most conscientious efforts, they modify his conceptions of the past. At the mere name of

England we picture to ourselves a country which is the centre of a mighty colonial system, her possessions scattered here and there in the old world and the new, her fleets without number, her ports in every land; we see a great metropolis surpassing all Scotland and soon to rival all Ireland in the numbers of its population; twenty other great towns each containing more than 100,000 souls; forty-two others very little inferior: we imagine whole districts where houses multiply till they touch and crowd upon each other, where pure air never enters and no green thing can grow; factories in thousands mingling their smoke; a pallid population of toilers, crowded almost shoulder to shoulder over leagues of country, their numbers swollen at nightfall with the dusky phantoms cast up by the dark city underground; vast areas densely packed with a haggard, toiling population. We cannot rid ourselves of these powerful impressions when we attempt to call up the England of another age. We cannot realize void and silence in the very place where that vast workshop, that busy mart, that warehouse and dock for all the world swarms today with din and movement.

The original of this picture is, however, of recent date; the England of the Tudors was the very reverse of the England of our day. The English were still at the beginning of the seventeenth century as much, if not more than any other nation of civilized Europe, a stationary agricultural and pastoral community, with a tendency even to become more pastoral than agricultural. The nation which was destined to show such eagerness for emigration, such skill in founding colonies upon un-

trodden shores, had not, till the last years of Elizabeth's reign, acquired any territory outside Europe. The first of her expeditions which did not end in disaster was in 1606. Spain, Portugal, Holland and France had outstripped her, and were to continue for more than a century to threaten the great future of her colonies.¹

The stream of colonization flowed in no great volume till after the Restoration.² It was under Charles II. that permanent settlements were founded or acquired in Carolina, Pennsylvania, at New York and in Delaware, and completed the occupation of the American coast as far as Charleston. Nevertheless in 1688 the French were masters of the two great rivers, the St. Lawrence and the Mississippi, and their chances for the future appeared to be at least equally good with those of their rivals. It was only in the eighteenth century that the balance inclined decisively in favour of the English. At the same period the possessions of the latter in Hindustan consisted only of a few factories. Their first acquisition of territory outside Bombay dates from 1757. (Porter.) A few years later they were to

¹ English emigration, much restricted to begin with, had increased after 1620. But "as soon as the Long Parliament met this stream ceased to flow, and afterwards for a hundred years there was so little immigration into New England from Old England that it was believed not to balance the counter-movement of colonists quitting the colony." Seeley, *Expansion of England*, 71.

² At the date of the Navigation Act, New York and New Jersey were Dutch; Georgia, the Carolinas, Pennsylvania, and Nova Scotia were not yet planted; Virginia, Maryland, and New England were in their infancy. Toynbee, *Industrial Revolution*, 78.

found a vast Indian empire on the ruins and upon the model of the work which Dupleix had begun for France. A single sentence and two dates sum up the story: England had only begun to count as a great colonial power towards the end of the seventeenth century; she outstripped her rivals only from 1763 onwards.

Trade moved along an almost parallel line. It had only begun to pass into native hands at the commencement of the Tudor period: during the whole of the middle ages it had remained in the hands of foreigners Lombards Dutch, and above all the Hanse traders whose exorbitant privileges were only suppressed during the reign of Edward VI. In 1640 various writers express themselves as if commerce had been a thing unknown in England before the time of Burleigh and James I. The literature of the subject was not in existence, so to speak, before the seventeenth century; after 1625—the epoch of the first great trading companies—we find it in abundance, and that it betrays the beginnings of certain pretensions to supremacy at sea. The Navigation Act of 1651 indicates for the first time a clear and well-defined conception of the future in store for English commerce. We must, however, go down to the end of the century to find England contending on nearly equal terms with the trade of the Low Countries. As late as 1694 she was compelled to dispute with them concerning fishery rights in her own waters, and in 1690 an author terms the Dutch¹ “masters of the field in trade.” At the same date the current rate of interest was 8 per

¹ Child, *New Discourse on Trade*, 1690, p. 122, 4th edition.

cent. in London and 3 per cent. in Holland. It was only in the course of the eighteenth century that the commercial preponderance of England was to become an indisputable fact.

Manufactures developed still more slowly, and at the Tudor period they were almost non-existent. The Venetian ambassadors wrote that England was a rich country, and they specified the sources of her wealth. These consisted less, they said, in her tin mines and the direct products of a most fertile soil than in her wool, which was known and sought after for its fine quality in every market of Europe. Nearly all this wool, was merely produced in England and exported raw to the Low Countries to be worked up by Flemish weavers.

Well on into the sixteenth century England was still "to Flanders what Australia is now to the West Riding. London was as Sydney, and Ghent and Bruges were as Leeds and Bradford."¹ About this time, however, the Spaniards had by their religious persecutions in the Netherlands driven a great number of Flemish workmen to the other side of the Channel, and England began herself to manufacture a part of her wools. The so-called Norwich period began, and was to take in the whole of the seventeenth century. It is specially to be noted that this single industry formed the only English manufacture; at least there was no other throughout the whole of the British Islands either important or flourishing. Writing about 1700 Berkeley could still speak of it as the "foundation of our national wealth,"

¹ Seeley, *Expansion of England*, p. 85.

and in 1701 it formed not less than a quarter of the whole external trade.

At the same date the manufacture of cotton was only in its infancy. In 1750 the value of the exports did not exceed £50,000. Adam Smith, writing in 1776, only mentions the cotton trade once and that incidentally, as if it was of no importance.¹

About 1750 four-fifths of the iron came from Sweden, and the English production of that metal did not exceed 17,000 tons. Smelting with wood was the only process known. In the absence of contrivances for the application of steam power, the workings for coal remained inconsiderable. Cut off these three industries—coal, iron and cotton—and what is there left of the England that we know? The sea washing an extensive coast line and running up into a multitude of gulfs and estuaries supplied admirable facilities for external communication; internally merchandize circulated duty free from one end of the kingdom to the other: two valuable advantages which England possessed over France. Inland communication however was very imperfect; there were no canals (the first was constructed in 1755). Roads were few and in bad repair, with a scanty service of coaches. Even at the end of the eighteenth century the main lines of traffic were nothing more in many places than country tracks easily cut up or too narrow for loaded vehicles, and a long line of pack horses, each carrying bales of wool, was no uncommon sight. We can hardly

¹ Baines states that the machines used in the cotton manufacture were, up to the year 1760, nearly as simple as those of India. *History of the Cotton Manufacture*, p. 115.

imagine a hundred years ago a state of things so different from the present.

There is a general relation between the growth of trade and manufactures and the growth of the towns. We find that, London apart, the total urban population was very inconsiderable. In the time of Elizabeth this state of things seemed likely to grow permanent through the severity of the regulations imposed by the guilds of merchants or master workmen who had almost everywhere the control of municipal administration. With the Tudors and under the Stuarts the government of the towns had fallen in most cases, with the connivance of the Crown, into the hands of small close bodies elected from within.¹ These jealous and interested cliques availed themselves of a statute of Elizabeth which forbade the exercise of a trade by any one who had not passed through a seven years' apprenticeship. Accurately speaking this law only contemplated trades already existing in 1563, and did not apply except in the cities and market towns but it rendered the ancient cities singularly unfit to serve as seats of manufactures. The artisan was repelled by the prospect of his seven years' service. The capitalist found that he could never extend his business, he was therefore compelled to wind it up and quit the town for the country. The manufac-

¹ An opinion of the judges of the year 40—41 of Elizabeth goes near to recognizing in these select bodies the right to make bye-laws, and to appoint local functionaries, authorizing them to cite usage and prescription in support of their claim, "in order to avoid the difficulties and confusion of popular election." Gneist, ii. 474.

turer, tired of being thus trammelled and harassed, established himself outside the walls and installed his workmen in cottages around him.¹ Thus the ancient centres of population showed no visible increase under the Tudors and the Stuarts. They appear on the map as a few black points scattered at wide intervals through the blank space which represents the country. The same proportion is maintained nearly down to the eighteenth century. At the end of the seventeenth century out of a population of five and a quarter millions, four millions dwelt in the country. There was not, with the exception of London, any town of 30,000 inhabitants, and there were only four of more than 10,000 each. Bristol, the second or third city in the kingdom, was said to be the only one in which from certain points the eye rested on nothing but houses.² The numerous boroughs or cities upon which the Crown conferred the right of sending members to Parliament were for the most part overgrown and often very miserable country villages, to which the neighbouring squires and farmers carried their produce for sale. The interests of such places were purely agricultural, like those of the country proper; the manners of their inhabitants were those of a rural population. In the time of Elizabeth, and even after the Revolution, the towns were still, speaking generally,

¹ In this manner the woollen manufactures extended from Worcester through the whole of Worcestershire, the cloth manufacture spread through the villages of Somersetshire and Yorkshire, and the manufacture of iron through the villages of the Sussex weald. Brodrick, *English Land and English Landlords*, p. 31.

² Macaulay, *History of England*, i. 335.

in a state of dependence upon the country districts, and their society, like their trade and manufactures, lacked stability, energy, and volume; they were in no position to make head against the time-honoured supremacy of the rural classes.

III

THE COUNTRY GENTLEMEN

THIS bird's-eye view of the distribution of economic forces hardly takes in more than the principal features and the most salient points. We must come down from our position of vantage and examine more closely the actual state of the people and the arrangement of the various classes.

At the head of the agricultural and pastoral community, the only class of any importance, the "country gentlemen" stands prominently forward, the most original and the most influential of the social elements which went to form the national character.

We know that the feudal nobility was nearly extinct at the end of the fifteenth century, and that it had been necessary to reconstruct the peerage with materials taken from the stratum immediately below it. The new peers never severed their connection with the class from which they sprang, they merely took up a position somewhat in advance of it. They looked upon their fellow landowners as their equals of yesterday and their possible equals of to-morrow, while the simple landowners felt themselves very little inferior to the titled

members of their own class. Each member of that class felt that he was enjoying something analogous to the *noblesse graduelle* of the French, that is, nobility conferred by the honourable discharge during two generations of the duties of a public office. In England the public office consisted of the management of a great estate with the duties incident to it—social intercourse, the dispensing of patronage, and an active share in local business. All the rich squires were, so to speak, peers in expectation. In the fifteenth century the superior social unit was not the peerage, it was the rural gentry including the peerage.¹ The peer's dignity did no more than confer precedence as amongst "gentlemen." The latter word which came into common use at the time of Elizabeth is not the equivalent,—Macaulay has proved it in a famous passage,—of the French word *gentilhomme*; it is rather the converse of it. A feudal tenure or a formal process of ennobling were not at the outset indispensable in order to confer the quality of gentleman, and birth alone could not transmit it. The ownership of a great estate, municipal rank, knowledge, and ability as a lawyer, all alike procured admission into this species of open nobility: poverty alone acted as a disqualification. The nobility enjoyed no privilege and was exempt

¹ Speaking of the nobles who alone, according to Fortescue, could afford to educate their sons at the Inns of Court, Waterhouse adds (p. 520): These by the text are said to be "*nobiles*," and their sons sent thither "*nobilium filii*" which is to be understood not of the high nobility, the peerage (though often their sons were thither sent), but of the sons of the *lower nobility*, *knights, esquires, gentlemen's sons, who are chiefly the "nobiles" here.*

from no public burden. At a later period there was no need of any violent change in custom nor of any statutory innovation to enable any man, who united a certain degree of education, and above all certain habits of life, to the necessary amount of wealth, to claim as of full right his admission to the order.

In the sixteenth century the ranks of the nobility were filled with new men; all the evidence goes to prove it. They were merchants, borough magistrates, lawyers, or even wealthy manufacturers, who had acquired or had been presented with estates in the country, especially property which had been taken from the Church. They "scented our needy heirs," they "purchased wards of noble birth" and married them to their daughters or their sons.¹ These self-made men had only one object—to wring from their land the highest possible return. With them came upon the scene the gentleman and the farmer, who looked upon farming as a commercial venture and a speculation. The landowner who himself examined his bullocks to see that they were fit for the butcher, the lady who carried her own butter to market or who let off her husband's sporting rights, were types of a new period; men of the old school were at first astonished and scandalized at methods which before long they were destined to adopt.²

¹ See Crowley's *Select Works* (1550), and Harrison's *Description of England* (1577).

² The people of the North held longer to old customs and ancient methods of cultivation, just as they kept up a feeling of loyalty to their local chiefs and adhered to them in their numberless revolts; they too, in their turn, were to be carried onward by the tide of progress.

From this date it was an established maxim that wealth was the supreme good ; men shared authority and took rank according to the amount of their incomes. The England of our own day is already before us. In the fifteenth century the inferior limit of the gentry was determined by real property qualifications imposed during the reigns of the three Henries and chiefly during the reign of Henry VI., the effect of which was to shut off all persons below a certain rank from the offices which had devolved upon the ancient knighthood. When the test of a property qualification is imposed, it implies that distinctions founded on birth and lineage are no longer accepted as final ; that law and custom have given them up, and that the upper classes feel the necessity of looking elsewhere for protection against the growing encroachments of their inferiors.

As is generally the case, the new comers, the men who had risen, were most eager to close the door behind them. Accordingly an income of a certain amount derived from land was made a necessary qualification for service on the grand jury, for a commission in the militia, and for the office of justice of the peace. The sum fixed upon tended to remain the same as the minimum annual value assigned to a knight's fee (£20). The gentry were in reality a privileged class, but their privilege rested upon the possession of landed wealth ; the class was thus recruited upon a broad system of selection, which excluded none but the lower social elements, and took in easily those who rose to it. Higher in the scale moral and social homogeneity was brought to perfection and almost absolute civil and political equality was

attained. An earl's daughter saw no impropriety in marriage with the son of a plain country gentleman, nor even at a later date with the son of a city merchant. The words *dérogeance* and *mésalliance* have no equivalent in English. At the time of Sir Edward Coke the House of Lords contained a few peers who had sprung from a feudal stock ; it contained many more who were the descendants of eminent lawyers. All alike, the scions of great houses and the offspring of commoners, had an equal voice in the counsels of their sovereign. The younger sons of these same peers, and even their presumptive heirs, mingled in the House of Commons upon a footing of equality with the representatives of the rural gentry and the wealthy merchants of the towns. It was in 1549 that for the first time a peer's eldest son solicited election to Parliament. The names of father and son alike appeared in the commission of the peace side by side with the names of the squires of their county and of various other persons chosen for their knowledge of law. The words of the commission itself recognized no distinctions amongst them. Outside the Upper House, where there was not room for every one, all without distinction were legally qualified to discharge every office ; all were called to the conjoint and collective exercise of public authority. Eligibility to public office (*l'admissibilité aux emplois*), that feature of civil equality looked upon as peculiarly French, has, so far as concerns all gentlemen, existed in England since the sixteenth century.

In short, all the higher elements of the nation were united and fused into one single class ever open for the

reception of those lower elements of which the development had been less rapid. The English aristocracy under the Tudors and down to the end of the seventeenth century had taken the shape of what, in France, at a later period, was termed by Royer-Collard "the middle class" (*la classe moyenne*). It had the breadth and scope of a comprehensive democracy resting on property qualifications; it was as far as possible removed from the narrow type of oligarchy to which in the eighteenth century it showed a tendency to revert. Privilege appended to money, the development of wealth into a class test superseding the old distinctions of birth, is one clear essential feature of this period, a feature which only becomes more prominent as we draw nearer to the present time. Two other facts, the unity of the State, the authority of the law taking the place of the anarchical autonomy of feudalism, complete the concise formula which sums up the characteristics of English society from the Tudor period onwards. These facts were brought into special prominence when the judicial and administrative power in the counties was conferred upon the leading gentry.

