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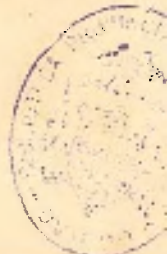
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AN ESSAY  
ON  
THE HISTORY  
OF THE  
ENGLISH GOVERNMENT  
AND  
CONSTITUTION,  
FROM THE REIGN OF HENRY VII.  
TO THE PRESENT TIME.

BY LORD JOHN RUSSELL.

Qualis frugifero quercus sublimis in agro,  
Exuvias veteres populi, sacratæque gestans  
Dona ducum; nec jam validis radicibus hærens,  
Pondere fixa suo est:  
At quævis primo nutet casura sub Euro  
Tot circum silvæ firmo se robore tollant,  
Sola tamen colitur. LUCAN.

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## ADVERTISEMENT.

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THE design upon which the following essay was written comprehended much more than has been yet accomplished. It was my object to illustrate, by an analysis of the history of the governments of modern Europe from the commencement of the fifteenth century, two very plain but somewhat neglected truths. The first is, that the monarchies of the continent of Europe have been, generally speaking, so ill adapted to make their subjects virtuous and happy, that they require, or required, complete regeneration. The second is, that the government of England ought not to be included in this class; that it is calculated to produce liberty, worth, and content,

among the people ; whilst its abuses easily admit of reforms consistent with its spirit, capable of being effected without injury or danger, and mainly contributing to its preservation.

The latter portion of this work is the only part (except an introduction to the whole) that I have finished. The reason why it is thus prematurely published, without sufficient concoction or correction, is to be attributed to the vanity of imagining it may at this period be of some service. It may at least provoke the wits and excite the thoughts of other men, to a more happy attention to subjects in which every member of this free community has an interest of the deepest importance.

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## ERRATA.

Page	6. line	20.	substitute a full point for the comma after <i>nation</i> .
—	12. line	1. of the note,	for <i>Essays</i> read <i>Essay</i> .
—	14. line	14.	for <i>other</i> read <i>others</i> .
—	18. —	9.	for <i>Lancasterian</i> read <i>Lancastrian</i> .
—	33. —	14.	for <i>in</i> read <i>on</i> .
—	36. —	17.	for <i>nation</i> was read <i>parliament</i> were.
—	55.	Title,	for <i>Charles the Second</i> read <i>Charles the First</i> .
—	56. line	4.	of the note, for <i>ruins</i> read <i>runs</i> .
—	106. line	15.	delete the comma after <i>Fox</i> .
—	107. —	19.	delete the comma after <i>Miles</i> .
—	124. —	19.	after <i>obtained</i> insert <i>for</i> .
—	136. —	14.	put a full point after <i>herself</i> .
—	211. —	9.	for <i>to see</i> read <i>see</i> .
—	224. —	10.	for <i>render</i> read <i>renders</i> .
—	267. —	2.	for <i>these</i> read <i>this</i> .

house of Tudor, the course of weak misrule and daring opposition, — of fierce contention and alternate victory, which, marking with a line of blood the history of the Stuart dynasty, at length

ended in a peaceable revolution, and the establishment of regular liberty. But those who have seen the harvest can have no doubt that the seed was in the ground; and at this day it ought to be within our power to point out what were the elements of freedom in the state of England, during the reign of the Tudors, which have been since developed in her matchless constitution. Among them, we may, without hesitation, enumerate the following circumstances.

In the first place, the sovereignty of England did not reside in the King solely. All matters of great state importance were made subjects of deliberation in the King's high court of Parliament, which was called together expressly for that purpose. In case of war, it was the business of that assembly to consider of means for carrying it on: if the succession was disputed, or a regency required, an appeal was made to their judgment; and all laws intended to be permanently binding on the people received the sanction of their authority. Nor did the princes of the house of Tudor attempt by any means to diminish or undervalue the importance of parliament. The crown of Henry the Seventh rested on a par-

liamentary act. Henry the Eighth repeatedly employed the name, and acknowledged the power of Parliament to change the succession. In the reign of Elizabeth, it was made a *præmunire* to say, that Parliament had not power to dispose of the succession to the crown. Thus, however arbitrary the acts of these sovereigns, nothing was taken from the reverence due to the great council of the king, the grand inquest of the nation, and the highest court in the kingdom. The power given to Henry the Eighth, to issue proclamations equal in validity to laws, was indeed a direct blow to parliamentary government. But this act was of force only eight years, and contained a proviso that these proclamations should not be contrary to the established laws of the realm. During the reigns of Mary and Elizabeth, the Parliament, however subservient, was yet a principal instrument in carrying on the government. Hence arose a necessity, not indeed that a King of England should relinquish tyrannical power, but that he must have his Lords and Commons accomplices in his tyranny. If these bodies therefore should ever claim an equal share in

the state, the King must either submit to their claims, or by discontinuing parliaments, give fair warning to the people that the form of government was changed.

Secondly. The nobility were not separated from the people by odious distinctions, like the other feudal nobility of Europe. Various causes have been assigned for this difference; without discussing them, I shall content myself with stating the fact. It would not be correct to suppose, however, that the feudal system has not existed in England in a very odious shape. After the Conquest, the feudal tenure seems to have been adopted by all the principal landholders of England, in a great council held in the year 1086.\* Wardships, liveries, primer seisins, and ouster-lemains, values and forfeitures of marriage, fines for alienation, tenures by homage, knight-service and escuage, as well as aids for marrying the King's daughter, and knighting his son, are all enumerated as part of the law of England, by the act of Charles II. which abolishes them. Happily, however, the system was not allowed to throw its roots very

\* Blackstone, b. ii. c. 4.

deep in the soil. A practice, which was growing general, of sub-infeudations, or granting inferior feuds by the mesne lords, with the same conditions as the chief, was restrained by the act of *Quia emptores* (18 Edw. I.) which directs that upon all sales, or grants of land in fee, the sub-tenant shall hold, not of the immediate, but of the superior lord. A corrective to the tyranny of the feudal system was also to be found in the constitution of our county courts, the cradle of our liberties, in which are to be found the origin of our juries, and the model of our parliaments. Here the free tenants met to do justice between man and man; and here, it is probable, they deliberated on the means of affording the assistance they were bound to give, to defend him and themselves against an enemy.

Thus much with respect to the free tenants. The state of the villeins is, perhaps, a subject of still more importance. The main difference between the two classes was this. The free tenant held his land, on condition of performing certain fixed services; the villein also held land, but was bound to perform services,



base in their nature, and often undefined in their extent. Here was real servitude. How soon it began to be abrogated we know not, but we are told by Sir Thomas Smith, who was secretary to Edward VI. and Queen Elizabeth, that in all his time he never knew any instance of a villein in gross, that is, of a villein transferable by sale, and not attached to the soil, in the kingdom; and that the few villeins attached to the soil, who remained, were such only as had belonged to bishops, monasteries, and other ecclesiastical corporations. The last claim of villenage recorded in our courts, was in the fifteenth year of James I. This great change, which had been silently operating in the condition of the people of England, is probably to be attributed to various causes, — the absence of foreign armies, — the necessity of conciliating the people during the civil wars, — and above all, the inherent justice and piety of the nation.

There were several ways in which a villein attached to the soil could obtain his freedom. He might be manumitted. Or if his lord brought an action against him, it was supposed to allow his freedom. Or if he went into a

town and settled there, he instantly enjoyed its immunities, and became free. Or, lastly, if he could show that, for time out of mind, he and his ancestors had been registered in the roll of the Lord's court, as having possession of the land he held, he obtained a prescriptive right against his lord. This was done by producing a copy of the court-roll, and hence the term copyholder. It has been supposed by some that copyhold was known before the Conquest. At whatever time it originated, however, its early prevalence is nobly characteristic of the English nation. Villenage was known in France till near the end of the eighteenth century; in Spain it is newly abolished; in Germany it is not extinct; in Russia it is in full vigour. But the spirit of the English people, and the equality of the common-law have always been a just corrective of the degrading institutions and customs imported from other countries. Magna Charta itself is a noble and singular proof of the sympathy then existing between the barons and the people of England. Philippe de Comines speaks of the humanity with which the nobility treated the people in the civil wars. English-



men have always felt that, if the order of civil society required the relations of superior and inferior ranks, nature conferred feelings and capacities with impartial justice upon all. Intimately connected with this spirit, is the absence of any distinction between gentleman and *roturier*. "The law," says Mr. Hallam, "has never taken notice of gentlemen.\* From the reign of Henry III., at least, the legal equality of all ranks below the peerage was, to every essential purpose, as complete as at present. Compare two writers nearly contemporary, — Bracton with Beaumanoir, and mark how the customs of England and France are distinguishable in this respect. The Frenchman ranges the people under three divisions,—the noble, the free, and the servile; our countryman has no generic class, but freedom and villenage. No restraint seems ever to have lain upon marriage. The purchase of land held by knight-service

\* The statute of Merton certainly affords an exception to this remark, when it speaks of the wards of noblemen being disparaged by marrying *villains, or others, as burgesses*. But the same act allows that such marriages, if made by the ward's consent, after fourteen years of age, are legal. — J. R.

was always open to all freemen. From the beginning our law has been no respecter of persons. It screens not the gentleman of ancient lineage from the judgment of an ordinary jury, nor from ignominious punishment. It confers not, nor ever did confer, those unjust immunities from public burthens which the superior orders arrogated to themselves upon the Continent. Thus, while the privileges of our peers, as hereditary legislators of a free people, are incomparably more valuable and dignified, they are far less invidious in their exercise, than those of any other nobility in Europe. It is, I am firmly persuaded, to this peculiarly democratical character of the English monarchy, that we are indebted for its long permanence, its regular improvement, and its present vigour. It is a singular, a providential circumstance, that, in an age when the gradual march of civilization and commerce was so little foreseen, our ancestors, deviating from the usages of neighbouring countries, should, as if deliberately, have guarded against that expansive force, which in bursting through obstacles improvi-



dently opposed, has scattered havoc over Europe." \*

Thus we see the nobility of England formed no separate caste. Their sons, not excepting the eldest, were in all respects, *part and parcel* of the commons of the land. It was decided, by votes of Parliament, both in the reign of Henry VIII. and in that of Elizabeth, that the eldest son of the Earl of Bedford was entitled to sit in the House of Commons. No decision could well be more auspicious. The heirs to a peerage, instead of feeling that petty pride, and indulging that insolent ignorance, which high rank has so great a tendency to breed, were members of an assembly in which they appeared as, or deliberated with, the citizens and burgesses of the land: they thus imbibed the feelings, and became acquainted with the wants of the people. When a struggle was to be made for freedom, many of them sympathised in the cause; few quitted their country; and thus their importance survived even the democratic revolution of 1649.

\* Middle Ages, vol. ii. p. 199. See note (A) at the end of the volume.

Thirdly. The last and the greatest element of freedom which existed in England, was the constitution of her House of Commons. Some wise men, I know, have considered that all virtue was taken away from that body by a law of Henry VI. which limits the right of voting in counties to 40s. freeholders; and they have judiciously dated the fall of the liberties of England from the time when villenage was gradually giving way to freedom. To such an opinion I certainly do not subscribe. Nor is it my intention to enter here into any controversy respecting the origin of our representation. Such a discussion belongs properly to an earlier period than that of which we are now speaking. The points to which I shall now confine my remarks are the Principle of Representation, and the Nature of our own Representation generally.

It has been observed to me, that in the ancient commonwealths, the people, who decided on public affairs, were all of a higher order than those of the poorer class, who in England read newspapers and discuss political questions. But this is a complete mistake. Slaves, it is true, had nothing to do with political functions, but



the poorest artisans who were free, had a voice in the public councils. The manner in which their votes were to be given, formed a difficulty which the ancient states did not altogether successfully vanquish. If the promiscuous multitude were admitted, with equal suffrages, into the public assemblies, as at Athens, the decisions were hasty, passionate, unjust, and capricious. If a method was adopted, as that of centuries at Rome, of giving a weight to property against numbers, it was difficult to avoid putting the scale entirely in the hands of the rich, enabling them to outvote the poor, and thus making an odious distinction between the richer and poorer, higher and lower classes of the community. This evil was greatly felt at Rome, and the expedient of setting up another and independent assembly, which decided by numbers only, was a very rude and a very imperfect remedy.\*

\* See Hume's Essays on some Remarkable Customs.

—— My soul akes

To know, when two authorities are up,

Neither supreme, how soon confusion

May enter 'twixt the gap of both.

*Coriolanus*, act 3.

The principle of representation nearly, if not entirely, overcomes these obstacles. A certain number of persons are chosen by the people at large, whose commission it is to watch over the interests of the community. Consisting naturally and inevitably of persons of some fortune and education, they are not so likely to be borne away by the torrent of passion, as the general, unsifted mass of the nation. Depending upon the people ultimately for their power, they are not so liable to act from personal interest, or *esprit de corps*, as a body of men whose power is attached for ever to their rank in the state. If the representative assembly is entrusted for no very short period with the concerns of the people; and if the members of it are always capable of being re-elected, such an assembly will evidently become enlightened on all the interests, and capable of discussing, with ability, all the great movements of the state. The most powerful minds in the nation will be brought to bear on any important measure of policy or justice, and, at the same time, the humblest individual in the country is sure, through some channel or other, to find a hear-

ing for his injuries, in the presence of the representatives of the whole people. The equality of civil rights, of which we have before spoken, is probably the reason why we find the knights sitting in the same assembly with the citizens and burgesses. There are few things in our early constitution of more importance than this. Cities and towns, however necessary their assistance for granting aids and taxes, are not likely to obtain, in a feudal country, that kind of respect from the other bodies in the state which would enable them to claim a large share of political power. The separation of this class from the other, was perhaps one of the chief causes of the failure of the Spanish, and other early constitutions similar to our own. But in England, the knights, who represented the landed force of the whole country, gave a stability and compactness to the frame of the House of Commons, and placed it on a broad foundation, not easily shaken by any king who should attempt its overthrow.

The sitting of the knights, citizens, and burgesses in one assembly, however, was not always the rule. It has been established by one of those

happy unions of fortune and counsel to which the English constitution owes so much;—I know not, indeed, if I ought to call it fortune. There was a practical wisdom in our ancestors, which induced them to alter and vary the form of our institutions as they went on; to suit them to the circumstances of the time, and reform them according to the dictates of experience. They never ceased to work upon our frame of government, as a sculptor fashions the model of a favourite statue. It is an art that is now seldom used, and the disuse has been attended with evils of the most alarming magnitude.



## CHAP. II.

## HENRY THE SEVENTH.

This King, to speak of him in terms equal to his deserving, was one of the best sort of wonders, a wonder for wise men. He had parts, both in his virtues and his fortune, not so fit for a common-place as for observation.

LORD BACON, *Life and Reign of Henry VII.*

THE battle of Bosworth Field put an end to the long and destructive wars which had wasted the blood, and disfigured the fair face of England, in the quarrel between the houses of York and Lancaster. Such a contention is little less disgraceful to mankind than it would have been to have made the white and red roses the subject, instead of the symbols, of hostility, and affords but too much ground for the assertion of a democratic writer, that hereditary right has caused as long and as sanguinary wars as elective monarchy.

Henry, who was crowned in the field of

battle, lost no time in proving he was as well able to keep, as to acquire a throne. He immediately summoned a parliament, and obtained from them the passing of a statute, not declaring that he was lawful heir to the crown; not asserting the right of conquest, or of election; but enacting "that the inheritance of the crown should rest, remain, and abide in the king." He procured this statute to be confirmed by the pope's bull. In the same spirit of peace and moderation, he caused many exceptions to be inserted in the acts for attainting the adherents of King Richard. A few years afterward he procured a law to be passed, declaring that no one should be called in question for obeying a king *de facto*. He thus quieted the minds of his subjects, and added more to the stability of his government, than he could possibly have done by displaying what Bacon calls the wreath of five; to wit, his own descent, and that of his Queen, the claim of conquest, and the authorities, parliamentary and papal. Amongst these titles, that of the house of York seems to have given him little satisfaction, and he took care not to crown his queen for a considerable

time after his marriage. And whether from prejudice or policy, it is certain that his Lancasterian partialities influenced his conduct during the whole of his reign.

One of Henry's first endeavours was to procure a law to prevent conspiracies among the great, and riots among the people. In a parliament assembled in the third year of this reign, Morton, Archbishop of Canterbury and Chancellor of the kingdom, spoke the following words:—"His Grace (i. e. the King) saith, that it is not the blood spilt in the field that will save the blood in the city; nor the marshal's sword that will set this kingdom in perfect peace; but that the true way is to stop the seeds of sedition and rebellion at the beginnings, and for that purpose to devise, confirm, and quicken good and wholesome laws against riots and unlawful assemblies of people, and all combinations and confederacies of them by liveries, tokens, and other badges of factious dependence; that the peace of the land may by these ordinances, as by bars of iron, be soundly bound in and strengthened, and all force, both in court, country, and private houses, be suppressed."