In the fourteenth century the local tribunals, superseded or discredited by the king's courts, were fast losing ground. In 1360, the Crown first selected from amongst peers, knights, esquires and lawyers certain persons in each county who were formed into a commission with powers over the whole of it, were entrusted with the maintenance of order within its limits, and were armed to that end with judicial and executive authority. These were magistrates or justices of the

peace. A little later this process of selection, confined for a time to knights, was made applicable to all owners of land of a certain rateable value. The duties of the magistracy continued to multiply with the increasing demand for order and progress in a rapidly developing community. The investigation of crime, the police duties of the county, the supervision of labour, the relief of the poor, measures of sanitation and, at a later time, the prosecution of papists and dissenters, all these combined to swell their jurisdiction.¹

What is important to be noted here as the most characteristic feature of this jurisdiction is that its origin was unconnected with feudal jurisdiction in any shape; it was not a disguised or debased form of the latter, it was rather its very converse. Feudal jurisdiction in each district belonged to a single individual, the new jurisdiction was collective. Feudal jurisdiction was created, in theory, by an irrevocable grant from the Crown, it necessitated in each case an actual subdivision of the sovereign power; the new jurisdiction rested on an essentially revocable delegation; it was a mere commission granted to officials. The former called in the lawyer only as the inferior adjunct of the feudal lord; the latter admitted him upon a footing of equality with other gentlemen, as if to emphasize by the honour shown to the specialist

¹ It is noticeable that the magistrates wielded each of these powers under an express and specific statute. They did not possess them impliedly as enjoying a *quasi*-sovereign jurisdiction. However great their power was they administered and adjudicated only in the terms of a series of precise and limited authorities conveyed in Acts of Parliament.

the intention to secure the effective discharge of a public service. Feudal jurisdiction was, as a rule, united to dominant rights of property over all land in the district in which it was exercised; the new jurisdiction could be granted to all the great landowners of the county whether noble or not, who were qualified by the enjoyment of a certain income. All magistrates were given jurisdiction over the whole county and not merely over the district in which they possessed manorial rights. Jurisdiction therefore in England was not conferred by, nor co-extensive with, landed property (jurisdiction defined by property being an essential feature of feudalism); the ownership of property merely supplied a qualification which was intended to secure in the administrator and in the judge a person of adequate moral weight and sufficiently interested in local affairs. Here once more we find the unity and vigour of the State conspicuous in England at an early period, the central power driving out feudalism and employing for the purpose a class of great landowners who very quickly absorb and level down whatever is left of the old hierarchy.¹

¹ In the exercise, however, of their vast power, the gentry encountered a limiting and a controlling force. This limiting force was parochial autonomy industriously developed by Elizabeth and fostered by the energy of the yeomen—a proud, numerous, and strong-willed race. The controlling force was the power of the Crown acting through its various agencies. The Tudors and the Stuarts kept the county magistrates well in hand and spoke authoritatively to them by the mouth of their judges; a general application of the writ of *certiorari* compelled the attendance of the magistrates to answer for their acts before the king's courts; more than this, the criminal side of the Star Chamber was swift to visit upon the justices any misuse of their

Thus the gentry had already become at the end of the seventeenth century the head and the heart of the English community. They were the source of all activity and the object of every aspiration. Everything in one way or another fell to them and contributed to their importance.

The strength of their position, the firmness and reality of their hold upon public opinion, were never better shown than during the most troubled period of English history (1640-1688). In less than half a century the English people witnessed the advent of a great parliamentary struggle, an eight years' civil war, a mighty religious movement, the condemnation and violent death of a king, the establishment of a republic, the defeat of the moderates, the accession to power of the extremists, the military despotism of a great man, then the completion of the cycle by the return of the legitimate line, to be followed finally by a fresh departure in the shape of a dynastic revolution. These great events, however, numerous and important though they were, left the political centre of gravity fixed as before

authority, and the Crown to deprive them of their office, if their fidelity proved open to question. Thus the self-government, still vigorous and intact, of small parochial democracies, the authority of the State still unimpaired and far-reaching, hedged in the magistracy on either side and anticipated the danger of a too extensive jurisdiction and an almost unlimited commission. These are the barriers which, as we shall see, were overthrown or lowered in the eighteenth century. An assumption of title to confidence, a species of divine right of aristocracy, were destined to level these obstacles to the exercise of arbitrary power, and to cast aside these guarantees, which came to be regarded as superfluous.

in the country gentlemen. Buckle attempts to prove that the revolution of 1648 was directed against the nobility and that it was the work of the lower classes. His argument does not hold good. He quotes the names of several individuals of low origin who played a prominent part in the events of the time. It is the characteristic of every revolution which is prolonged for any lengthened period that men who have nothing to lose thrust themselves into the movement, succeed in making themselves prominent, and force on those extreme measures which bring about a final reaction. These bubbles on the surface are no evidence either of the direction of the stream or of the properties of its waters. A political movement like that of 1640, which at its various stages, and down to 1660, numbered among its chiefs men who were unquestionably gentlemen, like Pym, Hampden, Cromwell,¹ Ludlow, Lenthall, Hutchinson and Vane, presents assuredly none of the features of a war of classes; on the contrary the fact remains that the aristocracy was split into two factions,² and that from the very beginning one of these followed the fortunes of the king, the other those of the Parliament. This

¹ This author (Buckle) insists on the fact of Cromwell being the son of a brewer. It is quite possible that Cromwell's father brewed and sold beer: this proves nothing. The one incontestable and decisive fact is, that father and son were country gentlemen of old extraction connected by blood with Thomas Cromwell of Henry VIII.'s time, and connected by marriage with the Hampdens, the Whalleys, and several other families of consideration. See Carlyle, *History of Cromwell*, i. 19. See also F. Harrison's *Oliver Cromwell*, c. i.

² Gneist, ii. 560.

shows clearly that the quarrel was in principle a political and religious one, and that neither the nobility nor the gentry saw in it either a threat aimed at their privileges, or an attack directed against an arrangement of classes of which they enjoyed the benefit. We have lists of the associations formed in the eastern counties during the Civil War. All the names which occur are followed by the titles of esquire or gentleman. Not that the smaller landowners and the farmers took no part in it; but they remained in the background behind their acknowledged superiors who were engaged with them in the struggle. Midway in that struggle the House of Lords may have been abolished; later on the position of the gentry in certain places may have been struck at by special measures of banishment or confiscation. These violent proceedings were aimed not at the class but at individuals singled out by their political and religious opinions. The country gentlemen as a class continued to hold their ground. The county archives of Devonshire have preserved for us an ordinance¹ of the lords protectors of the liberties of England nominating local magistrates; the names of these magistrates are worth quoting. They are Rolles, Davises, Yonges, Drakes, Fortescues, Carews; in other words they belonged to the families which then formed, and which form still at the present day, the heads of the local gentry. In the full career of the Republic the whole county administration remained in the hands of the justices, and they transacted the business connected with it at their quarter

¹ In 1651. *Vide* Quarter Sessions, from original records. A. H. Hamilton.

sessions ; they exercised also judicial rights, and it should be remembered that at this period their powers extended to the infliction of capital punishment. The legal records of the time prove that they punished poachers with severity ; that they fined unqualified persons who kept dogs for sport ; that they regulated wages, and on occasions fixed the maximum. These were the acts of a privileged class still in full and undisturbed possession of its privileges. If we imagine what their position would have been in corresponding circumstances in any one of the French departments in 1791, it will enable us to see clearly how different in their nature the two revolutions were. This short review of the state of the local administration in the middle of the seventeenth century, makes plain the fact that there was at that time in England no revolt against the established social order, and no generally felt need of a redistribution of power amongst the various classes of the community.

IV

THE YEOMEN

NEXT after the gentry, and following hard upon them, we find existing in the latter half of the seventeenth century another class which enjoyed great influence and was not less peculiar to England. I mean the yeomen. The yeomen formed, so to speak, a second component, and a vigorous and characteristic one, of that rural society which gave its tone to the whole nation. At the period when the higher gentry began to absorb what remained of the feudal nobility, and established themselves definitely as an upper class, the small landowners—freeholders holding estates of inheritance or for life—long leaseholders and the larger copyholders made corresponding progress, and the yeomen (the common term applied to all of them) began in their turn to fill the position and take the rank of an agricultural middle class. The reign of Henry VI. had marked the zenith of their influence; they had by that time fully realized the fact of their existence as a body. The inferior limit of their class was approximately determined by the electoral qualification of the forty-shilling freeholder (under the Act of 1430), or by the £4 qualification for

the office of juror. The superior limit was marked from a legal point of view by the property qualification of a magistrate, but socially there was not on this side any definite boundary line. In 1446 it was considered necessary to forbid the county electors to return "valetti,"¹ that is yeomen, to the House of Commons, a proof that custom and opinion left to themselves did not look upon the higher section of their class as unworthy of a seat in Parliament, an honour originally confined to the knights. Fortescue testifies almost with triumph to the fact that in no country of Europe were yeomen so numerous as in England; he adds that, however small the locality, there was always to be found in it a knight or a squire or some rich inhabitant amongst the so-called freeholders, and many yeomen who were qualified by their estate in land to sit upon a jury, and that of these last there were some who could afford to spend as much as 600 crowns a year.

The list given above enables us to understand how numerous were the distinctions and grades which led down by a hardly perceptible incline from the great lord to the most humble tenant. With this state of things Fortescue contrasts the condition of Continental countries, where it was a rare exception to see other persons than the nobility in possession of land.

Harrison in his description of England in the time of Elizabeth,² bears the same testimony. He depicts to us the forty-shilling freeholders living at their ease in good houses, keeping servants to assist them in their labours,

¹ Stubbs, iii. 556.

² Harrison's *Description of England*. Hollinshed (1586), p. 163.

sending their sons to the universities and to the Inns of Court, finally buying up the estates of impoverished gentlemen and becoming gentlemen themselves. In like manner under James I., Fynes Morrison describes the men of little education who came from the towns and elbowed out the needy squires. In the fifteenth and sixteenth centuries the ruin and spoliation of the feudal families, and at a later date of the monastic orders, had benefited the yeomen to a considerable extent, though to a less degree, than the gentry. The farmers had, like the gentlemen, felt the advantage of improved methods of cultivation, and enclosures had enabled them to work their land in a more rational and profitable manner. Landlords asked for higher rents, but their tenants were willing and able to pay them. Under the Tudors a vigorous parochial system took the place of hundreds and tithings; it was subordinate to the county authority, but this notwithstanding the yeomen took an active and independent part in the conduct of public business. As was the case with the gentlemen in the county, so in the parish the law imposed upon the yeomen an honourable and constantly increasing burden of public and gratuitous service. We find them employed as vestrymen, churchwardens, overseers, surveyors of highways, parish constables, and jurymen. They filled, according to their condition, a useful part in the State.

The number and prosperity of the small landowners is one of the most marked features of the rural England of Elizabeth; but the records and poems of the period point already to the beginnings of agrarian jealousies

between the two classes who own the soil. It is not the old squirearchy who in the first instance are the aggressors, but the pushing and covetous race of new landowners, men from the towns who have invaded the country, "men whose fortunes date from yesterday," who have bought up the lands of the Church. It was against such men that complaints were directed; there were amongst them, as we find from the petition of 1514, merchant adventurers,¹ drapers, goldsmiths, butchers, tanners, and other handicraftsmen. These interlopers, greedy of further wealth, attempted to substitute a more productive method of working the land for the three-course system; they enclosed commons, threw numbers of small farms into one, and reared great quantities of sheep. Wherever their venture prospered herbage was substituted for corn, sheep for human beings, the small country villages were depopulated, and where they had stood nothing was to be seen but a solitary expanse of grass. The language of contemporary writers is pathetic. "They throw down houses," writes Sir Thomas More, "they pluck down towns, and leave nothing standing, but only the church to be made a shecphouse."²

The whole legislation of the Tudors bears witness to these encroachments; it abounds in measures devised to check or prevent them; the pulling down of farm buildings is forbidden, the rebuilding of those which had

¹ The merchant adventurers were men who traded through other ports than those of the Staple.

² "Your sheep eat up and swallow down . . . the very men themselves," again says Sir Thomas More. *Utopia*, Arber, p. 41.

been pulled down since the fourth year of Henry VIII. is made compulsory; it is also made compulsory to annex to such buildings a sufficient acreage of land, and to maintain a suitable dwelling on every estate of from thirty to fifty acres. An analogous obligation was imposed upon purchasers of ancient monastic lands, and in addition they were compelled to retain as arable as much land as had on the average been in cultivation during the preceding twenty years. No single individual was allowed to own more than two thousand sheep. The preamble to one of these enactments states that it was passed "in order to prevent the ruin of agricultural villages and farms."

Bacon explains authoritatively the aim and object of these prohibitions. It was a question not only of preventing the depopulation of the kingdom but of retaining a great part of the soil in the hands of the "yeomanry or middle people, of a condition between gentlemen and cottagers, or peasants;" in other words to save from destruction the agricultural middle class which Bacon in another passage speaks of as the backbone of the army, the guarantee of the revenue—"The more gentlemen," he says, "ever the lower books of subsidies."¹

Thus the designs of the gentry upon the land date from a very early period, but it should be observed that these new-comers, and that portion of the old landowners who followed their example, did not aim at disturbing the political equilibrium by doing away with the yeomen; their object was simply to increase the profit derived from their own estates by the employment of fewer

¹ Bacon, *Hist. Henry VII.*, Lumby, p. 71, &c.

hands (the value of labour having risen appreciably) and by raising from the soil such produce as brought the highest return. They were merely skilled and mercenary agriculturists; they were not moved, as were the men of two centuries later, by the desire of political influence. The energetic resistance of the legislature, that is, of the Crown aided by certain of the gentry, seems moreover to have been successful in keeping these enterprises within bounds. It is clear that at the time when the Civil War broke out, the yeomen still formed a numerous, vigorous and prosperous class. It was they, as Whitelock says, who, "well armed within with the satisfaction of their own good consciences, and without by iron arms," vanquished the royalists. In 1663, Waterhouse, commenting on Fortescue, can find nothing in England comparable to the great French feudatories except by reviving far-off memories of Bohuns and Bigods, and he draws a picture of the rich English landowners surrounded by industrious neighbours who in their turn grow in wealth and importance and themselves become in some cases the owners of great estates.

Towards the end of the seventeenth century two estimates placed the number of the yeomen at 160,000 and 180,000 respectively. According to the first they were in the enjoyment of incomes amounting on the average to from £60 to £70 a year, and formed with their families a seventh of the whole population. Small landowners were at this period even more numerous than tenant farmers. Chamberlayne, in his *State of Great Britain*, published at this period, repeats exactly what Fortescue had said two centuries earlier. "Of the free-

holders of England there are more in extent and richer than in any other country in Europe." At the commencement of the century which was to witness the accomplishment of that revolution which I have undertaken to chronicle, the yeoman class had been threatened rather than attacked; it still counted within the nation as an economic, political and social element of very great weight.¹

¹ Toynbee, *Industrial Revolution*, p. 60.

THE AGRICULTURAL LABOURERS

A STUDENT of the time who carried his investigations below the class of farmers and small landowners would be struck at the outset with the species of legal servitude which lay heavy on the agricultural labourer ; he would imagine that he had discovered in him the one suffering member of that prosperous community. It is one of the features of feudal society that, outside the towns, the individual counts for nothing unless he hold lands, which confer a power upon their owner and stand a pledge for his acts. Those who possess nothing but the strength and skill to labour are outside the law ; they are subject to the good pleasure of their superiors, who are responsible for them as well as for the maintenance of public order which is supposed to be threatened by them.