The chief law passed by Parliament with the view here explained, was an act confirming the authority of the Star-Chamber in certain cases. The Star-Chamber, composed of prelates, peers, counsellors, and judges, had an undefined jurisdiction without the intervention of a jury over many offences not capital, and over actions proving a design to commit offences not actually committed. "But that which was principally aimed at by this act," says Lord Bacon, "was force, and the two chief supports of force, combination of multitudes, and maintenance or headship of great persons." The danger to liberty, of entrusting power so large and arbitrary to persons named by the crown, does not appear to have struck any one at this time; and Lord Bacon is lavish in his praises of the Star-Chamber, calling it one of the sagest and noblest institutions of this kingdom. But long civil war induces a people to surrender liberty for peace, as long peace induces them to encounter even civil war for liberty. One of the next acts of the Parliament was the sanction of an arbitrary tax. This species of tax, known by the name of Benevolence, had been raised by

Edward IV., without the consent of Parliament, and abolished by Richard III. in a very remarkable statute. It was now revived by act of Parliament on the occasion of a war with France. But the real object was to amass money; for Henry had scarcely landed in France before he concluded a peace, by which he was to receive 745,000 ducats (about 186,000*l.* sterling) and a tribute of 25 crowns yearly.

This reign was much disturbed by rebellion. Attachment to the house of York, and the burthen of taxes seem to have been the chief causes of discontent. Bacon attributes an insurrection in the North to respect for the memory of Richard III., a proof that his government, in that part of the kingdom, had not been very oppressive.

The chief object of Henry's administration was to restrain the inordinate power of the great barons. Two laws enacted for this purpose, the one facilitating the sale of entailed lands by what is called breaking an entail, and another suppressing retainers, were, with other statutes and the extensive authority given to the Star-Chamber, eminently conducive to the

object for which they were framed. In thus directing his policy, Henry adopted views prompted by his own jealous temper, but which ultimately were beneficial to his country. The course of justice became steady, disorders were suppressed, the tranquillity of the whole country was secured; and the Commons, being no longer oppressed by feudal power, or distracted by domestic war, were enabled to acquire, first wealth, then importance, and lastly freedom. Bacon, however, attributes many of the disturbances which still afflicted the country during this reign to the neglect and distrust of the nobility shown by the king.

The last years of Henry were disgraced by the cruel and arbitrary exactions of which Empson and Dudley were the vile and execrated instruments. His successor, with a generous magnanimity not uncommon in a king, sent the collectors to the scaffold, and kept the money in his treasury.



## CHAP. III.

## HENRY THE EIGHTH.

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When love could teach a monarch to be wise,  
And gospel light first dawn'd from Bullen's eyes.

---

GRAY.

THE reign of Henry the Eighth is justly esteemed the most arbitrary in our annals. Yet it affords many curious precedents of the authority of Parliament. One of the first of these is the act granting tonnage and poundage. The King had levied these duties for some time by his own prerogative. But in the 6th year of his reign, he met with resistance, and was obliged to apply to Parliament for their sanction. The act that was passed is curious. It condemns those who had resisted, but at the same time grants to the king, *de novo*, the duties of tonnage and poundage. Upon the whole, the

precedent, though inconsistent with itself, makes against the power assumed by the crown. For if the king had the right to raise those duties, the act would have been merely declaratory. The enactment proves, with whatever terms it might be qualified, that the King was not entitled by his prerogative to levy tonnage and poundage, and that his orders on this subject might be resisted with impunity. So, indeed, the act seems to have been understood; for at the commencement of the four following reigns, we find the duties in question regularly granted by Parliament.\*

\* Statutes 1 Edw. VI. c. 13. 1 Mary, st. 2. c. 18., 1 Eliz. c. 20., 1 James, c. 33. By all these acts, tonnage and poundage are granted for life. They are all amongst the last acts of the session. Notwithstanding these statutes, Mr. Hume asserts, that Henry's "successors, for more than a century, persevered in the like irregular practice, if a practice may deserve that epithet, in which the whole nation acquiesced, and which gave no offence. But when Charles I. attempted to continue in the same course, which had now received the sanction of so many generations, so much were the opinions of men altered, that a furious tempest was excited by it, and historians, partial or ignorant, still represent this measure as a most violent and unprecedented enormity in this unhappy prince." And with reason. These duties were not granted to Charles in the first year of his reign, as they had been to his predecessors, and he attempted to revive the practice which was not permitted



Another remarkable precedent is afforded by an indiscreet step of Wolsey. Wishing to impose a very heavy tax, he proposed to go himself into the House of Commons, for the purpose of silencing, by his presence, all opposition. Many were disposed to resist his admission into the house; but when that point had been conceded, the Speaker, Sir Thomas More, opposed the opinion of the majority, that he should be admitted with a few followers only. The Speaker was of opinion that they should receive him "with all his pomp, with his maces, his pillars, his pole-axes, his cross, his hat, and the great seal too." The cardinal being thus admitted, made a long and eloquent oration against the King of France, declared that the king could not do otherwise than join with the Emperor against him, and demanded of the Commons the sum of 800,000*l.* as the estimated charge of the war. "At this request," as we

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to Henry VIII. Where Mr. Hume finds, that Edward, Mary, Elizabeth, and James levied these duties, during the few months they were not in force, or whether he has not fallen into an error, in supposing they were levied without being granted by parliament, I will not presume to determine.

are told by the great-grandson and biographer of Sir Thomas More, "the house were silent; and when the minister demanded some reasonable answer, every member held his peace. At last, the Speaker, falling on his knees, with much reverence, excused the silence of the house, abashed, as he said, at the sight of so noble a personage, who was able to amaze the wisest and most learned men in the realm; but with many probable arguments he endeavoured to show the cardinal that his coming thither was neither expedient nor agreeable to the ancient liberties of that house:" and, in conclusion, told him, "that except all the members could put their several thoughts into his head, he alone was unable, in so weighty a matter, to give his grace a sufficient answer. Whereupon the cardinal, displeased with the Speaker, suddenly rose up in a rage and departed." The result was, that a subsidy was granted, but much less than the cardinal had asked.

In 1526, Wolsey sent commissioners by his own authority to levy a sixth part of the goods of the laity, and a tenth part of the goods of the clergy: but the commissioners were resisted,

and Henry was obliged to disavow his minister, and annul the commission.

Yet in the same reign in which so much spirit was shown, a magistrate of London was sent to the wars in Scotland, where he was soon after killed, because he had refused to contribute to a benevolence.\* What a confusion of law and custom ! how uncertain the bounds of right and prerogative !

The arbitrary government of Henry on every subject but that of taxes is well known. In all his violations of law and justice he was strenuously supported by his Parliament. When he wished to rid himself of his wives, Parliament assisted him ; when he desired to put to death his prime-ministers, Parliament condemned them without a trial ; when at length he chose to make laws by his own will only, Parliament gave him authority to do so. It is no wonder, therefore, to find him holding high the privileges of Parliament. A curious instance of this occurs in the case of a Mr. Ferrers, a member of the house of commons, who was arrested for debt. The house immediately released him,

\* Henry's History of England.

and imprisoned those who had arrested him. Henry upon this occasion made the following speech to the house on the question of privilege : — “ He first commended their wisdom in maintaining the privileges of their house ; which he would not have infringed in any point. He alleged that he, being at the head of the Parliament, and attending in his own person in the business thereof, ought in reason to have privilege for himself and all his servants in attendance on him. So that, if Ferrers had been no burgess, but only his servant, in respect of that he ought to have privilege as well as any other. For I understand,” says he, “ that you enjoy the same privilege, not only for yourselves, but even for your cooks and horsekeepers. My lord chancellor here present hath informed me, that when he was Speaker of the lower house, the cook of the temple was arrested in London, on an execution upon the statute of staple. And, because the said cook served the Speaker in that office, he was taken out of execution by the privilege of Parliament. Likewise the judges have informed us, that we at no time stand so high in our estate royal as in the time

of Parliament; when we, as head, and you as members, are conjoined and knit together into one body politic; so that whatsoever is done or offered during that time against the meanest member of the house is judged as done against our own person and whole court of Parliament. The prerogative of which court is so great, that, as our learned in the laws inform us, all acts and processes, coming out of any other inferior courts, must for that time cease and give place to the highest."

Thus did Henry exalt the power of the Parliament. He seems upon the whole to have been a popular tyrant; and there is some truth in the remark of Mr. Hume that the English of this age, like eastern slaves, were inclined to admire those acts of violence and tyranny which were exercised over themselves, and at their own expence.

## CHAP. IV.

## THE REFORMATION.

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He that would do right to religion cannot take a more effectual course than by reconciling it with the happiness of mankind.

TILLOTSON.

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THE Reformation in England was by no means similar in its history to the great revolution of men's minds which took place in Switzerland, Scotland, and Germany. It was begun by the King, in consequence of his desire to put away his wife and marry another; and this quarrel was not only unconnected with the doctrine of Luther, but that doctrine was at the same time condemned, and its supporters capitally punished. Had the Pope been as complying as he had often been before, Henry VIII. would have



been, if not one of the most pure and holy saints, one of the most faithful and zealous servants that the church of Rome could boast of possessing. Even after the breach seemed irreparable, propositions were made from Rome, and were accepted by Henry\*, but as his messenger did not arrive on the day fixed, the Emperor's party in the Consistory took advantage of the failure of punctuality to obtain a vote closing the door upon reconciliation for ever. The messenger of the King of England arrived only two days too late to reconcile his master with the Pope, and arrest the progress of religious light in this country.

The breach with the Church of Rome would still not have led immediately to the Reformation, had not Cranmer, holding the high station of Archbishop of Canterbury, with Cromwel, many of the peers, and a large number of the educated class, endeavoured to conduct the nation, step by step, to abjure the errors and superstitions of the Roman Catholic worship. At the same time, they were obliged,

\* Burnet's Hist. of Ref. v. i. p. 136.

even for the sake of the cause they favoured, to retain many ceremonies to which the people were attached, and which the English reformers copied from the Roman church, as the Roman church had copied some of their ceremonies from the heathen worship.

The first step which Henry took, of his own accord, against the church of Rome after the divorce, was the dissolution of the monasteries. The motive which induced him to adopt this measure, was probably a spirit of rapacity; for with all his power he found it a very difficult matter to squeeze money from his subjects. With the sum to be derived from the sale of the monasteries, he proposed to make harbours all round the coast of England. Those of the nobility who had adopted the opinions of the reformers, gave willingly into the measure, and no doubt their zeal was quickened by the share they got of the spoil. The abuses which prevailed in the monasteries were not, however, a groundless pretext. The relations of the visitors who were appointed by the King to reform the monasteries, and report their state, display



grounds for believing that they were any thing rather than seminaries of piety and morality.\*

The next steps taken in the road of reformation were some directions respecting the worship of images and praying to saints, and, what was much more important, a permission to the people to read a translation of the Bible, in St. Paul's Church. The people flocked to the place, and one person was generally chosen to read aloud to the rest, till the bishop, alarmed at the concourse, forbade the practice, as a disturbance to the service of the church. The destruction of some of the images exposed to the public several scandalous cheats.†

The outset of the Reformation in England was marked by a more cruel and insupportable religious tyranny than had ever subsisted under the Papal dominion. In the times of popery,

\* Burnet, Hist. of Ref. b. i. p. 198. Mr. Lingard, however, refuses credit to these charges: he observes with truth that they were *ex parte* statements to which the accused had no opportunity of replying. It would be difficult, on the other hand, to suppose all the facts alleged to be fabrications. Monks and nuns are not infallible or impeccable beings.

† Note B. at the end of the volume.

the articles of faith were placed in the custody of the priest, and the people received from him some knowledge of the doctrines of Christianity, somewhat more of the duties of morality, and an unbounded reverence for the authority and magnificence of the Church. But Henry VIII., after partly removing the veil of ignorance from the eyes of his people, required them not to go a single step farther than he himself did, and the nation was commanded by act of parliament to believe six articles of faith therein laid down, and whatever else the King might choose to ordain.

To punish men for their opinions in speculative articles of belief, is one of the luxuries which tyranny has invented in modern times. Dionysius and Domitian knew nothing of it. It was enjoyed by Henry to its full extent. He was not, like Philip II. or Charles IX., merely the minister of bigotry, of which he was himself the disciple. He taught from his own mouth the opinions which were to regulate his subjects; he contained in his own breast the rule of orthodoxy; and he had the triumph of con-



futing the heretic whom he afterwards had the gratification to burn.

The religion established by Henry VIII. was so far from being the reformed church of Luther or of Calvin, that he prided himself, in maintaining the Roman Catholic faith after he had shaken off the supremacy of the Pope. His ordinances indeed vibrated for a short time between the old and the new religion, as he listened more to Cranmer or to Gardiner; but the law of the six articles, which contains the creed he finally imposed on his people, maintains and confirms all the leading articles of the Roman belief. They were as follows :

*First*, That, in the sacrament of the altar, after the consecration, there remained no substance of bread and wine, but under these forms the natural body and blood of Christ were present. *Secondly*, That communion in both kinds was not necessary to salvation to all persons by the law of God. *Thirdly*, That priests after the order of priesthood might not marry by the law of God. *Fourthly*, That vows of chastity ought to be observed by the law of

God. *Fifthly*, That the use of private masses ought to be continued; which, as it was agreeable to God's law, so men received great benefit by them. *Sixthly*, That auricular confession was expedient and necessary, and ought to be retained in the Church.

The actual Reformation in England was the work of the Duke of Somerset, Protector, in the early part of the reign of Edward VI. In the first year of that reign, he sent visitors to persuade the people not to pray to saints, and to procure that images should be broken; that the mass and dirges, and prayers in a foreign language, should be taken away. By act of Parliament in the same year he prohibited speaking against giving the sacrament in both kinds; in that and the two following years he established the liturgy of the church of England. The law of the six articles was repealed. The Reformation in England was thus made by the crown and the aristocracy. The people, though agitated by religious disputes, seem to have been hardly ripe for so great a revolution. Insurrections of a serious nature took place in Devonshire, Norfolk, and elsewhere. The

preaching of the Roman Catholic priesthood produced so strong an impression, that all the means of authority were put in motion to counteract it. The clergy were first ordered not to preach out of their parishes without a license, which of course was granted only to the favoured sect; and this not proving sufficient, preaching was altogether prohibited\*;—a singular step in the history of the Reformation!

On the other hand, Mary, on succeeding to the throne, found it an easy matter to revive the ancient worship. Nor did she hesitate to call frequent new parliaments, and each went beyond the former in the road of reconciliation. The first refused to re-establish the law of the six articles, but only one year afterwards, the nation was formally reconciled to the church of Rome, and thanked the Pope for pardoning their long heresy. He said, with equal candour and truth, that he ought to thank them for putting a rich nation again under his dominion.

\* Burnet. Hist. Ref.

## CHAP. V.

### QUEEN ELIZABETH.

Sur ce sanglant théâtre, où cent heros périrent,  
Sur ce trône glissant, dont cent rois descendirent,  
Une femme, à ses pieds enchaînant les destins,  
De l'éclat de son règne étonnait les humains.  
C'était Elizabeth; elle dont la prudence,  
De l'Europe, à son choix fit pencher la balance,  
Et fit aimer son joug à l'Anglois indompté,  
Qui ne peut ni servir, ni vivre en liberté.  
Ses peuples sous son règne ont oublié leurs pertes;  
De leurs troupeaux féconds leurs plaines sont couvertes,  
Les guérets de leurs blés, les mers de leurs vaisseaux,  
Ils sont craints sur la terre, ils sont rois sur les eaux.  
Leur flotte impérieuse, asservissant Neptune,  
Des bouts de l'univers appelle la Fortune,  
Londres jadis barbare est le centre des arts,  
Le magasin du monde, et le temple de Mars.

LA HENRIADE, chant 1.

QUEEN Elizabeth is the greatest of English perhaps of all modern sovereigns. In a period remarkable for long and sanguinary wars, she made her name respected abroad, without



a waste of blood or treasure; and in a time of great political ferment, she maintained the most absolute authority at home, without any loss of the affections of her people. She obtained glory without conquest over foreign nations, and unlimited power without becoming odious to her own subjects.

The means by which results so extraordinary were obtained, comprise all the springs of her foreign and domestic policy. Three principal sources of her fame and success, however, may be discerned.

First. She made herself the head of the Protestant interest in Europe. To do this, it was not necessary to place herself in the front of a confederacy of belligerent powers. It was sufficient to give the sanction of the name of England, a rich and united kingdom, to the cause which she supported. The spirit and enterprise of her subjects, with some assistance from her, did the rest. By this policy, also, she pleased the popular feeling of her kingdom, and opened a channel in which all the restless action of her nobility and gentry might be borne out and find a current. The national fame was

likewise a gainer by the reputation acquired by English knights and soldiers, in fighting against the league in France, and Philip II. in the Netherlands. The country assumed her proper station in the van of the defenders of liberty; the blood of Sir Philip Sidney was shed in the cause of the freedom of the world; and tyrants trembled at the name of Elizabeth and of England.