In the fourteenth century, when this system of patronage had lost its force, there ensued great disorder and a complete displacement of personal and economic relations ; it was considered impossible to combat this state of things except by a series of harsh statutes which dealt either with the pettiest details or involved pro-

visions of a sweeping and indefinite character; the justices of the peace were entrusted with the task of carrying them into effect. Under the Tudors the monks were dispossessed of the estates which they had administered in patriarchal fashion, and the rapacity of the new owners showed itself in the frequent expulsion of tenants: these evictions, and the dispersion of the indigent poor who had clustered round the monasteries for protection, once more turned adrift a considerable section of the lower orders and rendered necessary the re-enactment in a fuller and more elaborate shape of the statutes of Richard II. At this period we find justices of the peace fixing the rate of wages, regulating the price of provisions, imposing compulsory service and apprenticeship, and sanctioning the forcible employment of the poor in the cultivation and harvesting of the crops. The hours of labour were fixed by law. The poor-rate was the inevitable result of this system of servitude and the price paid for its establishment.

It is possible that so far as regarded the civil and criminal law, the English peasant, even though he were a pauper, may at this time have enjoyed more freedom than any other peasant in Europe; but so far as regarded public administration, the maintenance of order and social economy, the class in England which owned no land, was in a measure outside the legal pale; English liberty, the subject of so much boasting, did not extend so far down the social scale.

It is one of the curiosities of history that oppressive laws do not always check the prosperity of the particular class which seems to feel their weight. A century

and a half before Elizabeth, the English peasant enjoyed the necessaries of life in the greatest abundance. Immediately after the Black Death the rate of wages rose considerably. The rigorous enactments of the time—the preambles themselves of the statutes prove it—were aimed at a class which was in a state of progress, a class which had become a disturbing element for the very reason that its condition had changed.

This process of change had set in motion the law of supply and demand, and so alarmed a community who were accustomed to consider the ratio between the two as permanently fixed. The men who under the terms of these statutes were prosecuted and punished as vagabonds were very frequently nothing more than workmen in search of better wages. The rate of wages had, in fact, become higher as the general increase of wealth enabled landowners and farmers to offer better terms. At the time of Edward IV. the English peasant, as Fortescue describes him, was warmly clad in woollen stuffs; he lived on fish and meat, and only drank water as a penance; he was well provided with household furniture and implements of husbandry. The French peasant, of the same period, was clad in sackcloth and ill-nourished on rye bread, and feasted at rare intervals on a morsel of bacon, or on the offal and heads of beasts that had been slaughtered for his lord. Fortescue views this contrast with complacency, but he is a boastful writer, and his work has the suspicious flavour of a panegyric. Still, after making due allowance for exaggeration, sufficient evidence remains to place beyond all question that the condition of the English agricultural

labourer at the end of the fifteenth century was an enviable one. It is not impossible that his condition changed somewhat for the worse during the sixteenth century, but in any case it continued to be superior to that of the corresponding class on the Continent. A French writer asserts that English workmen earned more in a week than Spaniards or Germans did in a month. He speaks with wonder of the journeymen carpenters who had money to spare and found time to play tennis. The existence of a compulsory poor-rate shows indeed that at the time of which we are speaking paupers were a numerous body; but it should be observed that the poor law was then neither a symptom of that hopeless destitution which we sometimes meet with in purely industrial communities, nor had it then become, as it became later on, a pauperizing and demoralizing agent. At this period relief was given to the impotent and helpless only; the able-bodied poor had no claim to it, and they were forcibly compelled to work; it was moreover distributed by the parish, that is to say, through an agency almost paternal in its character. Thus the poor-rate in Elizabeth's time had nothing in common with the local and aristocratic socialism which was so much in vogue during the eighteenth century. Civil society had taken over the traditional responsibilities of the Church with regard to the poor, and every little parish discharged them without ostentation, and, on the whole, impartially. While some required assistance, the greater part of the peasants were prospering. We find them again in the seventeenth century subject to the same system of discretionary

supervision, dwelling in cottages built upon the waste, for which in many cases they paid no rent. Each cottage had its plot of ground where fruit or vegetables could be grown, and beyond the hedge which bounded it lay the common where a cow, a pig, or a few fowls could feed at will. Frequently, too, the labourer lodged at the farmhouse, and among the numerous class of small farmers it was customary for the servant to eat at his master's table, and to live more or less as a member of the family. At the commencement of the eighteenth century agricultural wages were both absolutely and relatively much higher than they had been previously. Wheaten bread was in general use amongst the peasantry, and cheese, and even meat, formed part of their diet. It was their golden age. We shall see that during the years immediately preceding 1800, and the forty years which followed it, the condition of the peasant changed perceptibly for the worse. At the same time it must be borne in mind that the terrible suffering revealed by the inquiries held during that period was in no sense the legacy of a bygone system of oppression : it was an immediate result of the agrarian revolution which was brought about in the eighteenth century.

To put the case shortly. In 1700, rural England still formed almost the whole of England. It surpassed the commercial and manufacturing classes in numbers, wealth, and in the importance of its public services ; it over-shadowed them through the moral authority and the dominant position of its leaders.

Those leaders, that is, the country gentlemen, possessed none of the characteristics of feudalism ; the very

opposite was the case: they formed a class essentially modern in its nature. It was at that time the fundamental peculiarity of the English people that the various grades of the social hierarchy were divided by no wide intervals; different classes approached so nearly that they seemed sometimes to overlap. In the fifteenth century the country gentlemen invaded and absorbed the peerage; the country gentlemen themselves were in their turn recruited by the addition of wealthy merchants, borough magistrates, and the more eminent lawyers, and thus attracted to their own ranks the leading representatives of the urban communities and of the commercial and industrial interests. A step lower and the yeomanry followed in continuous sequence. The first conspicuous break occurs at the point where below the humblest yeoman the inferior and, so to speak, inorganic sections of the community began; yet even there the dividing line was less marked than it is in the present day. If the more considerable of the small freeholders bordered on the gentry, the more humble remained, to a certain extent, in touch with the paid labourer. They treated him as a rule like one of their own family; the shepherd or the ploughman lived at the farm; artisans dwelt under the eye of their master in cottages built upon the waste. In a progressive community the upper classes are strengthened in their authority and power, and fortified against destructive influences in proportion as the separation between class and class is made slighter and more liable to be overstepped by those sections that press on either side of the border lines. The vague limitation of classes acts

as a check upon the growth of class feeling; each rank is prevented from forming a distinct conception of its own interests, and shows no tendency to stand aloof or to regard all other ranks with a feeling of distant hostility.

Homogeneousness and coherence, continuity and gradation, these, at the period to which I am referring, were the clearly marked characteristics of English society. No surer guarantees of social harmony exist; and I have shown that, as a matter of fact, this harmony was never seriously shaken by the most violent political or religious disturbances.

This is what the eighteenth century destroyed; towards the end of that century all had changed. Throughout the social scale deeply seated class divisions and interests in burning rivalry split up the surface of society, silently undermined its tranquility, and hastened the day when, if peril was to be avoided, the problem of a wholesale reconstruction would have to be faced. We have next to investigate the causes of this phenomenon, and to note the various stages in the work of dissolution and ruin.

PART III

*THE INDUSTRIAL AND AGRARIAN
REVOLUTION*

*OLIGARCHICAL GOVERNMENT IN THE
EIGHTEENTH CENTURY*

I

THE CONCENTRATION OF ESTATES— DISAPPEARANCE OF THE YEOMEN

THE first point which strikes us is the phenomenon of an aristocracy open to all and liberal in its tendencies, which becomes in the end a tyrannical oligarchy.

In 1660, on the return of Charles II., the gentry, as was only to be expected, were reinstated, and their position made secure by statutes and measures of rehabilitation. The events of 1688 were in no sense a reaction against this outcome of the Restoration. The revolution which placed William III. upon the throne had not the depth of a movement which was social and popular, or even national, in the widest sense of the word. It was the work not even of the country aristocracy as a body, but of a coalition of great nobles moved by private interest or alarmed for their personal safety. This body of conspirators, fortunately for themselves, found in their legitimate prince a man gifted in a peculiar degree with a faculty for betraying his own cause, in the monarch whom they set up a man of transcendent abilities, and in the nation at large the indifference and the weary

disappointment which succeed a protracted struggle. The middle and lower classes had expected nothing from a change which came upon them almost by surprise; they could reap no advantage from it. The social, political, and administrative preponderance enjoyed previously to 1640 by the rural gentry remained intact after 1688. From this period, on the contrary, dates the rapid development of a great change in a direction favourable to the aristocracy, a change which the upper classes had long contemplated and striven for.

The gentry had absorbed two centuries before what remained of the old nobility, and had formed themselves into a single non-exclusive upper class which rested on, and was continually being recruited from, a numerous and rising middle class—the small landowners. The higher class, by a gradual process of contraction and self-isolation, cast off its weaker elements and those connecting it with the class below it, and finally grew into that haughty aristocracy which withstood the French Revolution. This social and political change was due to an agrarian revolution. Two facts sum up the position: the agricultural middle class disappeared; the monopoly of land became stricter and more oppressive. The social arrangement to which England in the middle ages owed her superiority was reversed. We are again confronted with a historical paradox. We are wont to regard it as a law of history that every aristocracy which has begun to lose its original shape and consistency knows no pause in its process of change, but tends, without ceasing, to sink into democracy. England supplies the rare example, so opposed to our ordinary experience, of

a nation imbued to a certain extent with the spirit of democracy, but which has for the time reproduced—or permitted the reproduction of—an oligarchy.

Two causes combined to hasten this metamorphosis : the preponderance of the House of Commons, established between 1700 and 1750, and the great mechanical inventions of the end of the eighteenth century. Both causes stimulated the attacks directed against the yeomen ; the second of the two diminished the vigour and obstinacy of their resistance. In Walpole's time men looked upon Parliament as the practical seat of power ; the House of Commons attempted, if not to make or unmake ministries, at least to force the hands of ministers and to call them to account for their conduct ; it had an indirect voice in the disposal of places and honours. The Septennial Act, passed in 1716, rendered Parliament less dependent on public opinion and better able to pursue uninterruptedly a more consistent and effective policy and a more continuous line of action. The House was fast becoming the basis of Government, and to gain the control of it was a natural object of ambition. To do this it was necessary to manipulate the constituencies, to exclude, so far as was possible, independent electors, and to admit those only who could be coerced or bribed without difficulty. The great Whig and Tory lords, royalist squires, Indian nabobs, men who had made their fortunes by commerce or manufactures, vied with each other in prosecuting the work of dispossession.¹ They set themselves to wrest

¹ The statute of 1711, which made the possession of a considerable landed estate a necessary qualification for a seat in the

his estate from the hands of the small freeholder, and to compel him to migrate to the towns or the colonies. In 1727 Lawrence, in a handbook for the use of stewards, counselled the model steward to keep a sharp eye on the estate lying next that of his lord, and to use his best endeavours to induce the small freeholders to sell.¹ We have here the evidence of a deliberate plan of expropriation; we have also a proof that the buying up of the small estates had not so far made any great progress. During the last quarter of the eighteenth century the object in view, which up to that time had been pursued with more or less want of energy, began to offer greater attractions, the temptation grew stronger, the efforts made more systematic and more effectual. Between 1750 and 1780 the great manufacturing industries had come into existence, and were attracting to the towns vast populations whose sustenance had to be provided for. The production of the food necessary to supply their wants promised to be an operation involving considerable profits. The rural gentry foresaw, or reckoned on, the higher returns which they would obtain by the application to large areas of improved methods of agriculture, and by the employment of increased capital. They betook themselves with redoubled energy to the task of seizing upon and appropriating the soil, and again they were assisted by the industrial revolution which completed the discomfiture of the class which was the object of their attacks. Almost down to 1760

House of Commons, emphasized and strengthened the tendency of the time.

¹ Lawrence's *Duty of a Steward* (1727), p. 36.

his own instinct and self-preservation had to a greater or less extent inspired the yeoman with the energy which enabled him to cope with artifice and resist encroachment. He knew that to part with his small farm was to jeopardise his means of livelihood. No other prospect of any promise lay before him. Colonization, commerce and manufactures were not as yet sufficiently developed, or sufficiently within reach, to provide him with an opening or insure him compensation for the change in his position. Under Charles II. England knit together her American settlements by occupying the whole coast-line. Between 1740 and 1763 she added to her colonial empire the choicest colonies of France. A great impulse was given to emigration. Emigrants were no longer, as in the preceding century, adventurers seeking for gold or spices: they were settlers in search of land worth cultivating. The small freeholder who had turned his land into money was sure of finding on some distant coast a free life and lucrative employment for his energies and his capital. A little later, and the great industries, with their promise of high profits, attracted him to the town, and so indirectly modified his unwillingness to be driven from his land; he listened to the offers made him, he yielded to the temptation, and finally agreed to sell.

This second stage in the conquest of the land by the gentry, subsequently to 1760, made itself felt in a variety of ways.

In the first place the enclosure of commons or waste lands went on increasing; between 1710 and 1760 the various Enclosure Acts had affected (in round numbers)

335,000 acres. Between 1760 and 1845, a period twice as long, they dealt with more than twenty times the quantity, about seven million acres, nearly a third part of the cultivated area.¹ It was chiefly the powerful squire who profited by these additions to private ownership; he was often the only interested party; his interest was always preponderant. It was his lawyer who drafted the Enclosure Act; men belonging to his own class carried the measure through Parliament; his own agent enforced its provisions; he could purchase, if necessary, at a very small outlay the support of the landless "houseowners" of the parish. The small freeholders, who were the losers by the arrangement, shrank from opposition in the shape of ruinous legal proceedings, and were in the end forced to submit. The poorer yeomen added to the profits of their land by the exercise of some small domestic industry; but this resource was cut off by the competition of manufactures established in the towns. The weaver's occupation was gone; the window pierced in the wall of his cottage, which in better days had served to light him at his work, now revealed nothing but his idle loom. The progress of the science of agriculture, and the change in the methods employed, were not less disastrous to the yeomen. The commonest result was the disappearance of small farms which were thrown together into great holdings. In 1795, Eden² found two farms where there had once been thirty; and in 1826, Cobbett³ found one where there

¹ Shaw-Lefevre, *Essays on the Land Question*, p. 199.

² Eden, *State of the Poor*, ii. 148.

³ Cobbett, *Rural Rides* (Ed. 1830), p. 579.

had been fourteen. Many a small owner, who had passed his life on familiar terms with his work-people, sank to the grade of a day labourer; while the large farmer, who had risen to the rank of a capitalist, worked land and men on strictly commercial principles, and cut a far bigger figure than the unpretending freeholders who struggled on by his side. In the fifteenth century the word "yeoman" was applied indifferently to the smaller land-owners and larger farmers. In the eighteenth century, on the other hand, "farmer" was used to describe both the one and the other; the preponderating section of the class gave its name to the whole, and stamped it, so to speak, with one general mark of inferiority and dependence in relation to the gentry.

In that land of great holdings, the old homesteads which no longer served any purpose were rigorously destroyed; cottages were pulled down which sheltered vagrant labourers who might perhaps become chargeable to the parish. Goldsmith describes in touching words the exodus of a people and the destruction of their homes.¹ Instead of a populous and busy country side, the small land-owner or the yeoman saw nothing around him but a solitude. The little village which once served as a market for his produce was emptied of its inhabitants, who had migrated to the towns, driven thither by the ruin of domestic handicrafts. His moral and social isolation were not less hard to bear. We shall see later on how the destruction of parochial self-government shut him off from a sphere of every-day usefulness. His neighbours, the wealthy farmers, were agricultural

¹ Goldsmith, *The Deserted Village*.

speculators intent only on improving their methods of cultivation by the expenditure of increased capital; they hardly spoke the same language that he did, and their habits and prejudices differed altogether from his. The distance which separated him from peers and great land-owners was even greater. Political privileges had been narrowed, and the better class of small proprietors, who had been wont to aspire to public offices, were now excluded from them. The end of the seventeenth, and the beginning of the eighteenth century were remarkable for a series of enactments which raised the standard of real property qualifications and extended them to offices which previously had been open to all; the only qualification, for example, which had been demanded from members of the House of Commons was contained in the elastic provision which required them to be "men of substance." A statute of Anne, passed in 1711, required that country members should hold land of the yearly value of £600; and borough members land of the yearly value of £300. The chief object aimed at was the exclusion of merchants and manufacturers whose personal estate, however large, conferred upon them no qualification, but the effect of the Act was to shut out as well the better classes of the yeomanry. A landed estate worth £40 by the year had been fixed as the qualification of a justice of the peace; the amount was raised to £100 (5 and 18 George III.). Peers' sons, or the heirs to peerages, eldest sons, or the heirs of land-owners, whose estates were worth £600 a year, were made eligible for the office without any personal qualification. By certain statutes of George III. deputy-lieutenants

were to be chosen by the lord-lieutenant of the county from among land-owners whose estates brought them in not less than £200 yearly. The higher grades in the militia were filled exclusively from the upper gentry. A colonel had to be the owner of real estate worth £1,000 and a lieutenant-colonel of real estate worth £600 by the year.¹ In the same way the right of sporting with fire-arms, which by a statute of James I. had been granted to owners whose rents amounted to from £10 to £30, was now by a statute of Charles II. restricted to owners whose rents amounted to from £100 to £150. These laws were all part of a process of disqualification; their tendency was to put an end to or lessen the interests and the pleasures which belonged to the ownership of a small country property.

Sporting rights were amongst the things which helped most to emphasize and embitter the separation of the two classes, and to render the position of the small landowners vexatious and almost intolerable. The higher property qualification, fixed by law in the eighteenth century, made sporting the exclusive privilege of the peer and the squire. The yeoman was indignant to find that his country life, monotonous enough already, had been robbed of one of its main attractions. The sight of a company of squires meeting in all the good fellowship of sport brought home to him more keenly the isolation and inferiority of his position; he felt himself

¹ The reconstruction of the militia on this aristocratic basis dates from the first years of Charles the Second's reign (13 Car II., c. 6; 13 and 14 Car II., c. 3; 15 Car II., c. 4). That basis was still further narrowed in the eighteenth century.

an outcast. He was hard pressed by the competition of large farmers; he was eaten up by game which he dared not destroy; harassed, worried, threatened with lawsuits by the squire's agent, tempted by the high price offered for his land, or attracted to the town by the rapid fortunes which he saw made there every day—all these influences working together were too strong for him, and he parted with his land; his hedges were cut down, and where his dwelling had stood stretched the silent expanse of some great park.

The whole latter part of the eighteenth century witnessed the decadence of the agricultural middle class; Waterloo completed their destruction. The French wars had given temporary support to the yeomen; farm produce during that period commanded extreme prices; but this very fact encouraged land-owners to incur expenses, to enlarge their mode of living, and to borrow money for the improvement of their estates. The fall in prices which followed the peace, aggravated as it was by the abolition of the forced currency, took the greater part of the yeomen unawares; they found themselves hopelessly involved, and sold their land to satisfy their creditors. They may be said to have reached their lowest point of depression during the last years of George III. The social element, which in the middle ages had formed the bone and sinew of the State—the rural middle class—had become extinct.

Three statistical results suffice to illustrate and sum up this agrarian revolution. At the very time at which I am writing, 10,207 individuals own two-thirds of England and Wales, 330 individuals own two-thirds

of Scotland, and 1,942 individuals own two-thirds of Ireland.¹

¹ See Brodrick, *English Land and English Landlords*, Part ii. chap. 3. It is not possible to trace the progress of this agrarian revolution year by year, but it is not without interest to ascertain accurately its final result, from which certain consequences have followed. At the end of the last century, according to the generally received calculation, the number of land-owners in England and Wales was 200,000 ; in 1861 a return, carelessly compiled and hastily interpreted, gave support to the statement that the number of landed proprietors had fallen from 200,000 to about 30,000. The last estimate was contested, and in the absence of the information necessary to decide the point both sides applied to the Government to order a fresh inquiry. The result was made known in 1875. If we take the gross figures, we find that the soil of England and Wales, exclusive of London, was divided amongst 972,836 land-owners. The total, nearly a million, was considerable, and would lead us to suppose that, far from having undergone a process of concentration since the beginning of the century, landed property had to a very great extent been divided and parcelled out. A more careful analysis shows us that this conclusion cannot be justified.

It was observed, in the first place, that of the whole number of proprietors, 270,000 only, in round numbers, owned more than one acre, and that among them were divided 32,862,343 acres, being almost the whole of the 33,013,514 acres returned. Only 151,000 acres remained to be divided amongst the remaining 700,000 land-owners, that is to say, they held on an average about two-tenths of an acre apiece. It seemed clear that plots so diminutive were not agricultural holdings, and all doubt was dispelled when it was shown by calculation that each acre of land classed under this heading returned an average rent of £200, while the average rent of land in general was £2 per acre. The small owners included in this category evidently consisted not of rural proprietors but of owners of plots in the towns or suburbs let at a high rental. All towns except London were, as a matter of fact, included in the return. There are various reasons why a similar

deduction should be made from the 122,000 proprietors of from one to ten acres ; they held among them only 478,679 acres, being less than four acres apiece. A large proportion of these plots of from one to ten acres were evidently devoted to commercial purposes, to warehouses, gardens, pleasure-grounds, &c., and were without any agricultural or rural character whatever. In addition to this their comparative annual values disclosed the semi-urban character of these estates. Their total rental, their quantity being less than 500,000 acres, was greater than the rental of the 3,317,000 acres—unquestionably rural in character—which made up the properties ranging from 500 to 1,000 acres. If we consider that the corporations and their estates ought also to be excluded, and if the necessary deduction is made in respect of estates returned in more than one category, and in respect of long leaseholders improperly returned as freeholders, we arrive at a result which gives us no more than 150,000 owners spread over an area equal to rather less than a third of France (the actual figures being 57,917 square miles as against 203,866), and forming part of a population equal to 70 per cent. of the population of France (the actual numbers being 26,000,000 as against 37,000,000). We have, therefore, in England one rural land-owner for (roughly speaking) each third of a square mile and for every 112 inhabitants. It is difficult to ascertain whether since 1830 the relative proportion of the rural proprietors to the whole population has declined or increased : it is however impossible that any considerable change can have taken place since that date, and we may in any case take it as established that between the end of the sixteenth century and the first thirty years of the nineteenth century, the proportion had fallen in the ratio of six to one.

II

THE CIVIL, FISCAL, AND ECONOMIC PRIVILEGES OF THE LANDED GENTRY

WE can now picture to ourselves an oligarchy of landlords who had divided the country between them. There lies before us an unbroken succession of great estates, with no small freehold to mar its continuity, and scattered here and there, like islands in a sea, a few towns where all that was left of population and wealth showed a growing tendency to concentrate. The gentry, as was natural, showed great anxiety to preserve these *latifundia*—the source of their wealth and the foundation of their influence—in the continuous possession of the same families by transmitting them undivided from generation to generation through a succession of sole owners. Real estate was indeed, under the common law, subject to the rules of primogeniture in cases of intestate succession; but the owner of real estate possessed both freedom of alienation *inter vivos* and, subject to a partial restriction which was before long removed,¹ the right of testamentary disposition. As

¹ In 1660. By Stat. 12 Car II., c. 14.

the law stood at the beginning of the seventeenth century a family estate was liable to a continual risk of subdivision; the shortcomings of the law in this respect were however made good by the system of family arrangements known under the name of "settlements." During the Civil War the ingenuity of Orlando Bridgeman, evolved this contrivance in its full perfection; it was adopted in the interest of their class by all the land-owning families, and from that time forward the custom has been adhered to with singular tenacity. By the terms of these "settlements" the successor to an estate surrendered beforehand the full ownership which would one day accrue to him; he accepted thenceforth the position of a mere tenant for life in relation to his eldest son, who, as a matter of fact, might be still unborn, and by so doing surrendered the right of devising, selling, mortgaging, or even leasing for any longer time than his own life, the estate which he was compelled to hand on intact and unencumbered to the remainderman. This splitting up of the rights of ownership rendered it almost impossible for the proprietor of a settled estate to alienate it, or for his creditors to seize it. It is true that the remainderman, when the previous interests had fallen in, enjoyed the rights of ownership to their full extent and could make a valid disposition of the property. Precautions were however taken to prevent this. The expectant owner had, during the lifetime of the tenant for life, no claim to any part of the income, and when he was of an age to need a provision, more especially at the time of his marriage, temptations were placed in his way. He was

easily prevailed upon to forego future in exchange for present benefits, such as an annuity or a sum to be settled on his wife, and to accept in his turn the position of tenant for life in relation to his own son born or not yet born as the case might be. In this manner the right to dispose of a family property was being constantly relegated to a future generation, and the estate passed through the hands of a succession of life-tenants free from the risk of disintegration. According to the evidence collected by a parliamentary inquiry the estates subject to settlement, and so rendered practically inalienable include even at the present time more than two-thirds of the land in England and Scotland.¹

This state of things, be it observed, is not due to the law. Parliament, and still more the courts, have ever regarded perpetuities with disfavour. The latter have been strenuous in asserting the principle that a testator's or settlor's power of disposition cannot extend beyond the life of a person or persons now living and a further period of twenty-one years. This system of limited settlement, recognized by law, is operative at most during about eighty years; but upon it has been grafted a system of unlimited settlement founded on voluntary agreement, an ingenious device contrived towards the end of the eighteenth century in the interest of a particular class and adopted continuously by successive generations. There has been practically a re-enactment in modern days of the feudal law

¹ Brodrick, *English Land and English Landlords*, p. 100.

De donis conditionalibus, which legal ingenuity in the middle ages was so skilful to evade, and which was formally abrogated by the legislation of the Tudors.

A few highly-placed dignitaries can afford to despise immunity from civil and fiscal burdens as a purely economic advantage ; the pleasures and profits of political power render them indifferent to inferior gains. On the other hand, a numerous class, the adherents of the men who are actually at the head of affairs, rarely deny themselves such exemptions or emoluments as circumstances place in their way. The English land-owners formed no exception to the rule. The opinion current in France since 1789 holds England to have existed as the land of privilege from very early times. Looking only at the English peerage, and comparing it with the nobility of other countries, the expression is inaccurate ; it is to a great extent justified if it is used of the landed proprietors as a class, and especially of the landed proprietors at the end of the eighteenth century. Strong proof that this was so is afforded by the fact that in no other country than England have the rules of law applicable to real property, and those applicable to personal property, been kept so distinct, nay, so opposed to each other ; that this, moreover, continued to be the case even when the latter form of wealth had vastly increased, when it appeared not merely in the shape of casual increment or surplus income, but had already become an essential and constant element of every private fortune. Class interests prevailed over natural forces and prevented the union of the

two branches of law, with the result that all the favours of the legislature were reserved for realty alone.

This legislative partiality, as might be expected, became even more marked in the eighteenth century. Down to 1832 a continuous series of provisions protected, strengthened, and extended the civil, fiscal, and economic privileges attached to landed property. As regards civil privileges, we have seen that, in cases of intestacy, real estate was governed by the rule of primogeniture, while personal estate was equally divided. The strict settlements of the eighteenth century were, it is true, applicable to property of both descriptions; but their main object was to safeguard the integrity of landed estates against the caprice or extravagance of their owners. Creditors had no claim upon settled land, and their position was very little better with regard to land which was free from settlement; in neither case could they sell it; they could only appropriate a part of the income in or towards the satisfaction of their demands. The fiscal privileges attaching to land were not less remarkable. It is a complaint of the Radical party at the present day, that at the period of the abolition of the charges affecting military tenures—affecting, that is to say, certain descriptions of landed estates—the consequent loss of revenue was made up by excise duties payable by the whole community. It is not altogether without reason that this charge is made. It is equally clear that real estate has been favourably treated as regards the Land Tax of 1692. This tax, levied in the first instance at varying rates, was finally fixed in 1798

at the apparently considerable rate of four shillings in the pound ; it has, however, from the first been assessed upon the absurd basis of a valuation made in the reign of Edward I. The personal property of a deceased person is subject to probate duty on the grant of probate, that is, on the official confirmation of the will, or to administration duty on the grant of letters of administration, that is, on the appointment by the court of some one to administer the estate. Real property is not subject to this duty. In 1780, Pitt established succession duty in addition to probate duty ; again real property was spared and left untouched by the statute. Even in 1853, when this exception was done away with, it was provided that the succession duty to be paid upon realty should be calculated on the value of the successor's interest considered as a life annuity and having regard to his age ; also that it might be discharged in eight half-yearly instalments ; while in the case of personalty it was calculated according to the capital value and discharged in one lump sum. This, as a matter of fact, is the system in force at the present time.¹ In 1880, Mr. Gladstone calculated that the amount of succession duty paid by the farmer or the merchant bore the proportion of three to one to the amount paid by the landed proprietor.

Economic privileges were striven for by the land-owners with equal anxiety ; it was their constant object

¹ Brodrick, p. 251. Mr. Childers's last budget before the fall of Mr. Gladstone's Government included a modification of this system.

to secure profitable markets for the produce of their estates, and, above all, to compel the rest of the nation to purchase from them at fancy prices. It was they who owned the bulk of the forests, and in 1750 they combined with the tanners to prohibit the importation of bar iron from the colonies, their fear being that less iron might be smelted in England and the consumption of wood decrease in consequence. They were producers of wool, and in concert with the cloth manufacturers they imposed an excise duty on printed calicoes, absolutely prohibiting their importation between 1721 and 1774. This excise duty, which was renewed in 1774, was not removed till 1831. They produced cattle, butter, and cheese, and immediately after the Restoration, between 1660 and 1685, the importation from Ireland of live-stock, meat, and dairy produce was forbidden by law. A little later, in 1699, another enactment prohibited the exportation of Irish wool elsewhere than to England, and prohibitive duties were imposed upon Irish woollen goods. The landlords were interested in the production of cereals, and in 1682 we find the first duty placed on imported corn; in 1690 the first bounty given to exported corn. The corn laws were suspended during a period of from thirty to thirty-five years down to the end of the eighteenth century; they were revived in 1804, and were carried to still greater lengths in 1815; they began to be relaxed in 1822, but did not finally disappear till 1846.

The French nobility struggling for pensions and places showed no more greed than did the English gentry in devising measures favourable to themselves,

in class legislation, as they themselves call it. But in England there was another side to the picture. The same men who evaded national burdens were eager to take upon themselves local burdens—the relief of the poor, measures of police, the repair of roads and bridges, and other charges of a like nature. Their disinterested conduct in this respect has been greatly extolled ; but if we examine further into the question we shall find that the facts no longer surprise us, though they continue to excite our commendation. The discharge of those burdens by the land-owners was the compensation and the excuse for the maintenance of those great estates which locked up land in perpetuity and made it impossible for the poor man to possess a home ; still more was it the price paid for absolute rule in the counties. Systematic expropriation had left the country gentlemen the only class possessed of any means in the rural districts. The State alone could have lightened their burdens, but State assistance would have justified State interference. The government which supplied the funds would have had an incontestable right to superintend their expenditure, and would little by little have gained a hold on local administration. It is in this direction that things are now moving, but the landlords averted the danger for a time by taking the whole charge upon themselves. It is to be observed, moreover, that if the land-owners defrayed the local taxes they themselves collected them and disposed of the proceeds absolutely and irresponsibly. Men are more inclined to give when they retain the control of their contributions and do not see them pass into other hands to be expended on some

remote and ill-defined object. Their sacrifices in this direction supplied the great land-owners with a fresh source of prestige, an instrument of power and a means of resisting the interference of the State.