Secondly. She took care not to ask too much money of the people. Her treaties with Henry IV. resemble more the hard bargain of a Swiss Canton than the generous alliance of a powerful and friendly sovereign. She well knew that Parliament held the purse, and must, therefore, become absolute master of a distressed or expensive sovereign. In her situation economy was power. Happy would it have been for Leo X., for Charles I., for Louis XVI., if they and their immediate predecessors had been aware of this key-stone of their fate. The Reformation, the civil wars of England, and the revolution in France, had their rise in disordered finances. Men will

readily submit to a bad government, but will not easily consent to pay a dear price for it.

Thirdly. She yielded to the popular voice, and cultivated popular favour, whenever it could be done with dignity and safety. No one knew better how to buy the nation's affections with a phrase, to declare on occasion, that her treasure was better in her subjects' purses than in her own coffers, and that her best guards were the affections of her people. She could be severe and kind by turns. Thus, having at one time excited great murmurs among the house of commons by forbidding liberty of speech, she soon thought proper to revoke her commands. But nothing shows her policy better than her conduct respecting monopolies. There was hardly any article of which a monopoly was not granted by the Crown. The evil grew so grievous that even Elizabeth's house of commons echoed with angry speeches and universal complaint. The Queen instantly yielded. She did not acknowledge that the debates of the House of Commons had had any weight with her, but she informed them, through her

secretary of state, that she consented to quash those monopolies that were illegal, and to submit to an enquiry with respect to the rest. Secretary Cecil made an apology to the House for having compared them to a school, and said, he by no means intended to deny the freedom of speech. \*

In her manners also the Queen took care to show the greatest confidence in the people. She knew that nothing is so pleasing as the condescension of supreme power. She therefore displayed her greatness by the pomp of state, and her goodness by the affability of her language.

By such means Queen Elizabeth was enabled to maintain a stable authority over an unquiet people. France was distracted by civil war; the king of Spain was employed in a bootless and bloody quarrel with his insurgent subjects in the Netherlands and Holland; Germany was shaken in every limb by the Reformation; but the Queen of England reaped the reward of prudence and courage in the tranquillity and affectionate obedience of her kingdom and

\* Note (C) at the end of the volume.

people. Her power was enormous. When the Commons remonstrated, she speedily dissolved them; at one time she told them not to meddle in affairs of state: still less did she permit any proposal of alteration in the church; and she repeatedly imprisoned, or procured to be imprisoned, those who gainsayed her high pleasure in these matters.\* She dispensed with those laws which were unpalatable to her, and regulated the behaviour of her people by ordinance and arbitrary mandate. She forbade the cultivation of woad, as offensive to her royal nostrils. The court of Star-Chamber, and the court of High Commission, not being sufficiently arbitrary, it was ordered that every person who imported forbidden books, or committed other offences specified, should be punished by martial law. Those who employed the press as an organ of discussion were speedily condemned. Mr. John Udall, a puritan minister, charged with having written "a slanderous and infamous libel against the Queen's Majesty," was tried for a felony, and condemned. The

\* Note (D) at the end of the volume.

sentence was never executed, but the poor man, after several years' confinement, died in prison. The judge told the jury to find him only author of the book, for the offence had been already determined to be felony by the judges. A gentleman who had written a book to dissuade the Queen from marrying a French prince, was sentenced by a law of Queen Mary to lose his hand. A puritan of the name of Penry was condemned and executed for seditious papers found in his pocket. Struck by these arbitrary proceedings, Mr. Hume has compared the government of Elizabeth to the modern government of Turkey, and remarking, that in both cases the sovereign was deprived of the power of levying money on his subjects, he asserts, "that in both countries this limitation, unsupported by other privileges, appears rather prejudicial to the people." It is needless to say much on this fanciful analogy, so unworthy of a great historian. Did it ever happen that a Turkish house of commons prevailed on the Sultan to correct the extortion of his pachas, as the English house of commons induced Elizabeth to surrender the odious monopolies? Did



Queen Elizabeth ever put to death the holders of those monopolies without trial, in order to seize their ill-gotten wealth? In fact, the authority of the House of Commons made some advances during the reign of Elizabeth. The very weight of the power that was used to crush their remonstrances shows the strength of their resistance. The debates of the House of Commons during this reign, fill a volume and a half of the old parliamentary history. An attentive observer of this country at that period, would scarcely have failed to remark, that the force of free institutions was suspended, but not destroyed, by the personal influence of Elizabeth, and whilst he acknowledged that no sovereign ever carried the art of reigning farther, he would perceive that the nation had granted her a lease for life of arbitrary power, but had not alienated for ever the inheritance of freedom.

## CHAP. VI.

## JAMES THE FIRST.

Every one pointed to her (Queen Elizabeth's) white hairs, and said with that peaceable Leontius, 'When this snow melteth, there will be a flood.'

HALL's *Sermons*.

DURING the latter years of Elizabeth, all classes of people were impatient for the accession of her successor. There is nothing so irksome to mankind as continued demands for a long series of years from the same person upon their admiration and their gratitude. In proportion as the novelty wears out, weariness succeeds to wonder, and envy to weariness. There might perhaps, however, be other causes why the English nation should desire the reign of James. A new spirit had arisen during the latter years of Elizabeth, both in religion and politics. A large party, known by the name of Puritans, had

been formed, or rather increased and united, who aimed at a further reformation in the church. The Romish ceremonies, which had been preserved in our forms of worship, found no pardon in the minds of this stern sect; and had they ventured to disclose at once all their views, the power and revenues of the bishops would have been submitted to their crucible. Their bold and uncompromising principles led them also to free principles of government; their reason quickly stripped a king of his divinity, and their hearts raised the subject to a level with the sovereign. Besides the progress of these opinions, a new standard of political right had been introduced by the general study of Greek and Roman authors. Not only had the glories of the ancient republics kindled a flame in the breasts of generous men, but the diffusion of classical knowledge had prepared the upper classes of society to require more enlightened methods of proceeding, and a more regular distribution of powers and privileges than had ever before been found necessary.

The reforms which this new world manifestly demanded, were naturally postponed till after

the death of Elizabeth. Her age and her reputation merited, her vigour and experience enjoined forbearance. But James, a foreign king, without reputation of glory or of firmness, did not enforce by his character the same submission. A resolution seems to have been taken to insist upon all the ancient privileges of parliament, and all the legal liberties of the subject; and if these should be found incompatible with the old prerogatives of the crown, or the new pretensions of the Tudor dynasty, to make the King yield to his people, not the people to the King.

James soon had ample occasion to remark the disposition of his subjects. Not all the rejoicing which attended his march, nor the new honours which he so lavishly threw away, could disguise the truth. A petition from upwards of a thousand clergymen of the puritan persuasion, was presented to the king on his road to London, praying for "a reformation in the church-service, ministry, livings, and discipline." He issued writs for the calling of a Parliament, accompanied with instructions to the people what kind of persons they should elect, com-

manding them not to chuse outlaws, and bidding them send the returns to his court of chancery there to be examined and judged. In pursuance of these instructions, the election of a Sir Francis Goodwin, elected for the county of Buckingham, an outlaw, was declared to be void; a new writ was issued from the chancery, and Sir John Fortescue was returned in his room. The Commons declared the election of Sir Francis Goodwin to be valid, and that all matters concerning the election of members of Parliament were cognizable in the House of Commons only. This had been an old subject of dispute with Queen Elizabeth; the precedents were assertions on both sides, and no decisive conclusion. The Commons had voted that the "discussing and adjudging of such like differences belonged only to the House;" and had passed a resolution that outlaws might be elected: the Judges had declared they could not, and Queen Elizabeth had complained to her last House of Commons that outlaws were admitted. James, after contesting the point, proposed that both Goodwin and Fortescue should be set aside, and a new writ should be

issued *by the warrant of the House*. The right of the Commons to decide in all matters of election was thus admitted.

In the same Parliament, a warden of the Fleet was arrested by the House for having imprisoned a member; a compensation for wardship and purveyance was proposed; and a conference with the Lords was desired on the subject of religion. The instructions given by the Commons to those who were to conduct the conference are remarkable. A relaxation is desired for such as were unable to reconcile themselves to the cross in baptism, the ring in marriage, and the surplice; but on the subjects of faith, and the sacraments, every person in the kingdom is to be required by Parliament to conform to the law of uniformity. So far were the ideas of those reformers from real toleration! James was alarmed at each and all of the pretensions of the Commons, and there remains a draught of a very able address reported from a select committee of that House, (though never adopted by the House itself,) complaining of the misinformation he had received, and entering at large into every subject which had been dis-



cussed. They mention the ill-treatment they had received on the subject of their privileges during the latter years of Queen Elizabeth; attribute their acquiescence to respect for her sex and age; and express their surprise and sorrow that in this first Parliament of King James, their rights should have been more invaded than ever.\* The session ended unsuccessfully: except tonnage and poundage, the King obtained no supply; and except on the question of new writs, the Commons got no redress.

The alarm of the Gunpowder Plot produced plentiful grants to the King. At the end of December, 1609, James dissolved his parliament, and with the exception of a session of two months in 1614, more than ten years passed over without any sitting of Parliament. Forced loans, arbitrary taxes from private persons, and new monopolies supplied the wants of his treasury in the interval. At length, in the year 1620, a parliament met, to which every Englishman ought to look back with reverence. Having first voted the King two subsidies, and having

\* Mr. Hume has laboured, but without success, to weaken the authority of this document, which, it seems, makes against his theory.

discouraged all recurrence to past complaints, they set themselves vigorously to examine the present grievances of the subject. James adjourned them, and imprisoned Sir Edwin Sandys, one of their most useful members. Undismayed by this step, they petitioned the King, on his next meeting, to defend his son-in-law the Elector Palatine against the catholic interest of Europe, to break off the match of his son with Spain, and to turn his sword against that formidable power. James threatened the Commons with punishment: they maintained their privileges: he told them they were derived "from the grace and permission of our ancestors and us." To this pretension they returned the following memorable answer:—

"The Commons, now assembled in Parliament, being justly occasioned thereunto, concerning sundry liberties, franchises, privileges, and jurisdictions of Parliament, do make this protestation following:—That the liberties, franchises, privileges, and jurisdictions of Parliament, are the ancient and undoubted birth-right and inheritance of the subjects of England; and the arduous and urgent affairs concerning

the King, state, and the defence of the realm, and of the church of England, and the making and maintenance of laws, and redress of mischiefs and grievances, which daily happen within this realm, are proper subjects and matter of counsel and debate in Parliament; and that in the handling and proceeding of those businesses, every member of the House hath, and of right ought to have, freedom of speech, to propound, treat, reason, and bring to conclusion the same: that the Commons in Parliament have like liberty and freedom to treat of those matters, in such order, as in their judgments shall seem fittest: and that every such member of the said House hath like freedom from all impeachment, imprisonment, and molestation (other than by the censure of the House itself) for or concerning any bill, speaking, reasoning, or declaring of any matter or matters touching the Parliament, or parliament business; and that if any of the said members be complained of and questioned for any thing said or done in Parliament, the same is to be shewed to the King, by the advice and assent of all the Commons assembled in Parliament, before the King give credence to any private information."

James, greatly wroth at this proceeding,

sent for the Journal of the House of Commons to his council, and tore out the protestation with his own hand. He dissolved the Parliament; he imprisoned Coke, Selden, Pym, Phillips, and Mallory, all members of the dissolved House of Commons. He was not aware that the force of the protestation he tore out was not in the parchment or the letters of a book, but in the hearts and minds of his subjects; and he little expected that, by confining the persons of a few commoners, he was preparing the imprisonment and death of his son.

If we look at the position of the adverse parties at this time, we shall see that James was attempting, most unseasonably, a new mode of government. The nature of the Gothic monarchies was generally the same. The King, who at first ruled together with his people in rude harmony, came, in time, to exercise certain powers of government which he called prerogative; and the people who, in early times, assembled on every occasion to discuss grievances, and laws, and treaties, became in the progress of civilization divided into cities, and had their privileges set down in general and particular

charters. Both prerogative and privilege were liable to misconstruction, and sometimes overflowed their banks; but the King always spoke with respect of the liberties of his subjects, even when he illegally imprisoned their persons; and the people professed their veneration for monarchy, even when they deposed their king. Queen Elizabeth, acting in this spirit, abjured the notion of infringing the rights of her subjects, at the same time that she occasionally encroached upon and always confined those rights within the narrowest limits. She acknowledged the *liberties* of the people without doubt or hesitation but made use of her own dictionary for the definition of the term. James attempted a new system: he denied the existence of privileges altogether, except by sufferance; and without possessing the wisdom of an ordinary man, he claimed, in an enquiring age, the infallibility of the Deity. His sayings do him credit as a wit; his learning was not unbecoming a scholar; but his conduct made him contemptible as a king. How vain then to pretend that all the ancient privileges of the English nation were to depend upon his nod!

## CHAP. VII.

## CHARLES THE SECOND.

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There was ambition, there was sedition, there was violence; but no man shall persuade me that it was not the cause of liberty on one side, and of tyranny on the other.

LORD CHATHAM, quoted by GRATTAN, (*Letter to the Citizens of Dublin*, 1797.)

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AN attempt has been made to throw upon the first Parliament of Charles the charge of bad faith and want of generosity, because they did not, previously to all enquiry into grievances, grant to their young king a sufficient sum to enable him to prosecute with due vigour the war which they had brought on by their advice and encouragement. Now, even if it were true that the Commons were the authors of the war, still it would not follow that they did wrong in con-



sidering the abuses of the executive government, before they supplied it with fresh means of setting law and economy at defiance. A rigid enquiry into the public means, and the public expences was at all events justly due to the nation, of which they were the representatives. But, in fact, the war was not theirs, but Buckingham's: it had been refused to the parliamentary address of the people; and granted to the private pique of the favourite.\*

In considering the requests of the House of Commons from the commencement of the reign, we must never lose sight, as they never lost sight, of the ancient statutes of the realm. By Magna Charta it is established, that no freeman is to be imprisoned, or otherwise injured, but by the judgment of his peers, or the law of the land: therefore the judgments of the Star-Chamber, and the commitments by the sovereign's pleasure were anomalous innovations. By a law of Edward I. no taxes were to be raised

\* "Instead of judiciously mollifying the misunderstandings betwixt the two houses and the king, he unadvisedly (for in Spain he had received some affronts upon some arrears he had made) ruins the King into a war with that nation."

WARWICK'S *Memoirs*, p. 13.

Sir Philip Warwick was a courtier.

except by the authority of Parliament; therefore forced loans, benevolences, and monopolies, were illegal. By two laws of Edward III. parliaments were ordained to be held once a-year or oftener: therefore an attempt to govern without the regular advice, and continual authority of Parliament, amounted to a subversion of the established constitution of the state. Nor is it to any purpose, even as an *argumentum ad hominem*, to say that frequent violations of all these laws took place under the reign of particular sovereigns, especially the Tudors. The uninterrupted practice of trial by jury, the solemn usage of granting supplies in parliament, and the frequent meetings of that high court, prove that none of these rights had become obsolete, and that the exercise of prerogatives incompatible with them were irregularities to be amended, and not examples to be followed.

Lord Strafford, most unfortunately for himself, for his king, and his country, fell out of the ranks of the friends of liberty, and encouraged Charles to persist in a resistance, which, perhaps, he might otherwise have abandoned. Devoid of all public principle, and the slave of



his malignant passions, even the patriotism of Strafford is to be attributed to his animosity to the Duke of Buckingham. With a mixture of baseness and boldness seldom equalled, he made himself the tool of his personal enemy, for the purpose of breaking down all those safeguards of the subject, contained in that petition of right, which he had been amongst the foremost to ask for and obtain. He had not the excuse of saying that he opposed new pretensions of the Commons, or that he had left his friends when they went beyond the bounds of legality and loyalty. The measures in which he assisted were violations of those laws which it was his glory to have recognized and established. He had himself said, "We must vindicate:—what? new things? no:—our antient, legal, and vital liberties; by reinforcing the laws enacted by our ancestors; by setting such a stamp upon them, THAT NO LICENTIOUS SPIRIT SHALL DARE HENCEFORTH TO INVADE THEM." When Deputy in Ireland, he made large promises to the Roman Catholics to serve the King's present convenience, without any intention of keeping them. He solicited an earldom

as the reward of his services with an importunity, that shows his ambition to have been of the meanest kind. When in the North, he persecuted with the utmost cruelty a Sir David Foulis, who had omitted to pay him some trifling mark of respect.\* His conduct to Lord Mountnorris in Ireland was of the same kind. Upon the whole, he was a violent, unprincipled man, destitute of any elevation of soul; for his request to the King to let him die, can hardly be thought sincere; and there can be little doubt, that, till the end of his career, he expected to rise to supreme power, by pressing his foot upon the necks of the people. The intrepidity of his character, his powers of eloquence, the virtues of his private life, and above all, the unjust manner in which he was condemned to death, have rescued his name from that abhorrence, with which every lover of his country would otherwise have regarded it. The execution of Strafford casts a stain upon all parties in the state. The House of Commons were instigated by passion; the House of Lords acted from fear; and Charles, from some motive or other, which, at all events,

\* Macdiarmid's *Lives*, vol. ii. p. 121.



was not the right one. The admission of the mob to overawe the deliberation of Parliament was a sure sign that law was about to be subverted.

In a contest between a king who refuses any limitation of his prerogative, and a people who require it, there can be no equitable agreement. The ordinary authority of a limited king, the power of calling out an armed force, of proroguing and dissolving Parliament, cannot be entrusted to a sovereign whose main object it is to destroy, by means of a party, all limitation. William III., Anne, and the first sovereigns of the house of Brunswick, might be safely entrusted with the prerogative, because no party in the nation wished to see arbitrary power in their hands; but Charles I. could not, because the Cavaliers would have been unanimous in repealing the restrictions imposed by Parliament. Hence, when the popular party had provided sufficient checks for the people against a king, they were obliged to devise fresh ones against King Charles. After the plot in the army in favour of the King they were obliged to put part of the executive power in the hands of trustees, and still more when war had actually

commenced, till the proprietor of the crown should have discretion to use it. This forms the only justification of the law respecting the militia, the bill for continuing the Parliament, and the articles of Uxbridge. It was too much to expect that the victorious party should lay down their arms, without securities, quietly permitting the liberties they had wrested from the crown to be again surrendered by a packed Parliament; and their own lives to be at the mercy of a king to whom the power of the sword had been again entrusted. The difficulty was inseparable from the case. The King's prerogative is so great, that nothing but the established opinion of the whole nation can prevent his absorbing every other authority in the state.

Much has been said of the insincerity of Charles. A king, who has been accustomed to exercise despotic power, who considers that power as the brightest jewel of his crown, and who esteems every attempt to confine his prerogative as rebellion, must necessarily fall a sacrifice to his obstinacy, when his subjects have determined that arbitrary power shall no longer exist; and his resistance will naturally bear the



character of insincerity. For every concession will be in his mind a concession to power, and not to right; and he will think himself entitled, if he becomes possessed of power, to repossess himself of his right. Charles was not, perhaps, in his character insincere. The entry on the council-book at the time of the treaty of Uxbridge, protesting that the two Houses were not a Parliament, in the face of his own designation of them as such, was at the request of the Council; and his original wish had been not to acknowledge the Parliament at all. When he negotiated with the Presbyterians and the army, he was fully entitled to try, by enquiries from each, which of the two would give the best terms. His continuing to treat with both, till it was too late to conclude with either, is a proof of his arrogance, his pride, his conceit, and his folly; but is not of itself a conclusive argument of his insincerity. The story of the saddle, however, with the letter in which he wrote "that he should know in due time how to deal with the rogues, who, instead of a silken garter, should be fitted with a hempen cord," is, if genuine, a sufficient proof that his natural sincerity was gone, and that he could no more

be trusted on any promise or oath that he might make.\*

When Charles was defeated by his subjects, a new party had arisen, who went a step beyond the Presbyterians, both in religion and politics. The toleration which the Presbyterians had originally asked, in matters of dress and ceremonial, the Independents wished to extend to faith and doctrine, and were thus the earliest advocates of religious liberty. The political freedom which the Presbyterians hoped to enjoy under the ancient kingly government of England, the Independents thought would best be secured by a republican constitution. Their views, with respect to the King, were tinged by the most erroneous notions, drawn from Scripture. They imagined the Sovereign ought to die, that the sins of the war might be expiated by him, and not by them. Ludlow, in vindication of the King's execution, quotes, with self-applause, a passage from the book of Numbers: "That blood defileth the land, and the land cannot be cleansed of the blood that is

\* See Herbert's *Memoirs*, Carte's *Life of Ormond*, and especially the excellent preface of Baron Maseres prefixed to the *Tracts* published by him.

shed therein, but by the blood of him that shed it." He continues—"And, therefore, I could not consent to the counsels of those who were contented to leave the guilt of so much blood upon the nation, and thereby to draw down the just vengeance of God upon all; when it was most evident that the war had been occasioned by the invasion of our rights, and open breach of our laws and constitution on the King's part." \* Strange infatuation!

Charles fell a sacrifice at last, because Cromwell had lost his popularity by negotiating with him, and wished to regain his credit with his army. He had found reason to suspect, in the course of the negotiation, that Charles had no real intention of being reconciled with him, and that the democratic troops whom he commanded were ready to break out into mutiny in consequence of his supposed apostacy. His reconciliation was written in the King's blood. Machiavel, in a chapter in which he shows, "that a people accustomed to live under a prince, if by any accident it becomes free, with difficulty preserves its liberty," says that, "for the difficulties and evils which must be encountered, there is no

\* Ludlow's Memoirs, i, 267.

more powerful, or more effectual, or more salutary, or more necessary remedy than to put to death the sons of Brutus," that is to say, to give a striking example of severity against those who would be the chiefs of a counter-revolution.\*

By the nation at large, the capital punishment of the King was not demanded, and very soon lamented. When living, he was a baffled tyrant; when dead, he was a royal martyr.

Charles was an obstinate, prejudiced, and foolish man, exempt from most vices, and possessing but few virtues. In politics he was a spoiled child, and lost his temper when he was contradicted. Hence his conduct respecting the five members, and his early appeal to arms.

The fate of the Parliament was much more important to the state than that of the King. From the moment they were obliged to raise an army, their independence was in danger. The exclusion of the eleven members was an act of force, destructive of all legal government. The diminution of their numbers, till at last they

\* See note (E) at the end of the volume.

consisted only of eighty-six, their subordination to military members, and their taking refuge with the army, were the preludes to their final exclusion and dissolution. The minds of men, which had been led into the war by reverence and attachment to legal forms and established precedents, were now left without star or compass to guide them. Many, no doubt, had supposed that a war against Charles I. was, like a war against Henry III., a proper method of seeking a redress of grievances. But when they found all established authority subverted, all government made a matter of question and conjecture, they knew not where to look for liberty or for law. In their utter inability to remedy this confusion, they turned their eyes to the strongest, and sought protection for their property and their lives. Thus, the attempt to bring human institutions at once to perfection, to get all the protection, without any of the oppression of authority, and to make every law the expression of exact truth and justice, ended in a recurrence to the rudest invention of a warlike tribe.

## CHAP. VIII.

CAUSES OF THE DISSOLUTION OF THE ENGLISH  
FORM OF GOVERNMENT UNDER CHARLES THE  
FIRST.

*Cunctas nationes et urbes, populus, aut principes, aut singuli regunt; delecta ex his et constituta reipublicæ forma laudari facilius quàm evenire, vel, si evenit, haud diuturna esse potest.*

TACITUS.

SUCH was the deliberate judgment of Tacitus; a judgment, indeed, contradicted by the event, but which nevertheless is marked with the utmost perfection of thought, to which speculative reasoning could reach. Indeed, the history of the English government, whilst it finally disproves, affords, in its course, ample justification for the opinion of Tacitus. Let us first consider what, in his profound mind, must have struck him as an obstacle to the success of a constitution made up of monarchy, aristocracy, and democracy. Was it the difficulty of forming a





balance between the three powers? Surely not. Any schemer may lay out the plan of a constitution, in which the three powers shall each possess the authority, which in theory it ought to have. Indeed, there is scarcely any constitution which a man of sense can draw up that will not appear more plausible in this respect than the English. What more absurd, *a priori*, than that the King should have the sole power of making peace and war, whilst the Commons have the sole power of granting money?

It is not then the difficulty of balancing powers which has been overcome by the successful refutation our history affords to the dictum of Tacitus. The grand problem which has been solved is, how the three powers shall come into action without disturbance or convulsion. Many a workman can make an automaton; but not every one can make him play at chess. More than one sculptor can form a beautiful statue; none but Prometheus could give it life. The first disturbance which is likely to occur in such a constitution as ours, is a collision between the King, as sovereign, and Parliament formed of Lords and Commons, con-

sidered as his advisers. The King, by the constitution, has, and must have, the power of naming his own servants, who are to carry on the business of the executive government. But if these servants violate the laws, betray the interests, or squander the blood of their country, it is as certain that the great council of the nation must have the power of demanding and enforcing their dismissal. Two such opposite pretensions have naturally given rise to contest and calamity.

In the reigns of Henry III., Edward II., and Richard II., the misrule of the King's servants led to the total subversion of his authority; and on more than one occasion, commissioners were appointed by Parliament, who exercised all the prerogatives which the law has placed in the King. Such provisions amount to a revolution in the state for the time being.

After the accession of the house of Tudor, another kind of revolution took place; and the King, in his turn, swallowed up the powers of Parliament.

When Charles I. and his people began their

dissensions, the great chasm, which separated one part of the constitution from another, again opened, and threatened destruction to the state itself. The first opposition party, afterwards called the Presbyterians, perceived the difficulty, and they imagined the method of solving it since so successfully adopted. Their expedient for ensuring a peaceable and long duration to our limited monarchy was, that the friends of the people should become the ministers of the crown. Charles accepted the proposal, and named the persons to be promoted; but was soon disgusted with their advice, which ill accorded with his own arbitrary notions. He plunged rashly into a civil war, and it soon became too late to expect accommodation. New politicians naturally arose, who maintained that it was folly to expend so much blood for the uncertain hope of the King's sanction to popular men and popular measures, when the same results might be unfailingly obtained by abolishing the kingly office altogether. Thus the prophecy of Tacitus was again accomplished; the nobles had overwhelmed the King and the people; the King had domineered over the

nobles and the people; and now the people extinguished the King and the nobles. The three powers of the realm, although each had a legal right to its portion of authority, were still confounded, trampling upon, and triumphing over one another. The constitution was still in its chaos. The hour, in which the elements were to be parted; in which variety and contrast were to subsist without disorder; when the King and the Commons were to separate from, and yet support each other, was not yet arrived.

Strange it is, however, that at the close of the eighteenth century a new sect of political theorists arose, who asked as a boon for the people that the House of Commons should be placed in the same state of disjunction from the crown, in which it stood at the beginning of the reign of Charles I. For such would be the effect of a law prohibiting any servants of the crown from sitting in the House of Commons, and of leaving the choice of the ministers entirely to the pleasure, caprice, or passion of the sovereign.

## CHAP. IX.

CROMWELL, CHARLES THE SECOND, AND JAMES  
THE SECOND.

But certainly it can never be worth the scratch of a finger to remove a single person, acting by an arbitrary power, in order to set up another with the same unlimited authority.

LUDLOW.

CROMWELL did much for his country. He augmented her naval glory, and made her name formidable to all the legitimate sovereigns, to whom his birth was a subject of derision. The smile on their faces was checked by the terror in their hearts. He made use of this wholesome intimidation to secure the liberty of foreign Protestants; and before he died he perceived the danger to Europe from the growth of the French power, which he thenceforth de-

termined to restrain. At home he held the balance, upon the whole, evenly and steadily; he gave to no sect the preponderance of state-favour; and were it not that the questionable nature of his claim provoked rebellion, and made severity necessary to him, he would not have been a harsh ruler. Many would admire his character had he been born a sovereign, and some would praise him with more cordiality had he never become one.

The quarrels between the army and the Parliament, and the generals of the army amongst themselves, resemble more nearly the dissensions between the senate and soldiery of Rome on the choice of an Emperor, than any thing in modern history. They were the obvious precludes of a restoration. The Restoration was in its turn naturally the presage of cruel executions, of violated faith, of broken promises, of gratuitous confidence, of transient joy, and bitter disappointment. The death of Sir Harry Vane disgraced both Clarendon and Charles, and is one of the most cruel and perfidious acts in English story. Not in the course of a long reign did the King perform any thing



to atone for the vengeance of the exile. He trampled on the rights, and shed the best blood of the nation, from which he had received the crown: he crouched at the feet of France, at a time when, of all others, England ought to have resisted French ambition; and he thus made himself odious as a tyrant, only to become contemptible as a slave. Yet the Restoration once determined upon, there is much to be said for those who have been constantly the objects of censure for bringing in the King without conditions. The best security for liberty was, that the King could have no revenue without the consent of Parliament: if that power were wisely reserved, no condition was necessary; if it were improvidently parted with, none could be effectual. Clarendon saw this, and did his duty to his country. James also saw it, and hated Clarendon for his conduct.

The characters of Charles II. and Shaftsbury, the one indolent and careless, the other violent and rash, both inconsistent and unprincipled, gave a colour of unsteadiness to the whole reign. A profligate king, a religious

people; excess of tyranny, excess of faction; the worst of governments, the best of laws; the triumph of party, the victory of despotism, are all to be found in this reign. It is difficult to say for what reason Charles, a witty and heartless man of pleasure, embarked in the vast undertaking of making himself absolute. Perhaps it was only to please his brother. The ready way of accomplishing this design, once adopted, was, as he conceived, to obtain money and troops from France. And as his father's throne had been overturned by religious fanaticism, he proposed to lay the foundation of his own upon a religion of blind obedience. The scheme not running on smoothly, however, he gave it up, partly from laziness, and partly from prudence; contenting himself with charitable donations from France, from time to time. The virulent opposition of Shaftsbury, and the attempt to exclude his brother from the throne, again roused him to exertion; and the discovery of the Rye House Plot afforded him a tolerable pretext for ridding himself of all his considerable enemies. Thus, without activity or anxiety, by merely taking

advantage of events as they arose, he procured for himself an authority which those of his family who made kingcraft their occupation, never possessed. He subdued the liberties of England, because it gave him less trouble than to maintain them. But the men, who could propose and carry through the House of Commons a bill for the exclusion of the next heir from the throne, evinced a spirit of honesty and freedom which no hazard could quell. The bill of exclusion was the legal warning of the Revolution.

The reign of Charles II. as has been observed, was an era of bad government, but of good laws. The act of Habeas Corpus was the greatest of these laws. It is the best security for liberty ever devised; but it must not be supposed that it was invented during this reign. The writ itself is old, and various laws mention and confirm it, but it never was made capable of certain application, till the time of Charles II.; and even after that time, the island of St. Nicholas continued to be used as a state prison, beyond the reach of law.

James formed his designs on another mould.

He settled in his own mind that he would make himself an arbitrary king, and the Roman Catholic religion the religion of the state. Which of these projects he intended to finish first, I own does not seem to me to be worth very anxious dispute, since it is very clear that both objects were in his view. He pursued them with that stupid obstinacy which is so frequently fatal to a man without talent. His want of sense was accompanied, as it often is, with a want of heart; and as he could not himself reason, he felt no pity for those who could. His opinions appeared to his own mind infallible truths, and he knew no mode of convincing those who doubted, but by executions.

The faults of the house of Stuart may all be traced to the scholastic pedantry of James I. Generally speaking, these sovereigns were not tainted with the spontaneous cruelty, the unjust caprice, or the sordid fear, which go to the formation of a tyrant. But they were intimately persuaded that they were destined to inherit arbitrary power; and they went on inflicting taxes and fines, and confiscation, and death,

from a bigoted persuasion of their own divine right. James I. probably drew this notion from the old civil lawyers, and their imitators in Italy and Germany. He bequeathed it to his son, who lost his head in consequence of his perseverance in maintaining it. His grandson James, in trying to carry it fully into execution, fell unpitied from the throne. The whole family have since been exiles, and the last male descendant of James II. died a cardinal at Rome. This was paying dear for the failure of an erroneous theory; but England would have paid a still dearer price had it succeeded.

## CHAP. X.

## THE REVOLUTION.

He who wishes to reform an ancient state, and constitute it into a free country, ought to retain at least the shadow of the old forms.

MACHIAVEL.

THERE are few examples of revolutions which have led to immediate good. This consideration ought to induce men who have any influence over their countrymen to be very cautious how they engage in projects which may put to hazard all that exists, unless they have a very near prospect of obtaining what is proposed.

The Revolution of 1688 appears to my mind the perfection of boldness, and of prudence.

The Tory party in general were not so much alarmed at the subversion of liberty, as at the innovations introduced in religion. "Church and King" was their motto and their faith. In





their anxiety to preserve the church, they appealed to the Prince of Orange; but they never intended he should supplant the legitimate King. The Earl of Nottingham proposed in the House of Lords, that the Prince of Orange should be regent. The Duchess of Marlborough bears testimony to her husband's surprise upon finding that the crown was to be transferred to William; and the Earl of Danby avowed, upon Sacheverell's trial, that it had never been his wish or expectation that James should be dethroned.

Had those, who invited the Prince of Orange to England, satisfied themselves with obliging James to call a parliament, the rest of his reign must have passed in continual jealousy. It would have been still more absurd to have given William the power, and James the title of King. That title, which is not the private patrimony of an individual, can only belong properly to the person who is qualified to exercise the office. The Princess of Orange being the nearest of blood, (except the infant son of James,) and a Protestant, the Prince of Orange (himself the nephew of James,) was the fit person to be

king. He had besides this merit in the eyes of the Whigs, that his right to the crown, and the right of the people to their liberties, were thenceforth to be placed on the same foundation, and opposed to the same Pretender.