III

THE POLITICAL AND SOCIAL PRIVILEGES OF THE LANDED GENTRY

THE RULE OF THE OLIGARCHY

WE have drawn a picture of these hundred and fifty thousand country gentlemen owning great estates which they could not divide and wielding absolute authority throughout the country districts. The law lent them its support, the treasury dealt tenderly with them, the regulations of the customs and inland revenue protected their produce against competition. The word "land" possessed apparently some sacred quality, and privileges seem to have attached themselves to it of their own accord. In other countries it was birth that brought privileges with it; in England it was "land" which attracted them and which in a manner forced their bestowal by the legislature. In order to realize the extent to which this system was carried, we must consider the great English land-owner not only in relation to his surrounding circumstances but also in his dealings with his fellow-men.

Who were his neighbours? Tillers of the soil, and almost all of them his tenants; the small agriculturist who farmed his own land had been, as we have seen, swept away. The legislation of the Tudors, ever careful of the interests of the yeomanry, had protected the tenant-farmer against the abuse of the exceptional power to seize his goods and chattels which his landlord enjoyed at common law; the eighteenth century only increased still further the hardships incident to the law of distress. Up to 1700 it was customary in England to grant leases for life or for long terms of years; during and at the end of the following century a custom grew up of inserting a clause in agreements to make them determinable at the end of any year. Instead of tenants who were assured of ten, fifteen, or twenty years' possession, and felt almost the independence of ownership, there remained for the most part mere tenants at will, whose precarious occupation lay at the mercy of a six months' notice to quit. This servile relationship was softened on the part of the master by a high conception of public and private duty, while the servant on his side grew to look upon it as involving moral obligations, as a quasi-feudal tie; but though honourable in form the relationship remained substantially a servile one.

Next in order to the farmer comes the agricultural labourer. The formation of great farms and the increase of pasture-lands lessened year by year the demand for hands in the country districts, and the peasants, attracted by a higher rate of wages, migrated to the towns. It is to be observed that it was the strongest, the healthiest,

and the most energetic who were affected by the movement ; only the idle, the incapable, and the weakly remained behind in the fields. It was at once a process of selection in an inverse sense and of actual diminution in numbers.¹

Adverse conditions of existence reduced this degraded remnant of their class to lower misery still. The great landlords, joining field to field, became in many cases owners of the whole parish, and under the provisions of enclosure acts added even the common lands to their estates. The labourer lost the cottage and paddock there which he had occupied rent free, and the right of pasture for his cow. He became the tenant—in almost all cases the weekly tenant—of the squire. He might find himself at seven days' notice without wages or shelter from the weather. In most instances, indeed, shelter was not to be found. From the time of Charles II. the local authorities had enjoyed a *primá facie* right to expel any person coming in search of work who was likely in their opinion to become chargeable to the parish. The land-owner however was not content with this safeguard ; owning the soil of the whole parish he pulled down every hovel and forbade the erection of any new building. The parish was “close” ; the “clearance” and, so to speak, the sweeping out of the human rubbish was complete. The country resembled a vast park, all trees and grass, without a building to break the line of

¹ In their evidence given before the Commission of 1879 upon the agricultural depression, farmers complained that the younger labourers were moving into the towns and that only old men were left upon the farms.

the horizon, while the dispossessed labourers sought a shelter in the nearest parish which was still left "open." They crowded together in unhealthy dwellings too small to accommodate them. "Slums" were not confined to the great towns; they became a reproach to many a country village.¹

We have, up to this point, treated of the country gentleman's position upon his own estate, and we have seen that within its boundaries his rule was absolute over men and things. His authority within his district was not less firmly established. In the county too he and his fellows were supreme, and finally, the country gentlemen as a class enjoyed in Parliament and in the State an equally marked preponderance. Near his mansion lay the hamlet or the small country town, both soil and houses being in many cases his property. He was free to reject any tenant who was not to his fancy, to prevent the erection of new buildings, practically to forbid the sale of intoxicating drinks, to establish special economic conditions within his little kingdom and to enforce compliance, under threat of eviction, with his own code of morals, particularly in the matter of "temperance." It was in his power to curtail even freedom of religion by refusing, as has happened more than once in Wales, to grant a convenient plot of land

¹ In 1775, under George III., was repealed the statute of Elizabeth, which provided that no cottage should be built in the country unless there were added to it four acres of land, and that no cottage should be lived in by more than one family. This prohibition prevented the occupation of lodgings by paupers. See *The Poor Law*, W. Fowle, p. 68.

as a site for a chapel.¹ In some few cases the soil upon which a great town was built was some land-owner's private property ;² and he of necessity would have a considerable voice in the internal economy of the place. In many instances it was a great land-owner who appointed the incumbents of the parishes in his own neighbourhood. His right of presentation was inherited from the original founder of the church, or acquired by purchase from some neighbour or from the Crown. At the present day, of 13,305 ecclesiastical benefices in England, 8,151 are the property of lay patrons: these constitute so many pieces of valuable preferment to be bestowed by the country gentlemen upon their younger sons or adherents. Thus to the authority of the squirearchy in temporal matters is added the prestige of influence in matters ecclesiastical.

Each county had its militia, and we have seen how a considerable real property qualification closed the higher ranks in it to all but landed proprietors. They, at the annual trainings, commanded a regiment composed largely of their humbler neighbours—small owners, if there were any left, copyholders and tenant farmers whose sense of their own inferiority was intensified by habits of military obedience.

The squirearchy had at its command a final instru-

¹ See the provisions of the Worship Sites Bill brought in by Mr. Broadhurst, May 22, 1885, and thrown out after a short debate, its object being to provide for the compulsory granting of sites.

² For instance, Tynemouth and Eastbourne have been built upon land belonging respectively to the Dukes of Northumberland and Devonshire.

ment of power the most effectual and the most unfailing of all, I refer to the administrative, judicial and executive powers which were placed in their hands as county magistrates. The property qualification required, which had been more than doubled during the reign of Anne, and the right of nomination enjoyed by the lord-lieutenant (generally some great noble), secured the office of the magistracy, in almost all cases, to wealthy landowners. I have shown how numerous were the powers conferred, even in the preceding century, on these voluntary functionaries, the Justices of the Peace. As the needs of a progressive community grew more and more imperative and complicated, fresh legal provisions were created which required agents to carry them out and new penalties were devised which needed an authority to enforce them. The Justices of the Peace already performed this double task, and each newly-created duty was added, by a natural process, to duties of a similar character which they had long been accustomed to discharge. It is not my intention to trace the limits or to specify the details of their jurisdiction. It comprised within itself and concentrated in the hands of each of its agents portions of all those powers which it is the object of French legislation to keep distinct. The English magistrate united in his own person not only the characters of administrator and judge, but certain of the duties of every local functionary and public body as they exist in France. It was he who enjoyed to a greater or less extent some of the attributes of a "préfet," "sous-préfet," "conseil de préfecture," "conseil général," "conseil d'arrondissement,"

“juge de paix,” “juge d’instruction,” “commissaire de police,” and “maire.”¹ The point of most interest to be observed here is the addition which the eighteenth century was still able to make to his sphere of activity and his means of influence, and the consequently higher degree of independence and effectiveness which he enjoyed in the exercise of his office.

We are at once struck with the fact that the duties of the magistracy, but a short time before fragmentary and unorganized, had been extended, classified and reduced to a system. Formerly there had been the justice who sat alone, the petty sessions of the district, and the greater sessions of the county. At the time of which we speak there were in addition special sessions held periodically for the transaction of certain matters of administration—the appointment of parish officers, the licensing of public-houses, questions relating to the repairs of highways, &c. Formerly, appeals had been carried to the royal courts, but at the time of which we speak the quarter-sessions had become the ordinary court of second instance and the court of final decision in almost all cases where an appeal lay from petty sessions; appeals were thus carried from magistrates to magistrates again. The procedure and composition of these tribunals is not less worthy of attention. In the eighteenth century summary jurisdiction without the

¹ I have attempted elsewhere to describe the magistrates in the complex variety of their local duties. I have only to refer in this place to the peculiar conditions of arbitrary irresponsibility under which they exercised their powers. *Annales de l'École des Sciences politiques*, vol. i. p. 179.

intervention of a jury was very considerably extended : it was the ordinary course of procedure in cases where the magistrate sat alone and in petty sessions. Thus with respect to an increasing number of small offences and minor matters the traditional guarantee of sound justice was cast aside. A far firmer hold is obtained upon the inhabitants of each district by those who exercise within it from day to day a many-sided jurisdiction than by the courts which take cognizance of important crimes. It was the country gentleman who with patriarchal irresponsibility exercised this jurisdiction. The situation was rendered still graver by the fact that another and very effectual safeguard had practically been done away with in the case of those sessions at which the magistrates sat together. Before the eighteenth century it had been customary to include the names of a certain number of trained lawyers in the commission of the peace for the county, and it was arranged that one of them should be present on all occasions to assist his colleagues, whose only qualification for their office was the possession of a landed estate. In the eighteenth century this rule was no longer observed : the skilled professional element was eliminated, and with it disappeared the last feeble influence which still acted as a check upon class spirit and class interests.

Thus in innumerable cases there was no jury to secure an impartial consideration of facts, and no trained lawyer to secure an intelligent application of the law. It would have been natural to suppose that to make up for this state of things the right of appeal to the

superior tribunals would have been developed with jealous care. In the eighteenth century the very contrary was the case. Down to the time of Charles II. the procedure of *certiorari*, under which the matter in question was transferred from the justices to the superior courts, had remained applicable in all cases. In 1672 this safeguard was done away with in certain matters relating to the revenue, and it was afterwards abandoned in questions relating to the highways. At the same time recourse to this remedy was rendered more difficult by multiplying the necessary legal formalities. (5 George II., ch. 19.) In most of the subsequent statutes a clause barring the operation of the writ of *certiorari* was inserted, so to speak, almost as a matter of course. It seems to have been the rule to make the decision of quarter-sessions final in all cases in which questions relating to real property or the public order were not involved. It amounted practically to giving full discretionary power in cases where the judge in his own interest and in that of his class might be both prejudiced and partial.

Finally, it is to be observed that the magistrates were protected in the exercise of their functions by a series of enactments equivalent in their effect, if not similar in their substance, to Article 75 of the French Constitution of the year VIII. Unlike French officials they were held liable to answer in damages for negligence or gross blunders—this being the English principle—but all right of action against them was barred after the lapse of six months; if they pleaded *bona fides*, they had *prima facie* a good answer to any proceedings, and this same plea of

bona fides exempted them from all responsibility for mere irregularities of procedure.

With regard to such civil and criminal proceedings as come before the superior courts, England has been for a long period in advance of all other European nations. The ancient safeguards of property and liberty (the writ of Habeas Corpus, trial by jury, the examination of witnesses in open court) subsist intact, and are jealously maintained by public opinion. With regard to administrative matters and minor offences, that is to say, in cases where no sufficient general interest exists to awaken public opinion, a single phrase describes accurately the powers of the county magistracy:—Absolutism shielded by impunity.

It is astonishing that this system has been tolerated for so long; it is more astonishing that all classes have united in praising it. All voices indeed are not audible in history: the successful and the strong utter their opinions freely; the oppressed are too prudent or too weary to speak out. To find trustworthy evidence and to form upon this point a conclusive opinion, we should have to call as a witness many a poor wretch who sleeps in some village churchyard. This reservation weakens but does not destroy the strong presumption to be inferred from a general concert of opinion in favour of the rule of the country gentleman. All those whose judgment has come down to us agree in paying a high tribute to the character of the upper classes in England. Still, although absolutism may possibly be harmless, it remains absolutism nevertheless. “My father,” says Mr. Milbank in a novel of Disraeli’s, “has often told me

that in his early days the displeasure of a peer of England was like a sentence of death to a man.”¹ The peer perhaps might never avail himself of this excessive power, but without even being actively employed the existence of such power could not fail to be felt and the dread of it to weigh heavily upon the minds of men.

Thus the county magistrates were subject to the control of no superior authority. The legislature assumed their absolute integrity, and the State transferred its powers to them spontaneously. The extension of their authority in a downward direction was unlimited; parochial autonomy was done away with, and the parish made subject to their supervision. This was perhaps the most important feature in that revolution in favour of oligarchy which the eighteenth century brought about. The decline of parochial self-government can be traced from year to year. Each parish had from very early times chosen its own constable and its surveyors of highways, while the overseers of the poor were appointed by the magistrates, but from a list of names drawn up by the parish. It was these overseers who regulated the relief given to the paupers, and it was they who apportioned the incidence of the poor rate amongst the various ratepayers; the justices could only disallow a rate which was illegal on the face of it. It was thus left to each parish to fix the amount of its own burdens and to get in the contributions through its proper officers. By the end of the eighteenth century the greater part of these prerogatives and privileges had disappeared. The appointment of parish constables

¹ *Coningsby*, ii. 41.

was given to the justices, and subsequently to 1691 no relief could be given to paupers whose names did not appear on the annual parish list except with the sanction of a magistrate or under an order of quarter-sessions; the overseers had no authority to act independently. During the whole of the eighteenth century the magistrates greatly misused their powers, and were lavish of relief to every applicant. After 1801 they were empowered not only to disallow a rate made informally, but to amend it in detail and to vary the lists of those rated and the amount to be paid by each. As from that time forward the poor rate showed a tendency to become the type and the common model of all direct taxation, the power of modifying it became a matter of great importance. This state of things was strangely at variance with those principles which were most firmly established by custom and most jealously guarded by public opinion. It was left to a body of men, chosen by no process of election, and subject to no control at the hands of those interested, to increase to any extent the charge upon the parish, and to portion out to each householder his share of a burden which their own indiscriminate almsgiving might aggravate indefinitely.

Still, in spite of all this spoliation the parish still existed; it remained to reduce it to nothing, without formally decreeing its abolition, and to minimize in it all elements of a separate local existence. In 1782 the justices were authorized to unite several parishes and to compel them to contribute together for the support of paupers. These unions speedily covered a considerable proportion of the kingdom. Each union was managed

by a committee of "guardians" acting under the supervision of "visitors"; both were appointed by the justices, and the visitors were generally chosen from the class to which the justices themselves belonged. The tendency from the end of the last century was to make the system of poor relief, which had formed the object and motive of all parish organization, applicable to wider areas. Later still, when other measures had to be carried out, notably those relating to sanitation, districts more extensive than parishes were formed for the purpose. It is these districts which at the present time supply the unit of administration,¹ and lie ready to be utilized for the working of each new local institution.

Thus the inhabitants of the parish saw themselves deprived to an ever greater and greater degree of every common interest and of every opportunity of continuous and united action. It is possible that these small communities, drained of their yeomen by the concentration of estates, could no longer have furnished individuals qualified for the performance of local duties. This was indeed a reason and a justification for the transfer of those duties to larger districts containing a greater number of capable persons; but on the other hand, it was certain that a redistribution like this would complete the ruin of local autonomy, and give a fresh impulse to the exodus of the smaller landowners who were deprived of the interest which belonged to the

¹ The system of primary education and of highway management furnish the only exceptions, both institutions being, for the most part, localized in the parishes.

uncontrolled discharge of active and responsible functions. In this manner was swept away the last trace of those minute and vigorous democracies which owed their organization to the Tudors. The eighteenth century extinguished and closed those numberless *foci* of the spirit of citizenship, those nurseries of a class which had long furnished one of the sturdiest elements of the English community. When the nineteenth century began it was no longer popular self-government by parishes, but aristocratic self-government by counties, which handed on the name and tradition of local liberty. Parochial franchises had been supplanted by class privileges; an oligarchy had mastered and governed despotically the whole of rural England.