The more violent of the Whigs were not satisfied with changing the dynasty. They looked to extensive reforms both in church and state: they wished to change our ecclesiastical laws, and remodel the House of Commons. Others desired, and perhaps with still more apparent reason to abolish the monarchy, and constitute a republic. But the leaders of the Revolution knew, with Machiavel, that nothing so much tends to give stability to a change of government, as an adherence to old forms and venerated institutions. They knew, that to enter upon a discussion of new projects, however plausible, at such a moment, and in the face of a large adverse party, would expose their work to be presently overthrown, and could only lead to endless conflicts, and unsatisfactory decisions. For these reasons, the leaders of the Revolution contented themselves with confirming by solemn statute all the ancient

liberties of England, and protesting against those particular violations of them, which had taken place in the late reign. Whether the securities they took were sufficient to form the basis of a good government, or whether they were but half-measures, satisfying the eye, but not the appetite, we shall see, in the following chapter.

It is curious to read the conferences between the Houses on the meaning of the words "deserted," and "abdicated;" and the debate in the Lords, whether or no there is an original contract between King and people. The notion of a tacit contract by which the King and his subjects are to be guided in their relations with each other is certainly not correct. The King, without any contract whatever, is bound to carry into execution the laws which are intrusted to his care. This is the simple duty of his office. But if at any time the people should require of him new liberties, he is bound to give them the species of government which the state of the nation, and the knowledge of the age may demand. The foundation of every durable government is the common consent of the realm.

The notion of an original contract was the theory of the friends of liberty in every part of Europe. The Spaniards had asserted it in the beginning of their contest with Charles V. The only debate in the House of Lords was between those who asserted the original contract, and those who maintained the divine right of kings. In short the question was, whether or no kings derived their power from the people. It was decided that they did; and the next resolution was, in substance, that James had abused that power, and had thereby become amenable to the nation. For such is the clear meaning of the vote of the two Houses, declaring that James, having broken the original contract between king and people, having violated the fundamental laws, and having withdrawn himself out of the kingdom, had abdicated the throne, and that the throne was thereby vacant. Nothing could be more creditable to the temper and justice of the English people than the calm discussion of this question; nothing more decisive of their wisdom and love of freedom than the judgment which they pronounced.

## CHAP. XI.

## DEFINITIONS OF LIBERTY.

The liberties of nations are from God and nature, not from kings.  
ALGERNON SIDNEY.

MANY definitions have been given of liberty. Most of these deserve no notice whatever; but there are two that, having been adopted by celebrated men, merit consideration. The first of these is the definition of the Roman civil lawyers, that liberty is the power of doing that which is not forbidden by the laws. The other is, that liberty is the power of doing all that we ought to be allowed to do. Of these two, it appears to me, the first includes too little, and the second too much. If liberty consists in being able to do what the law permits, a despotism, established by law, and which always

works by law, is a free government. Napoleon, for instance, scarcely ever violated in France the laws he had made; these laws, however, were tyrannical. But if no country is free except where no unjust prohibitions, and no unnecessary penal laws are found, it is impossible to say that there has ever existed a free government. What shall we say, for instance, to that law of the Twelve Tables, by which it was enacted that insolvent debtors should be given up to their creditors, to be bound in fetters and cords; and by which, though not made slaves, they were liable to be treated with the same or greater harshness.\* Indeed, what shall we say to the freedom of any democracy; for they have all passed laws measured by the rule of their own passions? Even England, whose governing power is formed expressly from a composition of conflicting forces, has admitted on her statute-book many an unjust and cruel enactment. A complete definition of liberty is perhaps impossible. Nor is liberty all of one kind. A nation may have one kind,

\* Adam, R. Antiq. p. 45. A. Gellius. N. A. l. 20. 1.



and be quite deprived of another. The greatest advantages, however, which a community can procure to itself, by uniting under one government, may perhaps be comprehended under the titles of Civil Liberty, Personal Liberty, and Political Liberty.

By civil liberty, I mean the power of doing that, and that only, which is not forbidden by the laws. This definition comprehends the security of person and of property.

By personal liberty, I mean, the power of doing that which in itself is harmless, as speaking or writing, and of which the abuse only is criminal. Eligibility to office may also be comprehended under this head.

By political liberty, I mean the acknowledged and legal right of the people to controul their government, or to take a share in it.

Each of these kinds of liberty should be allowed to exist in as great a proportion as possible. They were all comprehended by Cromwell's representative under the names of "the peace and security, the rights and privileges of the people."

## CHAP. XII.

### CIVIL LIBERTY.

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The laws of England are the birthright of the people thereof ; and all the Kings and Queens who shall ascend the throne of this realm, ought to administer the government of the same, according to the said laws ; and all their officers and ministers ought to serve them respectively according to the same.

*Statute 12 & 13 WILL. III. c. 2.*

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CIVIL liberty comprehends the security of person and property. For if a man is only allowed to do that which the law permits, he is liable to punishment should he raise his hand against his neighbour in violation of law ; and if he is free to do all that the law does not forbid, he cannot be called in question for a legal exercise of his rights.

" In walking over a large field with about thirty attendants and slaves, Hassan told the owner that he had done wrong in sowing the field with barley, as water-melons would have

grown better. He then took some melon-seed out of his pocket, and giving it to the man, said, 'You had better tear up the barley, and sow this.' As the barley was nearly ripe, the man, of course, excused himself from complying with the Kashaf's command. 'Then I will sow them for you;' said the latter, and ordered his people immediately to tear up the crop, and lay out the field for the reception of the melon-seed. The boat was then loaded with the barley, and a family thus reduced to misery, in order that the governor might feed his horses and camels for three days on the barley-stalks."\* — Every one must feel that, in a country where this could happen, there can be no security for property.

Tavernier tells us of a king of Persia, who ordered the heads of all the beasts he had killed in one day's chase to be set up in the form of a pyramid. When it was done, the architect came and told him that the pyramid was complete, with the exception of one large head

\* Burckhardt's Travels in Nubia, v. i. p. 94. Quart. Rev. No. 44. p. 457.

for the summit. "I think yours will do very well for that," said the king; and to this brutal joke sacrificed an innocent man. In such a country there can be no security for life.

When Athens was in its splendour, there arose that detestable class of men, who gained their livelihood by informing against the best and worthiest of their fellow-citizens, and holding out to the rapacity of a sovereign mob, the temptation of a rich forfeiture. It should never be forgotten by those, who are disposed to admire a democratic government, that the word *sycophant* had its origin in the most popular of all democracies.

Nicophemus and Aristophanes, public functionaries, were accused of malversation. On some change in the government, they were imprisoned, and secretly made away with without a trial. Their property was confiscated. The amount disappointing the greedy accusers, a prosecution was instituted against the brother of the widow of Aristophanes for embezzling the sum that was deficient. What is the language of his advocate upon his trial? An ap-



peal to feelings of justice and generosity? No: he plainly intimates the rapacity of the judges. "I know how difficult it will be," he says, "to refute the received opinion of the great riches of Nicophemus. The present scarcity of money in the city, and the wants of the treasury which the forfeiture has been calculated upon to supply, will operate against me."\*

During the reign of terror in France, men were put to death for relationship to suspected persons, for acquaintance with the condemned, for having wept at the death of the King, and a thousand vague and trivial offences.

Thus unlimited despotism and uncontrolled democracy are found to be equally unfavourable to the existence of civil liberty. The examples I have adduced are extreme cases; but in every state, where either the monarch, the aristocracy, or the multitude, is allowed to have too much power, civil liberty is incomplete: that is to say, a subject of such a government cannot be sure that, even when he obeys all the laws, he may not be taxed or imprisoned by arbitrary

Mitford's History of Greece, vol. v. p. 96.

mandate. Witness the gabelle and the Bastille of the French monarchy; the prisons of Venice; and the banishments of Florence. All these states were professedly under the government of laws, but to some of their citizens these laws were but a shield of paper. It may, however, generally be observed, that the violations of justice in a monarchy are more frequent; in a democracy, more striking. It seems more natural and tolerable that a king, revered as a kind of superior being, should oppress a slave, than that an assembly of freemen should maltreat an equal.

Let us now see how civil liberty is provided for in England. It is declared by the King, in Magna Charta, the earliest and the best law upon our statute-book, that no freeman shall be any way destroyed, unless by the judgment of his peers, or the law of the land—"Nullus liber homo aliquo modo destruat, nisi per legale iudicium parium suorum, aut per legem terræ." This admirable law, however, was frequently violated in times of disorder. It was renewed very frequently; but notwithstanding these renewals, and the claims of the Petition of Right,



the subject had no effectual remedy against wrong, till a law of Charles II. provided means for an easy execution of the ancient writ of *Habeas Corpus*. This act, well known by the name of the *Habeas Corpus* Act, commands, that upon written complaint from or on behalf of any person confined in prison, except on a charge of high treason or felony, the Lord Chancellor and the Judges shall, upon pain of forfeiting the sum of 500*l.* deliver a writ, ordering him to be brought into court. The writ is to be delivered, and the prisoner is to be brought into court within twenty days; and if his offence is bailable, he is to be discharged upon offering bail, and entering into a recognizance to appear at his trial. If his offence is charged as treason or felony, and if the prosecution is not followed up within the second term after his commitment, he is to be discharged. If no offence is specified in the warrant of commitment, his imprisonment is illegal, and he must be instantly discharged. Besides this protection, the Judges go into the country twice every year, with a commission of gaol-delivery, for clearing all the prisons. These securities, however, availed

not against James II., who employed the island of St. Nicholas, in Plymouth harbour, for a state prison, in the same manner as Cromwell had before made use of the isle of Jersey. From the Revolution, however, the Act of *Habeas Corpus*, when in operation, has always been found of power to protect the subject. Of the suspensions of that law, I shall speak hereafter; I would now remark only, that the suspensions prove the practical efficacy of the *Habeas Corpus* Act, as much as the renewals of *Magna Charta* prove the practical inefficacy of that great compact. All the precautions taken to prevent arbitrary imprisonment, however, would be nothing, if the trial when it took place could be unfairly and oppressively conducted. To prevent so dreadful an evil, we have the institution of trial by jury. The sheriff, a man of substance in the county, returns from twelve to twenty-three freeholders (usually men of property), to serve as a Grand Jury. To them the bill of indictment, or accusation, is preferred; they examine witnesses in support of it; and unless they find probable grounds to proceed upon, the bill of indictment

is thrown out, and the prosecution cannot be persisted in. To form the second, or Petty Jury, who are to try the cause, the sheriff returns the names of a number of freeholders, not less than forty-eight, nor more than seventy-two. The names are put into a glass, and the twelve first drawn form the jury. At this period, the prisoner may challenge any whom he can reasonably accuse of partiality, or whose characters have been degraded by the sentence of a court of justice. In treason, he may challenge peremptorily thirty-five. When the trial is over, the twelve jurymen remain inclosed together without separating or conferring with others, till they can deliver an unanimous verdict.

Nothing can appear less perfect in theory than the institution of trial by jury. What can be more liable to abuse, it may be said, than the choice given to the sheriff, an officer appointed by the crown? What more prejudicial to an accused person than the previous decision of twenty-three men of wealth and figure, formed upon hearing one side of the question only? What more likely to create confusion

of right and wrong, than to require an unanimous verdict, and thus make the guilt or innocence of a prisoner depend on the mental incapacity, the moral obstinacy, or even the physical strength of a single juror? These objections I shall not attempt to answer; the veneration which the English have for trial by jury, like the admiration they entertain for Shakspeare, must be taken as a practical proof of its excellence; and it would be as absurd to attempt to demonstrate that a people long free attribute their freedom to a slavish institution, as to endeavour, like Voltaire, to prove that a people long civilized adore barbarous and ridiculous poetry. It must be admitted, however, with respect to trial by jury, that it is liable to be perverted in bad times, and that the condemnation of Sydney was as violent an act, if not more so, than the attainder of Strafford. But, since the Revolution, the general respect that has prevailed for right and justice, has prevented abuse, and, upon the whole, juries have kept the balance very even between the safety of government and the liberty of the subject.

Trial by jury leaves, properly speaking, but little power to the judge. When the trial is over, the judge recapitulates the evidence, and explains the law upon the subject. The decision upon the facts is left entirely to the jury. This arrangement, the best ever imagined, leaves nothing to the judge but what is absolutely required, and cannot easily be abused. For it is necessary that some one present should have that knowledge of the laws, which can only be acquired by long and exclusive study: and it is much better that he should speak on the trial, than that he should assist at the decision; for numbers are ready at the bar to observe lest he misrepresent the law.

Notwithstanding this proper division, juries, in the time of Charles II. were controuled and dictated to by court judges, who were appointed and removed, in proportion to their subserviency. To prevent this, an act passed, early in the reign of King William, providing that judges should be appointed during good behaviour, and should be removable only by addresses from both Houses of Parliament; an act which completely answered its purpose of making the

judicial power independent of the executive, and gave an authority to the name and character of an English judge, which it had never before possessed. We must never forget, however, that there is yet another security which is, perhaps, more valuable than any. The trial is public, and the accused is brought face to face with his accuser, before the country.

Security of property is also well provided for. By a law of Edward I. it was enacted, that no aids or taxes should be taken from the subject, but by common assent of the realm. What this means we shall see, in a following chapter. It having been found, notwithstanding this law, that the King, by means of the Star Chamber, was able to impose arbitrary penalties, it was enacted in the law which abolished that tribunal, that it should not be lawful for the King in council, by English bill, or any arbitrary way whatsoever, to call in question the property of the subject.

The courts at Westminster-hall, the circuit of the judges in the country, the body of the magistrates consisting of the principal gentlemen of the county in which they act, giving



their perpetual attendance at home, and meeting in quarter and petty sessions, to administer the law gratuitously\*, are all instruments engaged in executing that great article of the Great Charter, — “We will not deny nor delay, nor sell right or justice to any one.” We have reason to rejoice in the observation of Delolme, who remarked with pleasure, within the precincts of the King’s residence at Windsor, inscribed in an enclosed space; — “Whoever trespasses on these grounds, will be prosecuted according to law;” thus claiming for the King, the common security of the poorest cottager in the land.† Nor has it ever been found, that the exalted station of the royal family have ever enabled them to trespass on the property, or disturb the private rights of individuals.

\* I have inserted this word, as we hear the unpaid magistrates so highly praised for disinterestedness. They have power, however, for their trouble, and a power which the barons of old struggled so hard to possess and exercise.

† See note (F) at the end of the volume.

## CHAP. XIII.

## PERSONAL LIBERTY.

Methinks I see in my mind a noble and puissant nation rousing herself like a strong man after sleep, and shaking her invincible locks; methinks I see her as an eagle during her mighty youth, and kindling her undazzled eyes at the full mid-day beam; purging and unsealing her long-abused sight at the fountain itself of heavenly radiance; while the whole noise of timorous and flocking birds, with those also that love the twilight, flutter about, amazed at what she means, and in their envious gabble would prognosticate a year of sects and schisms.

MILTON.

NEXT to civil liberty, in the order I have laid down, comes personal liberty. By personal liberty, I mean the freedom from restraint upon actions which are not criminal in themselves. The chief liberties of this class are the freedom of speaking and writing, and freedom of conscience in matters of religion. The absence of all exclusive personal privileges, such as signorial rights, exemption from taxes, monopoly of civil and military offices, must be reckoned also



in this class; for that which is a privilege to one man is a restraint upon another.

The liberty of speaking and writing was allowed in ancient times, not only in free states, but wherever despotism fell into the hands of a mild sovereign; and so palling to the ear is the continual monotony of praise, that in the absolute kingdom of Persia, where the sovereign is thought to be the very image of the Divinity, a jester was always kept, whose business it was to tell the truth, and yet to tell it in such a way that the King might, if he pleased, laugh at the fable, and neglect the moral. The fool of modern kings is a creature invented for the same purpose. Such were the devices which sovereigns adopted for the sake of hearing a little free observation, at a time when nations were divided into the court and the country. The court never spoke of the king's actions but to praise them, and the country never spoke to them at all. Such was still the state of Europe when Machiavel wrote *The Prince*, and he takes it for granted, in that much debated work, that the mass of the people can be kept wholly ignorant of the real character of their sovereign.

The progress of knowledge has overturned the basis of his whole system, and were Machiavel to write at this day, he would probably recommend to kings a totally different line of conduct.

The policy pursued by the governments of Europe, in later times, has been extremely various. Austria and Spain have assumed as a principle that, as general freedom of discussion must produce much calumny on private persons, much seditious writing against the state, and much matter offensive to morality and religion, it is prudent to the country, and humane to the writers, to place the press under the guardianship of censors appointed by the government. By this method, it is asserted, all fair and temperate discussion may be allowed; libels are stifled in the egg, before they have worked mischief; and public justice is spared the necessity of inflicting severe punishment. The government of France, without sanctioning so strict a system of ignorance as that of Spain, refused to allow publication without restraint. But the mitigated prohibitions of the French censors, in some degree contributed to spread the false no-

tions which obtained vogue at the beginning of their revolution. Every thing might be attacked by an equivocal jest, although nothing could be combated by direct reasoning; and the able writers of the last century soon found that the best institutions were as open to a sneer as the grossest abuses. General declamation, and affected sentiment were allowed, till the opinions of men fell into general confusion. At length the throne was shaken, the altar sapped, and the mine ready to burst under their foundations, before any one had had a fair opportunity of urging an argument in their behalf. The policy of England has been, since the Revolution, completely the reverse both of the Spanish and the French. During the reign of Elizabeth, as we have seen, the most severe punishments were awarded to libellers. During the reign of James, and the early part of Charles I. a censorship was established by means of a licence act. Cromwell adopted the same policy, which was continued by Charles and James. The licence act of the latter expired in 1694, and has never been renewed. The constitution of England thus deliberately,

not in the heat of the revolution itself, but without clamour, without affectation, without fear, and at once, adopted a free press. The principle then sanctioned is, that, as speaking and writing, and printing, are things of themselves indifferent, every person may do as he pleases, till by writing what is calumnious or seditious, he offends the laws. That a great advantage is afforded to personal liberty by the permission of a free press, is what no man can doubt. Reflection may convince us that this liberty is also beneficial to the community at large. Genius can never exert its powers to their full extent, when its flight is limited and its direction prescribed. Truth can never be got at, when all discussion is regulated by those who hold the reins of government, to whom the discovery of truth is not always acceptable. Neither is it true, as some people imagine, that no government can withstand the daily attacks of the press. Men know when they are prosperous, and although they love to grumble at all that is going on, no quantity of rhetoric will persuade a nation that is in possession of



liberty, to risk a civil war, in order to obtain a change in the form of government. A minister may generally so manage, as either to endure, or to overcome popular clamour. The slanderous whisper of the Emperor of Russia's courtiers is ten times more dangerous to a good minister than the angry hubbub of the King of England's people.

The right of petition is another right, by which men are enabled to express their opinions, and to set forth their grievances. When Charles II. was engaged in a contest with his Parliament, this right was much discountenanced; and it was, therefore, declared by the Bill of Rights: "That it is the right of the subjects to petition the King, and that all commitments and prosecutions for such petitioning are illegal." This right is still a very important one. A few years ago, the property-tax was overthrown, chiefly by the petitions of the people to the House of Commons.

The rights we have now been stating, viz. those of printing and petitioning, invest the people with no actual power or authority. But

they are of infinite importance in controuling and guiding the executive power. The influence of a free press, however, has never been so thoroughly felt as during the present reign, and, therefore, till I come to that period, I shall defer any farther observation respecting it.

We come next to religious liberty, upon which subject the authors of the Revolution did as much as they could, and by their maxims laid the foundation of much more.

We have seen how little of the spirit of charity and forbearance mixed with the reformation of Henry VIII. It is painful to think that Cranmer continued the same severity during the short reign of Edward, and that an unfortunate woman was burnt for some incomprehensible refinement respecting a mystery of our faith.

When the papal power was for the second time overthrown by the accession of Elizabeth, no progress was made towards the establishment of religious liberty. From this time dates the great schism amongst the English protestants, known, according to their respective parties, by the names of Puritans and Conformists. A con-



gregation of refugees, settled at Frankfort in the reign of Queen Mary, omitted in their worship the Litany and some other parts of King Edward's liturgy. A Dr. Coxe arriving there from England, interrupted the service by a loud response. After some contest, and some expedients not quite worthy of the cause of religion, he succeeded in driving his opponents from the place, and establishing the liturgy of Edward. Other congregations, however, had made similar reforms, and when the exiles returned to England, there was an open difference between the Conformists, among whom were Cox, Grindal, Parker, &c. and the Puritans, who reckoned in their numbers, John Knox, Bale, Fox, the author of the Book of Martyrs, &c. The chief deviations introduced by the Puritans, in practice, respected the use of the surplice, the cope, the cross in baptism, and kneeling at the communion; but in principle there was a much wider schism. The conformists acknowledged the church of Rome as a true church, though corrupted; and they maintained that the King, as supreme head of the church, had authority to correct all abuses of order and worship. The Puritans

abjured the church of Rome altogether, and contended that it belonged not to the King, but to assemblies of the reformed clergy, to pronounce upon doctrine and worship.\*

It is not surprising that Elizabeth warmly espoused the cause of the Conformists. Naturally inclined to the splendours of the Roman Catholic service, and fully impressed with the value of her authority in the church as well as in the state, she proceeded to punish the unsuccessful sect. In doing this, she acted upon a principle common to both sides — that an uniform faith, and an uniform church were absolutely necessary. Conformably to these notions, she obtained an act of Parliament for instituting a court of High Commission, and invested them with powers of fine and imprisonment, which the law had not granted. She offered bishopricks to Miles, Coverdale, Knox, and others of the puritan faith, but nothing could shake their constancy. Many of the most upright reformers attested their sincerity by their deaths. Barrowe,

\* Neale's History of the Puritans, vol. i. p. 144. See note (G) at the end of the volume.

Greenwood, and Penry, were amongst the most distinguished of the reformers capitally punished for their religious or ecclesiastical faith.

James I. gave, very soon after his accession, a sufficient warning that he was an enemy to toleration. For having appointed a conference at Hampton Court between the Conformists and the Puritans, he took upon himself to manage the controversy for the former, and after three days' dispute amidst the applause and flattery of the established clergy, he turned to his opponents, and said, "If this be all your party have to object to the established religion of this kingdom, I will make them conform, or expel them out of the land."

He was as good as his word. The court of High Commission required the dissenters to appear before them, and to affirm solemnly upon oath that which they could not conscientiously believe. Ruinous fines and long imprisonments were the penalties of disobedience. One person, accused of denying the divinity of Christ, and another charged with sixteen heretical opinions, were burnt alive.

Cromwell was raised by a sect, which the first in England, perhaps in Europe, made toleration a part of its doctrine. But it was a toleration of opinions, like the presbyterian toleration of vestments, intended chiefly for their own convenience. Cromwell himself, who probably carried as far as any man of his day a wish for indulgence, yet in the Instrument of Government, after a solemn declaration in favour of religious liberty, finishes the article by expressly excluding papists and prelatists from the benefit of the general freedom. Thus with liberality in profession, the law, in fact, authorises persecution.

The declaration of Charles II. from Breda, offered new hopes of a mild and conciliatory system. But such hopes were grievously thwarted by the laws passed soon after his accession. Those who attended any meeting for religious purposes "in any other manner than was allowed by the liturgy or practice of the church of England," were punished for the first offence by 5*l.* fine and three months imprisonment; for the second by 10*l.* fine and six months' imprisonment; and for the third by transportation, and



death in case of return.\* By the Five Mile Act, dissenting clergymen were forbidden to preach within five miles of a market-town. During the last years of Charles, the laws against the dissenters were rigorously enforced.

At length by the act of 1 William and Mary, c. 18. intituled "An Act for exempting their Majesties' Protestant subjects, dissenting from the Church of England from the penalties of certain laws," commonly called the Toleration Act, all persons who took the oaths of allegiance and supremacy, and subscribed the declaration against popery, were exempted from penalties; and meeting houses regularly registered, provided the service was performed with doors unlocked, were permitted. Since that time the presbyterians of England have been allowed to perform their worship in the manner which they think most acceptable to God. At the same period an attempt was renewed which had been made in the reign of Charles II. to bring about a reconciliation between the conformists and dissenters. In this

\* See note (H) at the end of the volume.

pious work called the Comprehension, Tillotson and Burnet took an earnest and christian share. They proposed to amend the liturgy in several points; to divide the services; to leave out parts of the prayers which had given offence, and by a few wise and reasonable concessions, to restore to the church a large multitude of her banished children. Articles for this purpose were prepared; but the clergy, in convocation, defeated these benevolent schemes, and insisted on exclusion and discord.

Amongst the concessions made to religious liberty, there were none in favour of the Roman Catholics. On the contrary, new laws were passed, of excessive severity, tending to render the Roman Catholics poor and ignorant, thus shutting them out, not only from all power, but from all the avenues to power, and making them, as it were, slaves among a nation of freemen. Yet it must not be supposed that a nation so humane as the English, acted in this harsh and unusual bitterness without deep provocation. The reigns of Elizabeth, of James I., of Charles II., and of James II., had been disturbed by plots, more or less sanguinary, some

using as their means the assassination of the sovereign, others the introduction of a foreign army, but all tending to extinguish the liberties, and subdue the independence, of England. Whether the precautions adopted by the English Parliament were wise I will not decide; but I am clearly of opinion they were just.

Under the head of Personal Liberty should be placed eligibility to offices civil and military. The policy of the great states of the world has been often narrow, illiberal, and unjust, upon this branch of true freedom. Rome excluded for centuries her plebeian genius and valour from the rewards due to distinguished services. Modern France, at first by custom of administration, and afterwards by positive edict, closed the door of military eminence to all ambition that was not of noble descent. Venice gave the command of her fleet to her patricians, and of her armies to strangers. England rejects all these odious distinctions of rank and birth. The ploughman's son may climb to the command of her military and naval forces, to the post of Lord High Chancellor, or the dignity of Archbishop of Canterbury. In a well-known con-

ference between the Lords and Commons, it is stated, by Lord Somers, and other managers on the part of the Lords, that there can scarcely be a more unhappy condition for an Englishman, than to be rendered incapable of serving his country in any civil or military office. At that time Protestant Dissenters were excluded from office by the Test and Corporation Acts. Since that time they have been tacitly admitted, by an Indemnity Bill passed every year, in favour of those who have omitted to take the oaths. Of the Roman Catholics I have already spoken.

## CHAP. XIV.

## POLITICAL LIBERTY.

I believe the love of political liberty is *not* an error; but, if it is one, I am sure I shall never be converted from it, and I hope you never will. If it be an illusion, it is one that has brought forth more of the best qualities and exertions of the human mind than all other causes put together; and it serves to give an interest in the affairs of the world, which without it would be insipid.

Fox, *Letter to one of his Friends.*

THE two kinds of liberty of which we have spoken, viz. civil and personal liberty, have existed to a certain degree in states which we usually term despotic. The monarchies of modern Europe have all been more or less governed by fixed laws, deriving their sanction from prescription. The monarchy of Prussia, which is altogether unlimited, allowed, from the time of Frederick II. great latitude of religious and political discussion.

As long, however, as the supreme power of the state is placed in the hands of one or many

over whom the people have no controul, the tenure of civil and personal liberty must be frail and uncertain. The only efficient remedy against oppression is for the people to retain a share of that supreme power in their own possession. This is called political liberty. And what is called a love of liberty means the wish that a man has to have a voice in the disposal of his own property, and in the formation of the laws by which his natural freedom is to be restrained. It is a passion inspired, as Sidney truly says, by Nature herself. In the manner of exercising this power, and satisfying this desire of the people, and in the portion of controul retained by them, free states have differed; and in these forms consist their respective constitutions. Authors who have written upon these subjects have distinguished three powers, viz. the Legislative, the Judicial, and the Executive. These powers, they maintain, ought to be separated. They never have been, and never can be so thoroughly. The judicial, indeed, which, properly exercised, means nothing more than applying general rules or laws to particular cases, without any discretion, may be



so separated: and we have already seen, that in the English Constitution this division has been very wisely and effectually made. The judicial power is in England independent and unconnected with any political subserviency.

The two other powers may be properly called the Executive and the Deliberative. The term Legislative implies merely making laws, which in no state that I remember has been totally disjoined from the Executive. These two powers are in fact, in every constitution, continually influencing and acting upon each other. The deliberative power in England is lodged in three authorities, one of which is chosen by the people themselves. Of representation, generally, we have already spoken.

Nothing is of more importance to a state, however, than to place in hands, worthy to hold it, the power of negotiating treaties; of deciding upon foreign relations; of directing in time of war the operations of fleets and armies; and, in short, all that is called the Executive Power. This power has been generally disposed of in one of two ways.

The first is that of putting it into the hands of one person, called an Emperor, Sultan, or King, without any controul. The obvious disadvantage of this mode is, that talent is not hereditary, and, as it was well put by Lord Halifax, "no man chooses a coachman because his father was a coachman before him." It is a necessary consequence of this form of government, that the peace and security of the state entirely depend upon one ill-educated man. For it is extremely difficult, if not impossible, that a king should receive a good education. All his passions and all his follies are indulged; his ignorance is called genius, and his imbecillity wisdom. But, above all, no object can be offered to him that can excite labour or emulation. Other men, whether nobles or ploughmen, can only be distinguished from amongst their equals by the excellence of their moral character, the superiority of their talents, or the advantages they have derived from industry. But a King, without any exertion, moral or intellectual, is placed above every one. Hence, in utter dearth of all useful ambition, he tries to be celebrated by drinking, or fiddling,

or some other art of easy attainment; or else, which is much worse, he aims at fame by commanding armies, and destroying provinces. The state, in the mean while, totally under his guidance, becomes weak with his weakness, vicious with his vice, poor with his extravagance, and wretched from his ambition. Absolute monarchy, then, is a scheme for making one man worse than the rest of the nation, and then placing the whole nation under his guidance.

The other method of government, which is at least more plausible, is that of putting the executive power in the hands of a citizen elected to that office for a certain period of time, and subject to the controul of the people at large.

The inconvenience of this method is, that men who have once held great power of this kind, and who have become in undisputed pre-eminence the first men in the state, naturally wish to retain their power for a longer time than it was granted, and even for their lives. Even if they unite what is very seldom united, a desire of performing great actions with a just fear of infringing the liberties of their country,

yet the minds of men are naturally so suspicious, that, no sooner has a citizen raised himself above his fellows, than they suspect him of a desire of making himself absolute. On one or other of these rocks nearly all democracies have split. Athens banished her best citizens by the ostracism. Rome drove from her Camillus, Coriolanus, Marius, and, above all, Scipio. She fell at last a victim to Cæsar's military power, and his ambition to be King. Holland, after numerous contentions, sunk at last under the sovereignty of the Prince of Orange. Sparta and Venice are mentioned by Machiavel as exceptions to the general rule. But Venice also bought her security dear; for it was only obtained by a custom of excluding from military command all her own citizens, and giving to strangers the richest prizes a state has to bestow. The method adopted by Sparta was somewhat similar to that of England, to which we shall now pass.

The executive power of England is placed nominally in the hands of an hereditary King. His powers are known and defined by law, and are therefore less liable to be exceeded than



those of any extraordinary office not known to the constitution. This was the argument most ably urged by Whitelocke and his coadjutors to the Protector Cromwell, to induce him to accept the title of King.\* At the same time the current of law, and the established reverence paid to majesty, form a complete estoppel to any great man who might wish to make himself absolute. So confirmed is public opinion, that a great general never dreams of overthrowing the liberties of his country. The Duke of Marlborough was dismissed from his command as easily as an ensign, and the Duke of Wellington returned from all his victories and pre-eminencies to occupy an office of little importance in a cabinet, not distinguished by any singular popularity or commanding genius.

But whilst the King's prerogative forms on the one side an almost invincible barrier to the ambition of any subject, who might wish to become sovereign of the state in which he was born a citizen, it is on the other side, quite open to the general controul of the people.

\* See the conferences on this subject. They are to be found in the parliamentary history.

Thus the King has, by his prerogative, the command of the army, but that army is only maintained by virtue of a law to punish mutiny and desertion, passed from year to year. The King has a right to declare war; but if the House of Commons deny supplies, he cannot carry it on for a week. The King may make a treaty of peace, but if it is dishonourable to the country, the ministers who signed it may be impeached. Nor is the King's personal command any excuse for a wrong administration of power. The Earl of Danby was impeached for a letter which contained a postscript in the King's own hand, declaring it was written by his order. The maxim of the constitution is, that the King cannot act without legal advisers. And so far is this maxim carried, that a commitment by the King, although he is the fountain of justice, was held to be void, because there was no minister responsible for it.

From the doctrine of the responsibility of ministers, it follows that they ought to enjoy the confidence of the Commons. Otherwise their measures will be thwarted, their promises will be distrusted, and finding all their steps



obstructed, their efforts will be directed to the overthrow of the constitution. This actually happened in the reign of Charles I. and Charles II. There was but one mode of preventing a recurrence of the same evil. It was by giving to the King a revenue so limited, that he should always be obliged to assemble his Parliament to carry on the ordinary expences of his government. On this point, more important than any provision of the Bill of Rights, a warm contest took place in the House of Commons. The Tories, wishing to please the new King, argued, against all justice and reason, that the revenue which had been given to James for his life, belonged *de jure* to William for his life. The Whigs successfully resisted this pretension, and passed a vote, granting 420,000*l.* to the King, by monthly payments. The Commons soon afterwards had all the accounts of King James's reign laid before them. It appeared that his government, without any war, cost on an average 1,700,000*l.* a-year; a revenue of 1,200,000*l.* a-year was given to William, with the expences and debt of a formidable war to be provided for.