One chief privilege served to unite and perpetuate all these privileges of minor importance; the country gentlemen were alone, or almost alone, in the enjoyment of parliamentary representation and of a voice in the legislature. It was only at their good pleasure that legislative benefits were conferred upon the rest of the community. The House of Lords was composed almost entirely of landowners. An ample revenue derived from land was the first qualification required on the part of future peers, and, speaking generally, only those who possessed it could secure a patent of nobility. The Lower House was recruited almost entirely from among the country gentlemen, as they alone possessed the necessary real property qualification. A great number of electoral boroughs, the so-called "pocket boroughs," belonged to them; as they owned both soil and houses, the inhabitants who were their tenants at will were

ready to vote as the steward bade them. The country gentlemen devised, sold, or exchanged with their friends the shares which they held in the government of the country; they even succeeded in buying out and out the venal corporations of the ancient cities. The great centres of energy and enterprise which manufactures had created might prefer to elect men from among themselves, men who had made their fortunes; but they were without separate parliamentary representation; they were merged in the general mass of the country. Thus in both Houses and in the government the landed aristocracy had no rival to fear, and political parties were only formed by the division within itself of that all-powerful class. At the beginning of the nineteenth century, of 658 members of Parliament, 487 were virtually nominated by peers or wealthy squires. Sanford enumerates 110 members who, between 1832 and 1867, sat as the nominees of thirty-one great families, the names of which he gives in his *Livre d'Or*. The political weight of these thirty-one families was equal to that of London and the forty towns next to it in size, equal to that of Ireland, double that of Scotland. The same class, as was only natural, retained in its own hands the government which depended on the Houses, and the public offices which depended on the government. In Pitt's ministry of 1783 all his colleagues were peers, and he himself was the son of a peer. Embassies, high military commands, colonial governorships, ecclesiastical dignities and preferments, all the prizes at the disposal of the State, were distributed amongst the landed aristocracy, and became in their hands a means of further

advancement. The parties which succeeded alternately to power, Whig nobles or Tory nobles, each secured their share of the spoil. The rest of the community waited their turn in vain ; their day never came ; nothing fell to their lot. If ever a privileged class existed, it was the English aristocracy during the eighteenth century. It constituted by itself that *populus Anglicus* which monopolized as of right public offices and honours, as opposed to the rest of the nation, the *plebs*, who were only admitted to it in certain exceptional cases and after a period of probation more or less prolonged in the ranks of the landed gentry.

IV

THE OLIGARCHY AND THE PARLIAMENTARY SYSTEM

I HAVE shown that the English Constitution had in the eighteenth century passed through nearly all its stages of actual progress. There is one fact in connection with this which has never attracted sufficient notice, namely, that if the ruling class in England had not, as we have seen, been transformed into a narrow oligarchy, the prototype of parliamentary government as known to us would never in all probability have taken substance and shape ; and as all civilized States have at one time or another borrowed from England the main features of their constitutions, it is possible that the political destinies of the world might have been very different from what they are. Democracy succeeded indeed in adapting and reproducing, not without difficulty, the parliamentary system, but it was only after a perfect model had been through other agencies built up for imitation. An aristocracy alone could create such a system, could mould its customs and form its traditions.

The eighteenth century witnessed the gradual development of what was to be the chief motive power,

the mainspring of the whole machine; namely, the interconnected existence of two great, compact and disciplined parties, who, as either of them commanded a majority, assumed power by turns, the king meanwhile being reduced to the position of a mere spectator. These two parties took the shape, in the first instance, of opposing coalitions of powerful families who, thanks to "pocket boroughs" and "rotten boroughs," could dispose of some hundreds of seats in Parliament, and so ensure the return to the House of Commons of a strong body of their own adherents. The representatives of the mass of the people formed an insignificant minority. The English government at the time of which we speak was like some trading company in which a few great capitalists have acquired nearly all the shares and formed two rival "rings"; their parliamentary representatives held their "proxies"; their "general meetings" took place in the House of Commons; they overawed or bought up the few independent "shareholders," and contended with each other concerning the appointment of "directors," or in other words, of ministers. That one of the two factions which carried the majority of votes could, if its members worked together, render the position of ministers untenable, and this is what invariably took place except when it happened that the ministers and the leaders of the dominant faction were identical. Ministries were thus perpetually being formed of the chiefs of that party which was in a majority in the House of Commons; the king's influence was not powerful enough to maintain any but these in office. There was no reason why the faction which had attained

power should share the fruits of it with its rivals; it had not too many places to bestow upon its own adherents and friends. Thus it came to pass that cabinets were composed altogether of men of one political hue. Moreover, the constant menace of an ever-present foe, ready at any time to attack the citadel if he suspected the garrison of discord or disaffection, helped to enforce strict obedience on the part of the ministerial rank and file towards their leaders, and on the part of those leaders towards their chief. To put it briefly, two great parties in opposition to each other, both compact and well disciplined, and both by turns through their chiefs intrusted with the government, a monarch impotent in their hands but still looked up to with reverence as the visible depository of power—these, I take it, form the chief parts and springs of that machinery which is actually at work before our eyes.

It is easy to see that such a system is to some extent forced, exceptional and artificial, and, in a way, opposed to nature; that it assumes the presence of politicians endowed with a certain measure of coolness and self-control, and that it has probably owed much to a happy combination of circumstances. For parliamentary government of this nature to succeed at the outset the existence of such an oligarchy as flourished in the eighteenth century was indispensable; under a democracy it must have broken down. It is for example open to question whether, under a type of government more popular in its character, it would have been possible, in the first instance, to form parties possessing at

once sufficient authority and weight, continuity, firmness and lofty moderation to control the authority of the throne without overturning the throne itself or stripping it of its prestige. Only a proud aristocracy, upheld but restrained by a sense of near relationship to the Crown, could grapple successfully with such a task. It is not difficult to believe that, under a popular form of government, the multiplicity of opinions, the divergence of interests, the shiftings of sentiment in the masses of the people would have reduced Parliament to a state of disorganized confusion, of moving chaos; that within the parliamentary body a multiplicity of petty groups would have formed for an instant only to dissolve again, that no main line of division could have been agreed on, no permanent classification of parties arrived at. On the other hand the traditional relationship to each other of the great houses which formed the two opposing groups, each united by the common object of securing power and the spoils of office, made it tolerably certain that only the two great parties, Whig and Tory, would count for anything, and that the composition of either party would vary very little. Members for pocket boroughs had merely to look in a given direction and follow the parliamentary leader whom their noble patrons had chosen for them; obedience came easily to them, they looked upon it as a duty imposed by personal or political relationship; speculative opinions seldom disturbed the serenity of their time-honoured prejudices; far from creating any claim to favour, the possession of such opinions would have but served to discredit them in the eyes of their

political masters.¹ No effort was needed to establish among such men the tradition of party discipline. The representatives of popular electorates, on the other hand, dare not for an instant lose sight of their constituents, they are hampered by the necessity of satisfying their supporters while obeying the orders of their chief; they are frequently troubled by personal convictions, or are more or less under the influence of local or special surroundings: there is every reason to think that men thus placed would never have succeeded in observing continuously the rule of obedience to their party, in practising it till it became a habit, and in making it synonymous with the decency and honour of parliamentary life. Finally, the accepted and imperative usage, that a cabinet left in a minority should retire from office, could hardly have been established under a democracy. If it has become admissible, practicable and safe for a vote of the House of Commons to overturn a ministry, it is because the opposition keeps another ministry constantly in readiness—a ministry that has been formed beforehand and is prepared at a day's notice to take over the government, so that no interregnum is possible. It is very doubtful whether, in a chamber representing a shifting variety of opinions and interests, a combination so complex as a cabinet could have been for long held together and kept ready to hand. It is probable that at each crisis the reins of

¹ "What are you saying?" says Lord Monmouth, in a novel of Disraeli's, to his grandson. "You go with your family, sir, like a gentleman; you are not to consider your opinions like a philosopher or a political adventurer."—*Coningsby*.

power would have fallen to the ground, and the country have been left without a government, till some body of men got together in haste, chance-comers or make-shifts, had undertaken the task and assumed the attitude of statesmen. Thus one of the fundamental maxims of the system, that a ministry when outvoted must resign, could in the case of a popular assembly have resulted only in disorder and anarchy; Parliament would have had neither justification nor inducement for laying down any such rule, and it would doubtless have sought some other solution.

To sum up the process, the Crown was deprived of its supremacy while its prestige was preserved, the various groups, in a Chamber crowded to the utmost, were reduced practically to two, they were given homogeneousness and taught steadiness and obedience, and so rendered capable of serving as the foundations of stable government. Matters were so arranged that, if at any moment an adverse vote compelled a ministry to retire, the harmony between the House of Commons and the government though disturbed for a moment was forthwith restored. To effect all this involved the presence of conditions nicely adjusted and sometimes difficult to reconcile, and which, at the outset, could never have existed in any Parliament which formed a genuine assembly of the nation, and which represented with fidelity the capricious and incoherent opinions of the masses. The House of Commons was however at the period in question little more than a place of meeting for the representatives of the two coalitions of great families: it was owing to its peculiar character in this

respect that it was enabled to carry out a work involving so much patience, firmness, discretion and moderation—the creation of modern parliamentary institutions.

Subsequently to 1832 England has been able, while drawing nearer to a system of popular government, to preserve the usages and customs of a system altogether different ; she has shown a natural tendency to cling to methods so happy in their results that they have become the subject of national pride. Other countries, more democratic than she is, have succeeded in adopting the principles and observing the laws of that form of free government which she was the first to reveal to them, and they have erected by its means a standard of justice unattainable by any aristocracy. But neither these countries, nor England herself after 1832, could have discovered these principles and these laws, or could have applied them successfully without the teaching, the experience, the examples and the precedents which the eighteenth century furnished, or could have gradually fitted them in with the opinions and habits of the day. Democracy has copied and adopted the parliamentary system and perpetuated its existence with more or less success ; but it was essentially incapable of either inventing or founding it. Without the existence of the English oligarchy of the eighteenth century, in whose shade it grew up and flourished, that best type of free government would never have come into being and would have remained unknown to the world.

*THE MANUFACTURING PERIOD—THE TWO
NATIONS*

WHILE the country gentlemen were busy establishing, as if for all time, their dominion over men and things, events were taking place in their midst which at first furthered their projects and seconded their efforts, before long operated in opposition to them, and ended by destroying their work just when it seemed complete and permanent—I refer to the rise and development of the great mechanical industries.

I have endeavoured to show that England entered later than is generally supposed, and even then not without hesitation, upon that contest for trade in which she has since outstripped her competitors. From the end of the seventeenth century we find united in her many of the conditions which are essential to industrial progress. The English possessed in 1700 a powerful trading fleet, the result of the Navigation Act, and they controlled a vast colonial market whence they could derive raw produce in plenty, and where they were able to dispose upon exceptional terms of their own manufactured goods. From this time forward manufac-

turers might count upon abundant outlets for their wares; they were encouraged and stimulated to produce. Various institutions, the necessary adjuncts and infallible signs of increasing production, had already made their appearance. The letter post was in full operation, the Bank of England had been founded in 1694. During the same year facilities were given, with the creation of the permanent debt, for the undertaking of public enterprises which were of a remunerative and lasting character, but which at the same time imposed no too heavy burden on the present; both the State and individuals showed a more far-seeing care for and confidence in the future. The currency had just been reformed and placed upon a correct basis. Associations of capitalists were organized; commercial companies multiplied and their fleets covered the seas. The country had already been smitten with the fever of great speculations and yielded to the enticements of colossal ventures. Still these favourable circumstances and these exciting causes acted upon manufacturing activity merely as a reasonable stimulant; they did not extend so far as to bring about any sensible modification in the balance of the various economic forces. I have quoted many proofs of this; there is one which sums up the whole case. The rapid increase of manufacturing wealth engenders as a rule a spirit of energy and enterprise which shows itself in an increase in the birth-rate. But the population of England and Wales, according to the most favourable estimate, only rose from 5,134,516 to 6,039,684 between 1700 and 1750—in other words it increased in fifty years by less than a million, by

17 to 18 per cent. on the original number.¹ This is identical with the feeble rate of increase maintained in France at the present time (1831-1851).

The ignorance of true economic principles, the indolent security fostered by protection, the slow growth of science and of the scientific methods in manufactures—all these were so many obstacles to progress. After 1750 six great discoveries which were destined to transform altogether the conditions of labour followed each other in rapid succession. In 1769, Arkwright invented his water-frame; in 1770, Hargreaves his spinning-jenny; in 1776, Crompton invented his mule; in 1792, Kelly his self-acting mule. The working power of these inventions was multiplied by the steam-engine, which was patented by Watt in 1769, and was applied to the cotton manufacture in 1785, the same year in which Cartwright constructed his power loom. These improvements were not to yield all their results before the present century. Arkwright's patent fell in about 1790. Cartwright's power loom was not employed upon a large scale before 1815, and the self-acting mule with the improvements added by Roberts, not before 1825.

On the other hand, the system of smelting by coal was discovered between 1740 and 1750, and that of steam blasts in 1788. The manufacture of iron and the working of mines developed rapidly. For the distribution of the resulting products fresh lines of communication were opened up. In 1777 the Grand Trunk Canal between the Trent and the Mersey was finished; other canals connected Hull with Liverpool, and both with

Toynbee (quoting Finlaison), *Industrial Revolution*, p. 33.

Bristol. In 1792, a canal ninety miles long was constructed between London and the Midland towns by way of Oxford, and in 1810 the system of canals was almost complete. Roads increased in number still more rapidly, and were carefully kept in order. Railways were of later date, and their effects were only felt when a third part of our century had passed; but we may put it that from 1780 the industrial revolution was fairly in progress.

Its effects were soon apparent. Everything, even the sustenance and exertions of man, resolves itself into the production of so much heat and is capable of being measured in foot-pounds. It has been calculated that the annual output of the coal mines alone, expressed as so much working power, equalled in amount the horse provender which could be produced from 36,000,000 acres of land or the food for human workers which could be produced from 252,000,000 acres. It was as if a new territory of vast extent and extreme fertility had been opened up by the side of the old. Under circumstances of so much promise the birth-rate rose rapidly. We have seen that the population increased by about a sixth only during the first fifty years of the eighteenth century; between 1750 and 1800 it increased by more than half; between 1800 and 1850 by more than 90 per cent.; and by more than 50 per cent. during the thirty years which followed. Since the beginning of the century the agricultural population has remained stationary or has diminished. Thus the gigantic increase which each decennial census shows is due to the growth of the manufacturing and

trading community. A little later than 1860, the two divisions of the population, the agricultural and the industrial, stood to each other in the numerical relation of 1,000 to 2,675, and the values of the goods produced by them respectively in the proportion of 3,500 to 5,800 millions of francs; an actual excess of the one over the other could probably be traced back as far as the beginning of the century. That swarm of human beings suddenly and artificially generated in the heat of countless furnaces, possessed from the very outset the characteristics of a second nation. They neither mingled intimately with the nation which already existed, nor shared the surface of the soil in equal proportion with it. They filled the empty spaces which surrounded the new mining centres and established themselves in insignificant towns, places unknown to the annals of municipalities and as yet of no account in the commercial statistics of the country. It was the north of England, a district till then scarcely peopled, which profited almost exclusively by the increase of inhabitants. In 1700 the ten counties which surpassed the others, excluding the metropolitan counties, in the density of their population, all lay to the south of the latitude of Birmingham. In 1750, of the ten most thickly populated counties, there were four, and at the present time, there are at least six, lying to the north of that limit.