By this arrangement, the crown was made dependent on Parliament ever after. Without even offering any advice, by a mere symptom of an intention to stop the supplies, the whole system of the King might be defeated, and his ministers dismissed from the council-board. Hence the House of Commons has the power to controul most certainly and effectually the acts of the supreme magistrate. Whatever struggles have been made since, have been made within the House of Commons. Ambitious men, instead of attempting, according to their several views, to abolish the monarchy, or dispense with Parliaments, have either sought to reach the King's closet through the favour of the people's representatives, or to serve the crown by corrupting that assembly with the allurements of influence, and poisoning the sources from which their authority was derived. And whatever may have been said of the prevalence of the latter of these methods of government, it is certain that, after the revolution, power was retained longest by those statesmen whose political principles were stamped by the approbation of their country. A friend of

liberty was no longer forced to the alternative of defying the authority of his sovereign, or perishing by the axe of the executioner; the same sentiments which he had spoken to the people, he was able to repeat to the King; and the same measures which he had recommended as an individual member of Parliament, he was afterwards empowered to propose, as the adviser of his sovereign. Thus harmony was produced between the different, and hitherto jarring parts of our constitution; while the means by which that harmony was attained gave, at the same time, a vent to emulation, liberty to the people, authority to Parliament, and stability to the throne. Thus the great principles of English liberty were brought into action after the revolution of 1688, whose authors, unambitious of the fame of founding a new form of government, obtained the nation the full benefit of those rights and liberties, for which their ancestors and themselves had toiled and suffered. Thus this great work was at once a lesson to the great to avoid oppression, and to the people to practise moderation.

We have now gone through the different

parts of that form of government which some bigoted and paradoxical men have had the conceit to undervalue. Those who have been shaken by nothing that they have read in history, and who still maintain that liberty cannot flourish under our barbarous and feudal monarchy, may yet perhaps be struck by the following passage from an impartial judge.

M. de Talleyrand, in speaking of America, after remarking the partiality which the Americans entertained for English maxims and manners, goes on thus:—"Nor should one be astonished to find this assimilation towards England in a country, the distinguishing features of whose form of government, whether in the federal union, or in the separate States, are impressed with so strong a resemblance to the great lineaments of the English constitution. Upon what does individual liberty rest at this day in America? Upon the same foundations as English liberty; upon the Habeas Corpus and the trial by jury. Assist at the sittings of Congress, and at those of the legislatures of the separate States; attend to the discussions in the framing of national laws: whence are taken their

quotations, their analogies, their examples? From the English laws; from the customs of Great Britain; from the rules of Parliament. Enter into the courts of justice: what authorities do they cite? The statutes, the judgments, the decisions of the English courts. To no purpose do the names of republic and of monarchy appear to place between the two governments distinctions which it is not allowable to confound: it is clear to every man who examines his ideas to the bottom, that in the representative constitution of England, there is something republican; as there is something monarchical in the executive power of the Americans."

## CHAP. XV.

## LAWYERS.

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Rex sub lege.

BRACTON.

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AMONGST other cavillings at the practice of our constitution, there has been raised a cry against the influence of lawyers. From the earliest times, however, that influence has been felt, and felt most beneficially for the country. Bracton, who was a judge in the reign of Henry III., and much more Fortescue, who was chief justice in that of Henry VI., are among the earliest authorities in favour of the liberties of the country. In the beginning of the contest with the Stuarts, the names of Coke and Selden appear with auspicious lustre on the side of freedom. In the second contest with the Stuarts, amongst a host of lawyers, with the venerable Sergeant Maynard at their head, appears the virtuous, the temperate, the



wise and venerated Somers. From him we pass to Lord Cowper, a Whig chancellor, who yet opposed the bill of pains and penalties against Atterbury, as an unnecessary violation of justice. The next in succession, as a friend to liberty, is Lord Camden, who, by his admirable judgments on the question of general warrants, and on libel, saved the country from the slavish doctrines with which it was threatened to be inundated.

In the House of Commons the members who have taken a chief part in the debates have generally been lawyers. This is the natural result of their habits of speaking, and we see them on one side of the House as well as on the other. On the side of freedom we may reckon a series containing many bright names that began before Lord Coke, and has been continued after Dunning.

It were needless to come down any lower, were it not that I should be sorry to omit any opportunity of expressing my admiration for that great genius whose sword and buckler protected justice and freedom, during the disastrous period of the French Revolution. Defended by him, the government found, in the meanest in-

dividual whom they attacked, the tongue and the soul of Hampden, an invincible orator, and an undaunted patriot. May the recollection of those contests, and those triumphs, brighten the last days of this illustrious man, and kindle those who have embraced the same studies to seek for a similar inspiration!

Such instances might persuade us that the study of the law, by giving men a better knowledge of their rights, gives them a stronger desire to preserve them, and by affording them a nearer view of our constitution, enables them the better to appreciate and cherish its excellencies. Unfortunately, however, there are instances on the other side, of men who, attracted by the brilliant rewards in the profession of the law, which the Crown has to give, have made themselves the tools of tyranny and corruption. But this is by no means an exclusive attribute of lawyers. The mean Lord Strafford, who sold his country for an office and a peerage, was a country gentleman; and the false Lord Bolingbroke, who betrayed his benefactor, and endeavoured to restore a race of despots, which the nation had proscribed, was a wit and a man of fashion.

## CHAP. XVI.

## PARTY. — REIGN OF QUEEN ANNE.

Party is a body of men united, for promoting, by their joint endeavours, the national interest, upon some particular principle, in which they are all agreed. Men thinking freely, will, in particular instances, think differently. But still, as the greater part of the measures which arise in the course of public business are related to, or dependent on, some great *leading general principles in government*, a man must be peculiarly unfortunate in the choice of his political company if he does not agree with them, at least nine times in ten. And this is all that ever was required for a character of the greatest uniformity and steadiness in connection. How men can proceed without connection at all, is to me utterly incomprehensible. Of what sort of materials must that man be made, how must he be tempered and put together, who can sit whole years in Parliament, with five hundred and fifty of his fellow-citizens, amidst the storm of such tempestuous passions, in the sharp conflict of so many wits and tempers, and characters, in the agitation of such mighty questions, in the discussion of such vast and ponderous interests, without seeing any one sort of men, whose character, conduct, or disposition, would lead him to associate himself with them, to aid and be aided in any one system of public utility?

BURKE.

THE reign of Queen Anne is as remarkable for the violent contentions as that of George I. is for the complete ascendancy of party. It is

worth while to consider the effects both of the contention and the triumph. Let us, first, however, endeavour, in a few words, to explain the existence of party, and to vindicate the integrity of those who avow that they belong to party. The general defence, indeed, may be left where Mr. Burke has placed it. There can be nothing more striking, or more sound, than his writings on this subject. But although his reasoning never has, and never can be answered, a certain degree of favour still attends the man who declares himself not to belong to party; as if he were clearing himself from the imputation of dishonesty or selfishness.

The division of England into two great parties began, as I conceive, and still continues, in consequence of wide and irreconcilable differences of opinion.

The Tories look upon the exaltation of the Crown as the favourite object of the State. Allowing, as they now do, perhaps, that the King is entrusted with his power for the public good, they yet think that public good requires he should be unfettered in the exercise of his



prerogative, so far as the law permits. While he remains within the legal bounds assigned to him, they are extremely unwilling to controul his power. If he steps beyond them, or places the country in great danger, they are ready to oppose the Crown by their votes in Parliament, or in any other legal manner. It follows from their doctrine, however, that their tendency always is to support the King in the first place, in all his measures, and to refuse their sanction only when those measures have placed the country in peril so imminent, that they are obliged reluctantly to disclose their own opinions.

The Whigs look towards the people, whose welfare is the end and object of all government. They maintain, that as the King's advisers are responsible for his measures, it is the duty of Parliament to examine and pronounce whether those measures are wise and salutary. They are, therefore, ready to interfere with any exercise of the prerogative, which they think unwise or improper; and to insist (too haughtily, perhaps, at times) upon the adoption of that line of policy which they consider

as best adapted to the wants and state of the country.

Such appears to me a just general representation of Whig and Tory opinions. I know that the Tory doctrine is not now so much avowed as formerly, but it animates more than ever, if possible, the views and conduct of that party.

If I have made a fair statement, it was inevitable that the two parties should separate, and remain divided.

Let me now suppose a young member of Parliament coming to London at the beginning of the reign of Queen Anne. He adopts, if you please, the general opinions of the Tories. He votes generally, but not always, with that party. He naturally becomes acquainted with some of them. He talks over the questions that are coming on for some time before.—These conversations lead to a more intimate union: his opinions are listened to, and his doubts melt away in the course of amicable discussion. Sometimes, when the measure is one of party policy rather than of principle, he surrenders his own opinion to that of the states-



men most respected by the society of which he is a member. He thinks it more probable that several able, and a large body of patriotic men, *arguing from the same principles as himself*, should form a right decision, than that he alone in the whole House of Commons should, from given general principles, have derived a true conclusion. He is, in short, a party man. Thus it is, that without any violation of conscience party is formed, and consolidated, and men acquire that kind of "*esprit monacal*" which, according to the remark of a very sagacious foreigner\*, prevails in the political confederacies of England.

Let us now proceed to the effects of party contests.

Among the bad effects of party is to be reckoned the want of candour it necessarily produces. Few men can enter into the heat of political contention, backed by a body of friends, who animate and support each other, without attributing to their adversaries intentions and motives of which they are no more capable than themselves.

\* The Abbé Galiani.

Another evil is, that men become unwilling to give way to the natural bent of their minds, when their opinions would lead them to admit any error upon which their adversaries have insisted, or might render them liable to reproach for weakness and inconsistency. Obstinacy in supporting wrong, because an admission of what was right and true would give a triumph to his adversary, has led many a minister of England into a course most injurious for the country.

In attributing this evil to party, I by no means intend to lay upon the same cause the blame of the exaggeration which accompanies political discussion. Such exaggeration I believe to be inevitable. It is true, indeed, that every statesman has often occasion to weigh with some degree of doubt the reasons for or against a measure which he afterwards supports or opposes, with as much warmth and confidence, as if there could not be two opinions on the subject; but it does not follow that it would be right or useful to produce in public all the arguments which have gone through his mind before he came to a decision.

What would be the effect, for instance, of the speech of a minister proposing an address in support of a new war, who should lay a stress upon the hazards it would be attended with, and the new burthens it must infallibly produce? Nothing, it is evident, but discouragement, and perhaps a disgraceful treaty. For the slightest words which a man lets fall in opposition to his ultimate opinion, are of more weight against that opinion than the strongest arguments he can use in its favour. Those who agree with him are all disheartened, and those who differ from him are all encouraged. Nor does this proceed from the factitious spirit of party, but from nature herself. Human affairs are so constituted, that the truth scarcely ever lies entirely on one side; and the human mind is so formed, that it must either embrace one side only, or sink into inaction.

Nor do I impute to party the corruption by which votes in Parliament are obtained. Some persons, I know, imagine that the minister has recourse to corruption only because it is necessary to strengthen himself against the Opposition. But it is evident that, in a free govern-

ment like ours, the ministers will always make use of the influence of money and patronage that is in their hands to procure themselves adherents. For a minister knows very well that he must have adherents. He cannot reasonably found his administration on the support which he may be able to obtain by his arguments in favour of each particular measure. Now of the two ways of procuring adherents, — the attachment of interest, and that of party, — party is by far the best. Many a man, I fear, would abandon his opinions, and fall off from his principles, for the sake of office, who yet will not desert a party to which he is engaged by passion and affection as well as by reason.

Party, therefore, instead of being the cause of corrupt and undue influence, is often a substitute for it. Some, indeed, think it possible that the world may be governed by pure intention and the force of argument only. But it is well said by Mr. Wilberforce, when speaking of religion, "Man is not a being of mere intellect. *Video meliora proboque; deteriora sequor*," is a complaint which, alas! we might all of us daily utter. The slightest solicitation of appetite is



often able to draw us to act in opposition to our clearest judgment, our highest interests, and most resolute determination." "These observations," proceeds the enlightened author, "hold equally in every instance according to its measure, wherein there is a call for laborious, painful, and continued exertions, from which we are likely to be deterred by obstacles, or seduced by the solicitation of pleasure. What, then, is to be done in the case of any such arduous and necessary undertaking? The answer is obvious:—You should endeavour not only to convince the understanding, but also to affect the heart; and for this end you must secure the reinforcement of the passions."\*

The good effects of party in this country are numerous and weighty. One of them is what I have just mentioned, that it gives a substance to the shadowy opinions of politicians, and attaches them permanently to steady and lasting principles. The true party man finds in his own mind certain general rules of

politics, like the general rules of morals, by which he decides every new and doubtful case. The belief that those principles are just, enables him to withstand the seductions of interest, and the ingenuity of projects: his conduct acquires somewhat of the firmness of integrity and wisdom.

The union of many in the same views enables the party to carry measures which would not otherwise gain attention. There is many a proposition eminently useful, yet not calculated to catch popular favour, which by the stout and strong working of a party at length becomes law. The waggon arrives at last at its destination; but a loose horse will probably return to the place from which he set out.

The greatest benefit of all that is conferred by party is, perhaps, that it embodies the various opinions of the nation for the time being. Those opinions are at times so violent, that had they not a vent in Parliament they would break the machine to pieces. Happily the people, when they overturned Sir Robert Walpole, placed confidence (a confidence little justified,

\* Wilberforce's Practical View of Christianity, p. 60.



perhaps) in his opponents; and when Lord North appeared to have ruined every thing, the nation looked for safety to Lord Rockingham and Mr. Fox. There may be a revolution in this country; but it is hardly possible that the country should not first try what may be done by a change of counsels. The change, indeed, may be too late to be effectual.

In reckoning up the bad effects of party, I have not spoken of the animosities and violent contentions it produces. Mock philosophers, sentimental women, and effeminate men, are always making lamentations over political divisions, and contested elections.

Men of noble minds know that they are the workshop of national liberty, and national prosperity.

It is from the heat and hammering of the stithy that freedom receives its form, its temper, and its strength.

Let us now proceed to the history of the two parties from the Revolution to the reign of George I.

We have seen that the Whigs refused to grant King William a permanent income that might

render him independent of his people; and he dissolved the Parliament in 1690 with some disgust. The next House of Commons was a Tory one; and Sir John Trevor, a violent Tory, was made First Commissioner of the Treasury. He undertook to distribute bribes in such a manner as to secure the votes of the majority; being the first systematic corruption after the Revolution. Trevor was afterwards punished for bribery in a question relating to the Orphans Bill. There arose at this time a violent struggle between the Whigs and Tories for the favour of the King, and the confidence of the people. The dismissal of Monmouth and Warrington attested and established the success of the Tories. They were supported by the small proprietors of land and the gentry of the country, who feared a bias to innovation on the part of the Whigs both in politics and religion. On the other hand, the Whigs were esteemed by the people as having been the original opposers of arbitrary power, and had the credit, as well as the responsibility, of the new settlement. In order to support it, they came forward with their wealth in a time of embarrassment,

and also prevailed upon their friends in the city, which was then, as in former times, a stronghold of liberty, to lend largely to the Government. By these means, the Whigs attached men of great wealth to the establishment, and distinguished themselves to their advantage from the Tories, who were unwilling, or unable, to advance considerable sums. Hence the King, who had placed his confidence in Ranelagh, Rochester, and Seymour, afterwards discovered an inclination to trust the Whigs, placed Somers and Shrewsbury in high situations, and gave his tardy consent to the Triennial Bill. After the peace of Riswick, the Whigs defended the maintaining of the Dutch Guards, in which perhaps they were right, though the line they took exposed them to much popular odium. The defeat of this favourite wish of our deliverer is a proof how extremely weak the royal authority was at this period. It would not be so easy perhaps to defend the Whig party in their transactions respecting a new East India Company. Still less can they escape blame for having suffered in silence the conclusion of the treaty of partition. By this treaty, William

imprudently trusted himself to the faith of the French King, and unwarrantably disposed of the whole of the Spanish monarchy during the life of the reigning sovereign. The partition, thus previously arranged, at once provoked the Spaniards and enraged the Emperor. It was rash in policy, unfounded in justice, and impracticable in execution. With arms thus imprudently furnished by their adversaries, the country party violently attacked the Whigs in the House of Commons: Orford and Somers were removed and disgraced: a Tory ministry was established, and was the last of King William.