It was above all in the towns that the influx of population was apparent. In 1680 London formed the only considerable mass of dwellings which existed in the kingdom. Other great towns shot up and spread with the rapidity of a conflagration, "shooting up like

flames and tending ever to engulf each other.”¹ It was not the old cities known to history, Bristol, Norwich, York or Exeter, which grew indeed, but slowly, but towns like Liverpool, the population of which rose from 4,000 in 1685 to 40,000 in 1760, and to 552,508 in 1881, and Manchester, which contained 6,000 inhabitants in 1685, from 40,000 to 45,000 in 1760, 95,000 in 1801 and 517,649 in 1881; the populations of Birmingham and Sheffield, which were smaller than that of Manchester in 1685, reached nearly to 30,000 in 1760, increased respectively to 74,000 and 46,000 in 1801, and number at the present time 400,000 and 285,000. These were all places which had been in the sixteenth century either unknown or unimportant. A new England was added to the old; it was as if a new land had been upheaved from the sea, and joined on to the shores of some old-world continent. The teeming swarms of population sought breathing space in the new territory and seized upon it as upon virgin soil; they found nothing there, and created a society for themselves—a society that was ignorant of the traditions and ideas which prevailed in the country and the older towns. The very conditions of labour intensified the difference between the two communities. I have shown how manufactures in the first stage of their modern development deserted the corporate towns for the purely rural districts, that they were carried on there side by side with agriculture and under domestic, almost patriarchal conditions; weaving, for instance, was carried

¹ “Croissent comme la flamme et ne cessent de tendre vers un abîme de grandeur.”—*Études sur l'Angleterre*, Léon Faucher.

on by men who owned the looms they worked. As machinery was brought into practical use workmen were compelled to live within reach of the motive power, and an end was thus put to the transitional system of combined industries. In the country districts the rural element alone remained. The factory system appeared with all its characteristics: concentration of capital, sub-division of labour, the personal contact of great numbers of individuals between whom existed no moral tie, and a broadly traced line of division between employer and employed. On the other hand the human being became a mere part of the machine; the workman no longer controlled the industry at which he toiled; he was compelled to watch—an uninterested hireling—the mechanical beat of an engine which derived its brute force from the action of steam. A mere spectator could detect that a new community had arisen. Sir Robert Peel remarked in 1806 that the progress of machinery had created “a supplementary race of men;” a new race had in fact appeared upon the scene with instincts, passions, sufferings, grievances, ideas, habits and laws peculiar to itself. From that time there were in England two distinct nations; Disraeli has contrasted them in *Sybil*, and Mrs. Gaskell in *North and South*, and the younger of the two grew so rapidly that, springing as it did almost from nothing, it comprised in 1871 more than four-fifths of the working population.

In this twofold world, with its two centres of attraction, the social and political system created by the country gentlemen was altogether out of place. It was contrary

to reason and opposed to the logic of facts that one whole section of the community—the youngest, the most ambitious, and soon to be the most numerous, which by reason of the novel interests and the unforeseen wants which its development had evoked, was more nearly affected than the others were by the state of the law and its administration—should find itself without a voice in the legislation and government of the country. A fairer division of political power was sure in the long run to prevail; this event was rendered even more certain by the conduct of the country gentlemen, who by monopolizing the land had narrowed the social basis, while they extended the agrarian basis of their authority, and who had weakened the title to influence which numbers might have given by depopulating the rural districts. Each census which revealed a relative diminution of the rural community with a marked increase of the industrial community, made it more difficult to defend the exclusive retention of privileges by that section of the nation which was steadily declining in numbers.

At the end of the eighteenth century a still more deeply-seated cause isolated rural England—I refer to its peculiar views upon the subject of political economy. At that date, throughout the manufacturing world, the excitement of success created a tendency to look upon the maximum of production as a species of sovereign good. The maximum of production is only attainable where no obstacle created by law or custom exists to prevent that which has to be done from passing into the hands most capable of doing it, nor to prevent those hands in their turn from undertaking the task and doing

their best. The free circulation of capital, the free play of individual capacity, this was the twofold rule enunciated by the new nation with greater and greater emphasis. A third principle was also insisted on, namely that if the individual and capital were to be freely employed in the work of production, the full fruits of their activity must be secured to them ; it followed from this that the idle and the weak were to be left to bear the consequences of their idleness and weakness, and were not to be allowed to become a burden on the deserving and the strong, or, in other words, that each one's share in the profits was to be reckoned by the value of his services, and not by the extent of his necessities.

The doctrines and methods adopted by the country gentlemen were altogether opposed to these maxims. The great landowners, as we have seen, by their system of settlements had re-established, for their own ends, a species of mortmain ; land passed out of circulation and became the subject of a more or less forced monopoly in the hands of a class which was day by day becoming less numerous. The landowner who failed to make a profit from his land was unable to sell it ; one whole class, the class which is in France most ardently attached to the soil—the peasantry—were prevented from buying. On the other hand, the right of ownership was split up ; nothing was left but an incomplete form of *dominium*, a life interest subject to the rights of a remainderman—a state of things essentially incompatible with the proper management of an estate. A strange spectacle confronts us. We have followed the great landowner in the exercise of his multitudinous public functions, we

have gauged his influence and traced in detail the limits of his authority, but when, with minds profoundly impressed with the idea of his boundless power, we accompany him to his own estate, we find that this great man, this autocrat, is the most helpless of human beings. A mere usufructuary, thwarted at every turn, he can sell no portion of his estate nor raise by mortgage the funds necessary for its development. He can neither cut down a tree nor grant a long lease. His lawyer is perpetually at his elbow raising legal objections to the most prudent and the most useful schemes, or aiding him with all the subtlety of the law to avoid that heavy responsibility which the exercise of the every-day acts of ownership involves. The landowner's only means of effecting what he wishes is by obtaining the sanction of the Court of Chancery—a sanction only granted in certain special cases. The anomaly of his position strikes us from every point of view.¹

The position of the farmer was not less inconsistent with economic principles than was that of the great landowner. The law of distress, as elaborated in the eighteenth century, sacrificed the ordinary creditor and endangered the under tenant; the farmer had in consequence great difficulty in procuring the advances which he required or in sub-letting a part of his holding. The system of letting from year to year produced even worse results. The tenant at will had no security that he would enjoy the fruit of his toil or reap the benefit of

¹ The position of the "limited owner" has been altogether changed by modern legislation, notably by the Settled Land Act, 1882.

his improvements; he felt no incentive to the employment of more costly methods of cultivation or to the application of the latest agricultural discoveries. A politician guided by sentiment might regard the tenant as sufficiently protected by the traditional fairness and good faith of the landowner, by the honourable understanding which had existed for generations between individuals and families of the two classes. Political economy cannot accept the virtues of humanity as its basis. It is possible that the tenant of a generous landlord might feel that he ran no risk in laying out his own capital in improving the land, but he lacked the means of inspiring the banker, whose confidence was indispensable to him, with the same feeling of security. Here again rural England, when confronted with the difficult problem involved in the relations existing between the owner and the cultivator of the soil, fixed upon a solution directly opposed to the teaching of Smith or Young. The position taken up by the rural community at the beginning of the present century grew more and more precarious and untenable as the energies of the remaining sections of society were directed towards a solution which was altogether different.

Any violent disproportion between the positions of the powerful and the weak provokes the interference of the State in its character of guardian of the rights of individuals, and leads in the end to the adoption of socialist remedies: the country gentlemen foresaw and anticipated this. No more curious record exists than that which reveals to us a particular variety of socialism, to which the name of "Tory socialism" has been given,

springing at the end of the eighteenth century from the very movement which originated the system of *latifundia*. It was a species of compensation spontaneously offered for abuses which were not to be removed; it was a salve applied to a virulent disorder, the causes of which no one dared to attack. The poor relief of Elizabeth's time was not, speaking strictly, a socialist measure: it drew a distinction between the old and infirm and the able-bodied; the latter did not receive actual relief; work was found for them and they were compelled to perform it. It was the parish, a species of enlarged family, which relieved the impotent poor, and it did so under the guidance of the Church and in her charitable spirit. After 1782 the character of the system changed altogether. The creation of great estates had dispossessed, driven off, and crowded together in certain spots great masses of human beings inevitably doomed to poverty and degradation. The country gentlemen in order to avoid State interference were compelled to deal with this state of things themselves. Throughout the country, by order of the justices, parishes were grouped together for purposes of poor relief, and civil sub-divisions of the county were thus practically created. A staff of officials knowing little of those whom they assisted, and acting under the immediate control of the magistrates, dealt out relief with the practical object of preserving the public peace, and of insuring that tranquillity and decorum which the gentry took care should be maintained. During more than fifty years both theory and practice had alike required that the pauper should receive no relief unless he consented to

be lodged, or, in other words, confined in a workhouse. "Outdoor relief" was not permitted; that is to say, no assistance was given to paupers in their homes. Relief in this shape was evidently an encouragement to idleness and improvidence. But detestable as the system was, it was once more made legal by an Act passed in 1782. It was no doubt supposed that a slender pittance would suffice to silence complaints, but outdoor relief soon came to be regarded first as a payment in aid of insufficient wages, then as a payment made to bring up wages to a standard looked upon as normal; and finally, the amount of relief granted was made to depend without limitation upon the number of individuals to be supported. On May 6, 1795, some Berkshire justices, meeting at Speenhamland, issued a proclamation declaring that in future allowances calculated upon a certain principle should be made to poor workmen and their families, and they accordingly fixed a scale of relief adjusted in proportion to the price of wheat and the number of children in each household. The report of this proclamation spread from one end of England to the other. Its extraordinary provisions were copied and adopted by the magistrates in a great number of counties, and were so readily acquiesced in by the country gentlemen that the proclamation became generally known as the "Speenhamland Act of Parliament," the word Parliament implying that it had all the authority of a general enactment. The effects of it were such as might have been expected; demoralization, the multiplication of irregular connections and an enormous increase in the poor-rate.¹ This

According to the Report of the 25th March, 1832, of seven

was at all events socialism and nothing else; its distinguishing marks are clearly visible. The system was not indeed worked by the State but in extensive districts, where its working tended to become, like the working of a State institution, indiscriminate and inelastic. Relief was dealt out as the State itself would have dealt it out, according to the necessities of the individual relieved, not according to the value of his services; and in the result a minimum rate of wage was fixed, payment for work and the legal allowance being added together as complementary to each other, so as to amount in all cases to the same total. The same policy inspired a statute of 1819,¹ which provided that any parish might acquire land to the amount of twenty acres (raised later to fifty,^{1 & 2 William IV., c. 42}), and employ upon it, at reasonable rates of wages, the poor who were capable of work. This was simply an example of national workshops (*ateliers nationaux*) in an agricultural form. It is clear that the country gentlemen did their best to relieve the misery and remedy the injustice which were the results of the system upon which their own supremacy was founded. They gave without stint to render that system tolerable. They endeavoured to silence the complaints of the destitute paupers who depended on them by providing for their daily subsistence. They did not see—they shrank from seeing—that their task was hopeless and contrary to the laws of nature, and that the remedy which they applied

millions sterling expended in the relief of the poor, only five per cent. was paid for work; all the rest went for the support of the impotent and the idle.

¹ 59 George III., c. xii. § 12.

enlarged the wound though it might for the moment dull the pain. Above all were they blind to the fact that their practice was directly opposed to the principles of that young, energetic, and self-reliant generation which was springing up around them, and that consequently the organization of which they were the head was destined all the sooner to be condemned as artificial and antiquated. The State interference which they dreaded was only a question of time; the excessive concentration in the hands of a few of so much property and influence rendered it inevitable that a day would come when the legislature would be compelled to aid the dispossessed and check the abuse of power, and that with this end in view the State would impose a new code of regulations and employ its own agents to carry them out. Tory socialism, a lower and short-lived form of State socialism, forced into existence by the intolerable oppression of monopoly, could never have amounted to more than a provisional solution of the difficulty.

VI

MANUFACTURES AND THE MANOR

WHILE the rural community culminated in an oligarchy such as I have described, a process of evolution no less remarkable in character was going on in the manufacturing world. It began peaceably enough with a form of alliance between the manufacturers and the country gentlemen; it ended in the shock of an open rupture. Even before manufactures had made any notable progress manufacturers seem to have enjoyed great influence. Adam Smith shows that they had become formidable to the government, and that they had obtained so much hold upon public opinion as to command popular support. Parliament turned an attentive ear to their demands; they procured the passing of certain Acts which operated altogether in their own interests, and which were in many cases a source of annoyance to the landowners. We see with surprise that the country gentlemen accepted and passed measures which imposed what were apparently most vexatious restrictions on sheep-shearing and the transport of wool.¹ It is probable that, to begin with, these measures were much

¹ *Wealth of Nations*, book iv. ch. 8

less a concession to the interests of a powerful class than the outcome of a mistaken belief common to all classes, that it is of the highest advantage to a State to attract and retain the largest possible amount of foreign money. The country gentlemen had no doubt to reckon with the *novi homines*, but they did so upon advantageous terms by dealing with them individually. No sooner had a manufacturer attained conspicuous prosperity than overtures were made to him, and he fell a rich and easy prey. Some prosperous traders were conciliated by marriages, others acquired estates, were received upon a footing of equality by the country gentlemen, enrolled themselves in the ranks of the squirearchy, and aimed at founding families. During the whole of this first period the manufacturers were intent on their own interests, but they had no conception that those interests were often opposed to those of the great landowners. Both classes alike favoured monopoly; they supported each other, exchanged favours, and legislated by turns for each other's benefit. The men who had made their own fortunes and outstripped their rivals saw no cause for annoyance in the privileges of the country gentlemen. They were as yet unaware of their own strength; they were moreover few in numbers, and they had risen in succession as individuals rather than as a class. So soon as they had struggled to the surface they were attracted and absorbed by the dominant section; they grew contented with things as they were, and their example maintained amongst those who followed them in their rise a feeling of respect for a social organization which could thus reward a life of toil.

Interests which have not yet found expression in an abstract proposition may draw men towards each other; they do not form them into a compact body capable of united action. Men thus associated are an army without uniform or flag; they may have endurance enough to act on the defensive, they have neither the dash nor the enthusiasm which would enable them to deliver an attack. Those principles only which can be embodied in some general theory can initiate a decisive effort and sustain it to the end, and such principles were not lacking to the manufacturing classes. The closeness of the connection which united the theory of free exchange and competition with the cult of nature, that chief article of belief in the eighteenth century, has not perhaps been sufficiently insisted upon.¹ The doctrine of the day which taught that human nature possessed an unerring instinct, which successfully supplied the place of the reasoned efforts of the legislature, and a capacity for development which effectually disconcerted them, was silently influencing the minds of men, compelling them to refer everything to the action of that one cause. The phrase *Laissez faire, laissez passer* only reasserts this double principle in the language and form of political economy. The first axiom is embodied in the optimism of Adam Smith, the second in the fatalism of Malthus and Ricardo. For a long period theories such as these remained the property of philosophers and publicists, but they could not fail to grow and spread. Ricardo carried them with him into Parliament when he was elected in 1819. It is clear that the humanit-

¹ Toynbee, *Ind. Rev.*, p. 20.

arian Tory socialism, which, as I have shown, suggested the expedient of outdoor relief, forced on the legislature the creation of parish farms, and fixed a normal rate of wages (the excess over and above the market rate being made up by charitable contributions), was altogether at variance with the theory of free competition. In this lay the beginnings of a conflict of legislation and of a schism which was to divide the two Englands, rural and commercial, from each other.

The opposition between the two was at first not very noticeable. The manufacturers were slow to shake off their belief in monopoly. The treaty of 1786 with France merely carried out the theories of protection in a mitigated form; there was nothing to show that the parties to it had been really converted to contrary views.

It was only towards 1820 that the doctrine of economic freedom gained any decided hold upon men's minds, exposed popular fallacies, and was recognized as a practical truth. It was only then that it appealed confidently to public opinion, and that it began to influence legislation. To this year belongs the petition presented to Parliament by the merchants of London. In this document was set forth the disastrous effect of prohibitive and protective duties, and of a legislation which pretended to regulate the course of trade. From that time the movement went on. The Edinburgh Chamber of Commerce drew up a petition to the same effect, and a committee of the House of Commons presented a report which was nothing less than a free-trade manifesto. In 1823 the London merchants called for the abolition of the protective system in still more

energetic terms, "even though" (these were the words of their petition) "other nations should be slow to establish reciprocity." The legislature finally yielded to a pressure which had become irresistible. In 1822-23 the exclusive privileges established by the navigation laws were curtailed, and they were done away with entirely in 1849. In 1825 the laws forbidding the exportation of wool were repealed, and those forbidding the exportation of machinery were relaxed (the latter disappeared completely only in 1843). During the same year the penalties imposed upon persons hiring workmen for service abroad, and upon the workmen so hired, were abolished. The right of the labouring class to form combinations, and to organize strikes with a view to higher wages, was recognized. It is impossible to peruse the enactments of the period between 1820 and 1830 without feeling the influence of a new social element, resolute, liberal, and progressive in its nature, in striking contrast to the first so-called "cotton lords," that feeble and narrow clique so quickly swallowed up in the great body of landowners. A flood of light, it is plain, had illumined the new generation; they saw, knew, and believed. To them was given the love of competition and of freedom of action, a desire for wider fields, a spirit of optimism which gloried in rather than dreaded the struggle for life. Impulses like these, such as the men who preceded them had never felt, filled their minds, severed their sympathies from the rural aristocracy, and made of them its determined opponents. From that time forward the conflict raged between the old England and the new, between the manufactory and

the manor. The great manufacturers, as a class, were not only fully conscious of their own power and weight in the country, but they held a common faith, they had given their common adhesion to certain well-defined principles, and they were intent upon carrying those principles, to their practical conclusion. Each of the opposing hosts represented a distinct body of interests; a distinct economic theory was inscribed on the banner of each. The class which had risen claimed a place in the political world from which it had till then been shut out; its demands were backed by the opinion of the nation; it worsted its opponents, and finally carried its point. This redistribution of power received its legislative recognition in the Reform Act of 1832. We must not however regard this great measure as merely conceding their political rights to a portion of the nation which had been denied them; it was something more than a step towards equality, than a concession granted to democracy. A new theory of politics, slowly elaborated after much effort, appeared in the Reformed Parliament, inspired fresh legislation, modified the moral code, and strove to reorganize on its own lines the political system of England.

VII

THE REFORM OF 1832

CONCLUSION

IT was in 1832 that the two Englands first met in conflict. It does not fall within the scope of this work to chronicle in detail the collisions and onslaughts, the doubtful victories and the gradual retreat of the country gentlemen, or to trace down to the present day the record of a struggle which is still unfinished. One by one the privileges of the higher classes were done away with. Their political privileges fell first. The Reform Act of 1832 gave to the great manufacturing towns the right of returning members, and transferred to them the seats in Parliament which had belonged to the "pocket boroughs" of the country aristocracy. The Act of 1835 dissolved the ancient municipal corporations, close and corrupt bodies who sold their votes to the great landowners. In 1838 the exclusive character of the property qualification for a seat in Parliament, which had till then depended on real property alone, was modified, and in 1858 the property qualification was abandoned altogether.

Their economic privileges were swept away at a single

blow in 1846. The corn laws were repealed, and the markets opened to cereals from abroad. Their fiscal immunities were broken in upon, notably in 1853; and during last year¹ (1885) a proposal of the then government would have modified them still further. But it is in relation to questions of civil privilege and administrative authority that the combat waxes hottest, and that victory will carry with it the most important results. During the whole of the eighteenth century the country gentlemen, as we have seen, did their utmost to turn the ownership of land into a monopoly by accumulating it in the hands of a few, and to establish a system of mortmain by tying up estates in the same families from generation to generation. They sinned directly against economic law in rendering the position of the farmer precarious and uncertain to the highest degree, when his undertaking was one which could only be carried on in a spirit of far-seeing enterprise and with a view to far-off results. A system which favoured monopoly and mortmain, and ran counter to the laws of political economy, gave ample reason for the intervention of the legislature in the name of the public welfare. Napoleon remarked, when the law of 1810 relating to mines was under discussion, that he would never suffer any individual to throw twenty square leagues of land in a corn-growing province out of cultivation, in order to form a park.²

¹ Written in 1886. The passage refers to a proposal in Mr. Childers's Budget of 1885.

² Menant, *Annales de l'École des Sciences politiques*, No. 2. Carlyle puts the following language into the mouths of the squirearchy: "What would become of you — if we chose to grow

The right of the individual to dispose of his property does not justify him in depriving the people of their means of subsistence. The danger was, in the case of England, all the more grave as, according to the most eminent lawyers, the Roman and French conception of the ownership of property, as implying the absolute right to use and abuse it, is unknown to the English common law. The principle of that law is to recognize "tenures" only, that is to say, the holding of land which has been granted on certain conditions. This species of ownership, altogether relative in character, occupies a moral and legal position far less strong than does ownership as understood in certain other countries, as, for instance, in France; it is less able to defend itself energetically from attacks directed against it in the name of public expediency. The late statutes dealing with the relations of landlords and tenants in Ireland offended against no principle of English law,¹ even when they thrust aside freedom of contract, substituted a standard of value fixed by an official arbitrator for the law of supply and demand, and practically conferred upon the tenant only partridges henceforth and a modicum of wheat for our own use? Cannot we do what we like with our own?"—*Past and Present*, p. 215.

¹ The Irish tenant no more looks upon his rent as proving the ownership of the land by the landlord than does the landlord look upon his taxes as proving the ownership of the land by the State. Gladstonian legislation has nearly arrived at the Irish theory of ownership, by reducing the landlord, speaking approximately, to the position of a mere rent-charger. The tenants consider that not enough has yet been done for them, seeing that they are still liable to eviction in cases where they are unable to pay their rents.

a species of joint ownership in the soil. They were opposed to interests and considerations which were economic only; the only serious arguments which they had to contend with were those founded on expediency.

We find in the recent Act passed for the benefit of the Scotch crofters a still graver legislative infringement, in a certain sense, upon the rights of property. It is to be observed that while the subject was under discussion the arguments on both sides were founded on the special circumstances of the case, and again amounted to nothing more than appeals to expediency. Even in England the landlords have shown themselves no better able to withstand, upon principle, a measure designed to protect the tenant against damage done by game, nor a measure designed to secure him compensation for his own permanent improvements. Here again we have another attack directed against freedom of contract. The farmer now possesses certain rights which he cannot surrender by agreement; there are certain improvements which he can carry out, even against the wishes of his landlord, without losing his right to be compensated for them on a scale to be fixed by arbitration. If moreover we are to attach weight to the complaints of the class who have benefited by recent legislation, and to the schemes put forward by theorists, the Agricultural Holdings Act is merely the tentative introduction to more radical measures. It is openly proposed to reduce the landlord to the position of a rent-charger, and a time is to come when his tenants shall be free to cultivate his estates and transfer their interests in them without his having any right to interfere. This is however by no

means the only threat directed against real property. Politicians of importance have taken up, and made a part of their programme, as worthy of serious attention, projects which go so far as to confer on municipal authorities the right of compulsory purchase of urban and suburban properties at such prices as would be given by a willing buyer to a willing seller—*volentis volenti*.¹ They see nothing extravagant in compelling the restitution of plots of land supposed to have been unjustly appropriated, and in setting back the limits of prescription in order to deal more effectually with the wrongful occupiers. To this must be added the agitation kept on foot by societies like the Land Reform Union and the Scotch Land Restoration League, the stir created by the books and speeches of Henry George, and the pamphlet of Mr. Wallace, and the response which they have drawn from classes of the community—the clergy, for instance—generally credited with conservative views. For a long time too the soil which was to receive the seeds of modern socialism had been prepared by the theories of well-known writers. John Stuart Mill, for instance, claimed, as belonging to the State, the unearned increment, viz., that portion of the increase in the value of land not due to the efforts of the owner but to the general progress of the nation. The English system of great landed estates has provided an opening for, and given an impulse to, a whole series of agrarian laws.²

¹ The proposal of Mr. Jesse Collings adopted in substance by Lord Randolph Churchill. See report of debate of Oct. 2, 1886.¹

² Democratic legislation has not kept pace with agrarian legis-

¹ This proposal has since been approved in a modified form, and has passed into law as "The Allotments Act, 1887."

The administrative powers of the country gentlemen have been to an equal extent abridged and threatened. The duties to be performed have multiplied continuously with the needs of a progressive community; the task of performing them has in the end proved too much for lation; but it is a fact of no slight significance that the Lord Chancellor of a Tory government brought in, in 1887, a Bill which aimed at no less than the virtual suppression of the right of primogeniture by destroying at a blow the distinction existing between realty and personalty in cases of intestate succession.¹ Fresh facilities for the barring of estates tail and provisions forbidding their creation in the future gave still greater emphasis to the anti-aristocratic character of the measure.

I give below a list of reforms insisted on at the present time by the advanced party. The "Free Land League" voted the following programme in 1885 (See the *Daily News*, 19th August, 1885):—

- (1) Abolition of the law of primogeniture.
- (2) Abolition of copyhold and customary tenure, and obsolete manorial rights.
- (3) Prohibition of settlement of land upon unborn persons, and of the general power of creating life estates in land.
- (4) Conveyance by registration of title; all interests in the property registered to be recorded.
- (5) Provision for the sale of encumbered settled property.
- (6) Preservation of commons, and of popular rights over land and water, and restoration of any illegally taken away in recent times.
- (7) Enfranchisement of long leaseholds.
- (8) Amendment of law of landlord and tenant calculated to promote and further to protect improvements.
- (9) To promote the acquirement of land by the people for residence and cultivation both by general laws and by the instrumentality of municipalities and other local bodies.

¹ A Tory government has, in fact, passed a measure which strikes the first blow at the rule of primogeniture. See Stat. 53 and 54, Vic., c. 29.

the strength and ability of the original county authorities. It has been necessary to organize special bodies for the administration of districts intermediate in size between the county and the parish. The magistrates are *ex officio* members of these bodies, but, as a matter of fact, they take little part in their proceedings. On the other hand the State intervenes more actively under the new system than it did under the old. It does so not only by means of a code of minute regulations, but also through the agency of an official whose powers are continuously on the increase—"the inspector." The inspector can attend the proceedings of any board and can call for their accounts; he corresponds with the secretary of the department over the heads of the local authorities, and he alone has the power of initiating the dismissal of their officers. It is only in their Quarter Sessions that the country gentlemen have preserved their liberty of action; there they are still unembarrassed by the presence of elected colleagues or the interference of the State. The Quarter Sessions have, however, retained but little of their importance.¹ The small proportion borne by the county rate to the whole sum of local taxation, hardly five per cent., gives us some idea of this rapid falling off. A remarkable change has taken place. In the eighteenth century the gentry had excluded the professional element, the lawyers, from the commission of the peace. At the present time the country gentlemen are in their turn elbowed out and thrust aside by the engineer, the doctor, the officer of health—by a whole

¹ The jurisdiction of Quarter Sessions as a criminal court is not referred to here.

bureaucracy of skilled specialists. It has been already proposed more than once to deprive the squirearchy of their administrative and financial powers, and to transfer those powers to councils for the most part chosen by election, where the magistrates in fact will not sit, though they may have technically the right to do so. It is proposed to do away with the plural vote which gives to the landowners so marked an advantage, to introduce the ballot, &c. It is hoped by the same measure to restore to the parish its former autonomy, and to revive the parochial self-government which the eighteenth century suppressed. Threatened on one side by the State and officialism, on the other by the principle of popular election, the magistracy as an aristocratic institution needs all its ancient prestige to delay the inevitable success of that double attack.¹

¹ Since these lines have been written the proposed reform has been effected in England by the Local Government Act, 1888, and in Scotland by the Local Government (Scotland) Act, 1889. The present Cabinet moreover is pledged to complete the work by embodying in a supplementary statute those clauses of their scheme which the resistance of the Opposition has constrained them to postpone for a time. The Local Government Act of 1888 has completed the discomfiture of the ancient system of county government. A wide and gaping breach has been effected in the ancient barrier which secured the supremacy of the squirearchy, and guarded the approaches to the House of Lords.

The new enactment retains for the magistrates their judicial functions, but it transfers all the administrative functions of Quarter Sessions to elective county councils. The control of the police, a judicial as well as an administrative matter, is not left wholly with the magistrates; it is intrusted to a mixed committee containing an equal number of elected councillors. It is intended

The country gentlemen have guided for centuries the destinies of England. Legislation, executive government, local administration and foreign politics, all phases, in short, of political life, show clear traces of their handiwork. Under the Tudors they played a useful part; they were the agents of the Crown and were moved by true patriotism; but with the fall of the House of Stuart their ambition grew, and they attempted the perilous heights of absolute power. They had already subdued and despoiled the Church, expelled a dynasty, and humbled the Crown. They attempted finally to bring the whole nation into subjection to themselves. They monopolized the land, they broke down parochial self-government, and seized on the right of nomination to all local offices; they extended their jurisdiction in the counties till it was almost unlimited, and so robbed of its importance the central authority of the State; they controlled the electorate, and filled both Houses of Parliament; they succeeded in closing to all other classes the access to political power. At the very time when

in the future to substitute elective district councils for the highway boards and boards of health upon which the landlords exercise a preponderating influence. No one has a seat *ex officio* upon the new councils; the landlords can become members of them only through the votes of their fellow-citizens. Property qualifications are no longer required, and there is no plural vote to tell in favour of the largest tax-payers. The rule is, one man one vote, and the franchise is enjoyed by every householder who pays rates. The fact is full of meaning that it is a Conservative government which has taken the initiative in organizing a reform so clearly destructive of the former authority of the landlords. It was plain that the time had come and that the sacrifice had to be made.

they were most intent on casting the nation into bondage what was almost a new community was added to the England of the past, a community open to influences from without, teeming with new ideas, swept in every direction by a breeze of liberty and progress. The attempt of the landlords failed. The new generation cast off its oppressors and retaliated upon them within their own territory. From 1832 onwards the movement has never paused. The great manufacturers carried the breach, and the other classes followed them. In 1867 the working classes in the towns forced their way into the electorate. The tenant farmers were given the right of voting in 1832, but they have only enjoyed its unfettered exercise since the adoption of the ballot in 1872. In 1884 the agricultural labourers were in their turn admitted to the franchise, and England has just¹ made her first trial of almost universal suffrage. The peculiar effect of the aristocratic revolution of the eighteenth century was not so much that it let loose democracy—democracy would in any case have had its day—as that it disturbed profoundly the conception of property, and that it excited more violently than elsewhere the chimera of agrarian radicalism. That dangerous addition to the political and social claims of the present day is an answer, and a natural one, to the inordinate pretensions of the landowning oligarchy in the last century. But, be that as it may, at the no distant date when a reformed system of local administration and a redistribution of landed property shall have

¹ 1885.

shifted the basis of political power, the England of the past is destined; if I may so put it, to suffer a change of soul. Her ancient spirit must needs disappear with the county aristocracy, that healthy and vigorous frame which formerly sheltered it, and a new life must quicken the freshly moulded clay of the English democracy.

THE END.

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