Queen Anne came to the throne with violent prejudices in favour of Tory politics, both in church and state, and severe bills against occasional conformity were received with applause by a House of Commons composed chiefly of that party. But the natural inclinations of the Queen yielded to the advice of Marlborough, who, though himself a Tory, became convinced that Lord Rochester would not actively support the war, and that the Whigs alone



sympathized with the sentiments of King William, as expressed in the last speech that he delivered to his Parliament. Feeling that a vigorous opposition to the arms of Louis XIV. could alone save the liberties of Europe, Marlborough advised his mistress to give her countenance to the Whig party. Lord Cowper was made Chancellor; but still the Queen consented, with great reluctance, to the admission into her councils of persons whose politics she detested; and year after year passed in struggles at court to obtain the higher offices of state for Sunderland and Somers. It would not be just to ascribe these demands of the Whig leaders to the mere love of office: their ambition was of a higher kind. They aspired to rule the state according to their own system of policy, and they found that all their efforts were thwarted by the wilful negligence of the Tories, who filled less conspicuous places in the administration. Godolphin tells us, that there was not a Tory in any ministerial office who did not require to be spoken to ten times over before he would execute any

thing that had been ordered, and then it was done with all the difficulty and slowness imaginable. This remark certainly goes far to justify the importunity of the Whigs to remove Sir C. Hedges from the post of Secretary of State, in order to give him a more permanent and profitable but less responsible office.\*

The Whigs held their power by a precarious tenure. The Queen, originally adverse to them, was rendered implacable by their haughty invasion of the cabinet; and she was daily excited to little acts of hostility by Mrs. Masham, who had succeeded the Duchess of Marlborough in the friendship and the government of her weak head and ignoble heart. There needed only a popular or plausible occasion for discarding the General who rendered the name of England illustrious by his victories, and the statesman whose reputation was founded equally on his wisdom and his love of liberty. Marlborough and Somers fell: Harley and St. John appeared: it is thus that when the statues of gods and

\* See Conduct of the Duchess of Marlborough. Coxe's Life of Marlborough.



heroes are thrown down, snakes and reptiles are obtruded into light.

It must be owned, however, that the Whigs gave a handle to the designs of their enemies. The trial of Dr. Sacheverel was needless and imprudent. Under an established government it was not exceedingly wise to proclaim aloud the doctrine of resistance; nor could there be any great danger in leaving a clergyman of no great station to vaunt his absurdities unmolested. The solemnity of an impeachment, the marshalling of all the forces of the state against a private individual, could not fail to excite afresh that cry in favour of the High Church to which the people have been so much inclined at various times in our history, and which ought to have been allowed to sleep in peace. In consequence of the popularity of Sacheverel, and the well-known opinion of the Queen, a House of Commons was obtained completely favourable to the Tories. And here begins the history of those last four years of Queen Anne, in which the press was restrained, intolerance favoured, our allies deserted, our enemies encouraged, a disadvantageous peace concluded;

and had not Queen Anne died, the Elector of Hanover might never have been able to ascend the throne, to which the Act of Settlement had called him.

We have now gone over the struggles of party during the reigns of the first two sovereigns who reigned after the Revolution. They were times in which political integrity was rare, and political animosities violent, but the people was admitted as an umpire between the contending armies; and, upon the whole, the rise and fall of each seems to have been proportioned to its merits. In so saying, I must except the elevation of Harley and of St. John: men who were base enough to flatter Marlborough for the purpose of lulling and supplanting him, ought to have remained in the obscurity in which they were originally placed. With this exception, however, the contest between the two parties was a contest between two lines of policy, in which the welfare of the state was involved, and between two great principles, on one or other of which the foundations of the English government must be made to depend. Men of great talents, vast property, and long experience,

distinguished themselves on one side or the other; and whichever the nation leant to, more practical liberty, more personal security, and more tranquillity from religious persecution, (not to mention fame and consideration abroad,) were enjoyed by the people than had ever been known in England.

## CHAP. XVII.

### IMPEACHMENT.—BILLS OF PAINS AND PENALTIES.

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The Parliament have also power to punish any who judge for man and not for the Lord; who respect persons or take gifts, or any way misdemean themselves in their offices.

WHITELOCKE, *Notes on the King's Writ.*

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It is absolutely necessary to the preservation of an established form of government, that there should exist a legal method of bringing to punishment those who endeavour to subvert it. For this reason the executive magistrate is always entrusted with the means of proceeding to a trial against persons who conspire against his or their lawful authority. Nor is it of any avail to the rebel, to say that, if he had succeeded, he should then have been possessed of the autho-

city of the state: it is very true that he would; it may be true that he would have exercised it better; but until the government is dissolved, it must, to prevent anarchy, inflict severe punishments on those who stand out in open insurrection against it.

In the same way, and for the same reasons, there must exist in a free state a method of accusing those persons who have abused the authority confided to them for the purpose of usurping undue power, or corrupting the citizens, or obtaining ends adverse to the general interest of the community. In this case the discretionary power of proceeding to trial cannot rest with the executive magistrate; for he is generally the party complained of: it must reside in the popular branch of the state. It is therefore wisely provided in our government, that the House of Commons should have the right of impeachment. This extraordinary power, thus confided to the representatives of the people, enables them to denounce, as guilty of high treason, all who shall violate the law upon this subject. It enables them to denounce, as guilty of high crimes and misde-

meanors, all ministers of state whose conduct is injurious to the interest of the nation. Some very narrow-minded men, I know, have maintained that an impeachment can only lie against an indictable offence; but this doctrine is in plain contradiction to three out of four of the impeachments which have been brought forward. To take one instance only:—In the case of the ministers who signed the Treaty of Partition at Utrecht, the House of Commons resolved on April 1. 1701, “That William earl of Portland, by negotiating and concluding the Treaty of Partition, (which was destructive to the trade of this kingdom, and dangerous to the peace of Europe,) is guilty and shall be impeached of high crimes and misdemeanours.”—Now what petty jury could take upon them to say that a treaty was destructive to the trade of England; or to bring in a verdict of guilty, on a charge of endangering the peace of Europe?

The same thing may be said of the impeachments against Oxford and Bolingbroke for signing the Treaty of Utrecht. Those who argue that impeachments can only be brought for an indictable offence, say, “it is true a jury





could not try these offences; but that is only an objection to the jurisdiction; every misconduct in office is a misdemeanour at common law." This answer, it is evident, is a mere evasion; it is only saying that every wrong is a misdemeanour, but that a great part of these misdemeanours can only be tried in Parliament.

It is impossible for the King to stop the progress of an impeachment. His pardon under the great seal cannot be pleaded in bar of trial. His prerogative of prorogation, and even of dissolution may suspend, but does not put an end to the proceedings. These two securities for justice were contended for during the trial of the Earl of Danby, in the reign of Charles II.; the first was established, at the Revolution, and the second confirmed during the impeachment of Mr. Hastings.

It is much more difficult, in a free state, to find impartial judges than to find courageous accusers. There can hardly be any body of men who are at once qualified to form an opinion on political questions, and who are not disqualified by having formed one before they are called upon to judge. This latter fault, it must be owned, is found in

our House of Lords. It is difficult, if not impossible, to bring a principal minister before them, on whose conduct they have not already pronounced judgment in their own minds. For this reason we find, that when the Lords are in favour of the accused, Lords and Commons generally conspire to produce a quarrel between the Houses, and thus avoid giving judgment. So it happened in the cases of Lord Danby, Lord Somers, and many others. The experience of later times has not made impeachments more easy in the trial, or more impartial in judgment. The impeachment of Hastings was a long punishment; and in the last case of impeachment the Lords were found to vote more from a sense of gratitude, or a sense of friendship, than a sense of justice; and some came to the decision without having heard a word of the evidence.

Bills of attainder and bills of pains and penalties, are of a very different nature from impeachments. They have been generally, if not always, used on occasions of great moment and urgency. Two circumstances seem to be requisite to all bills of this kind. First, That it is impossible

to convict the offender by due course of law. Secondly, That his escape would be in the highest degree injurious to the state. Great indeed must be the mischief that would arise from the impunity of a criminal, to overbalance the evil of shaking the common security of the subject, disturbing the regular course of justice, and affording an example of inflicting a punishment on one who cannot be convicted of a crime.

Examples of bills of attainder and bills of pains and penalties are unfortunately too numerous on our statute-book. But, in early times, bills of attainder, however unjust their operation in particular instances, had not the character they have at present. Originally, the high court of Parliament was not a court only in name, but was chiefly employed in deciding causes, and particularly in judging all the great criminals whose power placed them beyond the reach of a jury. The offences for which they were condemned were, however, offences of which a jury might legally have taken cognizance. Thus it was with the Spencers, the adherents of Richard III., and others. The reign of Henry VIII. opens to

us a more alarming scene. A bill of attainder was passed against Empson and Dudley, at the accession of that King, for the exactions they had used under the reign of his father. As these exactions had been sanctioned by an act of Parliament, there was surely great injustice in condemning those who had acted under it to a capital punishment. The act of attainder was also unnecessary; for Empson and Dudley had been previously convicted of treason at Guildhall, for an attempt to maintain themselves by force.\* So strong was the popular feeling against them, however, that they probably met with as little justice from a jury as from a parliament.

In the same reign of Henry VIII. Queen Catherine Howard was condemned to lose her head, by a bill of attainder, for incontinency before her marriage with the King. When the bill was in progress, the Lords, by the desire of Henry, sent a message to her, to ask her if she had any thing to say in her defence. She, however, confessed her guilt; and in those

\* State Trials. Burnet's Hist. Reformation.



times she did not think of complaining that she was to suffer death for a crime unknown to the laws.

In the year 1539, a most dangerous precedent was made. The Marchioness of Exeter and the Countess of Salisbury refusing to answer the accusation against them, were attainted by act of Parliament. "About the justice of doing this," says Burnet, "there was some debate; and to clear it, Cromwel sent for the judges, and asked their opinions, Whether a man might be attainted in Parliament, without being brought to make his answer? They said it was a dangerous question. That the Parliament ought to be an example to all inferior courts; and that when any person was charged with a crime, he, by the common rule of justice and equity should be heard to plead for himself. But the Parliament, being the supreme court of the nation, what way soever they proceeded, it must be good in law; and it could never be questioned whether the party was brought to answer or not."\* The precedent thus begun

\* Burnet, Hist. Ref. p. 265.

was made worse, as all bad precedents are, the following year. The person was, however, well chosen: it was Cromwel himself. Instead of declining to plead, he petitioned to be heard; but his request was refused, and an attainder passed on the mere assertion of his enemies.

Of the bill of attainder against Strafford I have before spoken with indignation. There can be no excuse for the manner in which the bill was forced through. It must be observed, however, that few cases of state-necessity can be imagined so strong as that which could be urged for the condemnation of Strafford. Yet some of the moderate among the Presbyterian party were for sparing his life; they were hurried on by others of a more bloody temperament. The bill of banishment against Clarendon had this strong foundation, that he had withdrawn himself from justice: this plea seems to me to be sufficient for such a punishment. Nor am I disposed to blame the act of attainder against Sir John Fenwick. A person accused of high treason, and about to be tried in the due course of law for that offence, who pretends he is going to reveal his treason, and takes advantage of



his fraud to spirit away a witness, seems to me to have removed himself beyond the pale of all rule of law and justice. He has endeavoured to defeat justice, at least as much as if he had himself gone beyond sea.

There is not so much to be said in favour of the bill of pains and penalties against Atterbury. It is said that Walpole could have brought evidence enough against him to have convicted him of high treason in a court of law. Whether he could have done so or not, it remains as a stain upon his memory for ever, that, for the purpose of banishing this busy priest, he should have induced Parliament to condemn him upon the evidence of letters not in his own hand, and after the death of the person supposed to have written them.

The protest signed by Lord Cowper and thirty-nine other peers on this occasion contains a sound and satisfactory doctrine on the subject of all bills of this nature.

"We are of opinion," say these Lords, "that no law ought to be passed on purpose to enact that any one be guilty in law, and punished as such, but where such an extraordinary proceed-

ing is evidently necessary for the preservation of the state."

"We clearly take it to be a very strong objection to this mode of proceeding, that rules of law made for the security of the subject, are of no use to him in it, and that the conclusion from hence is very strong; that, therefore, it ought not to be taken up, but where clearly necessary, as before affirmed; and we do desire to explain ourselves so far, upon the cases of necessity excepted, as to say we do not intend to include a necessity, arising purely from an impossibility of convicting any other way."

## CHAP. XVIII.

GEORGE THE FIRST, AND GEORGE THE SECOND.

I shall continue, during the short remainder of my life, most steadily attached to the ancient freedom of my country, (as it was practically enjoyed under those honest old gentlemen, George the First and Second), and your grateful servant,

JOHN HORNE TOOKE.

Mr. HORNE TOOKE's *Address to the Electors of Westminster*,  
June 26. 1802.

THE accession of George I. was the era when government by party was fully established in England. During the reign of William, Whigs and Tories had been employed together by the King; and although the distinctions of a Whig ministry and a Tory ministry were more decidedly marked during the reign of Anne, yet Marlborough and Godolphin, who formed great part of the strength of the Whig ministry, were Tories; and Harley and St. John, who put themselves at the head of the

Tory administration, had held, a short time before, subordinate offices under the Whigs. But the complete downfall of the Tory Administration, who had signed the peace of Utrecht, and the suspicion which attached to the whole party, that they favoured the claim of James II.'s son, against that of the House of Hanover, placed George I. entirely in the hands of the Whigs. At the same period, the financial difficulties which followed the winding up of the war, and the great practical talents of Walpole as a statesman, contributed to give a greater importance to the House of Commons than ever, and to place within that House, if I may so express myself, the centre of gravity of the state. Besides these causes, Speaker Onslow was of opinion, that much weight and authority were added to the House of Commons by the Septennial Act.

We now find, therefore, a party ruling the country through the House of Commons; a species of government which has been assailed with vehemence, with plausibility, eloquence, and wit, by Swift, and Bolingbroke, and the

whole party of Tories in the reigns of George I. and II.; by Lord Bute and the King's friends in the commencement of the late reign, and by a party of parliamentary reformers in our own time. The sum of their objection to it is this, — That it mixes and confounds the functions of the King with those of the House of Commons; that the King hereby loses his prerogative of choosing his own servants, and becomes a slave to his powerful subjects, whilst the House of Commons, by interfering in the executive government, open their door to corruption; and, instead of being the vigilant guardians of the public purse, become the accomplices of an ambitious oligarchy. Now this objection, if good, is fatal to our whole constitution; for we have seen, in reviewing the reign of Charles I., that a King whose servants are quite independent of Parliament, and a Parliament which is adverse to all abuses of power, cannot exist together: submission from one or other of the parties, or civil war, must ensue.

The question, then, for us to consider, is not whether the government of the two first Princes

of the House of Brunswick was a corruption of the English constitution, but whether it was upon the whole a good or an evil.

The first consideration that must strike us is, that, upon the whole, the liberty of the subject was secure. The chief exceptions to this remark are, the suspension of the *Habeas Corpus* Act on Laver's plot, and the attainder of Bishop Atterbury. Of the latter I have already spoken. The suspension of the *Habeas Corpus* Act on Laver's plot has always seemed to me unnecessary; but it must not be forgotten that all the chief Jacobites of England were at that time intriguing at Rome to bring in the Pretender.

Another remark nearly allied to the former is, that the triumph of party was not marked in England as it has been in nearly every republic that ever existed, ancient or modern, by a cruel and unsparing persecution of their adversaries. The history of the divisions of the parties of aristocracy and democracy in the minor states of Greece, — of the parties of Marius and Sylla, at Rome, — of the Guelfs and the Ghibelines, the Bianchi and the Neri, in Italy, — of the Catholics and the Hugonots in France, — is



a history of proscriptions, confiscations, massacres, and murders: but in the reign of the first Prince of the House of Hanover, although many of the Tories were known to be adverse to the protestant settlement, yet little was done against them, besides the banishment of Bolingbroke and Ormond. The temper of Walpole inclined him to leave his enemies alone. He knew of many who corresponded with the Pretender, of whom he took no notice. It is said that, one day, Wyndham, or Shippen, made a violent speech, which excited a murmur, and a cry of "Tower!" "Tower!" among his opponents. Sir Robert Walpole rose: "I know the honourable gentleman expects me to move that he be sent to the Tower; I shall disappoint his expectations, however, for I shall do no such thing."

The strength of Walpole's administration lying chiefly with the House of Lords and the aristocratic part of the country, he was enabled to carry on for many years a pacific system. Peace, at all times a blessing, was then most desirable. The politic union between the King of England and the Regent of France, took

away all the fears which had prevailed during the reign of Louis XIV., of overgrown ambition, and a king forced upon us by foreign powers. Upon the whole, the people had reason to be satisfied with their government under the administration of Walpole. Montesquieu and Voltaire, who have most contributed to spread an admiration of the English constitution over the Continent, and to hold it out as a fit model for imitation, took their notions of it from this period. At the same time there was a fault in the general course of Walpole's government, the most fatal of any to the permanence of a spirit of freedom in a nation. With the view of soothing the angry passions which disturbed the early part of his career, he gradually weakened, and had nearly extinguished, every large and liberal feeling in politics. To maintain "our happy establishment" was the sole end of his administration; an object which, however praiseworthy, was little calculated to excite vigour of thought, or energy of character. For this, however, no blame is justly imputable to him. What we may complain of, with truth is, that in his choice of means he showed a low

opinion of human nature, and addressed himself rather to the interested views of individuals, than to any public sense of the benefit of the whole. Thus he went on depraving the times in which he lived, and the times again depraving him, till the state was all festered with gangrene and corruption.

The administration of Walpole fell at last, however, chiefly by unjust clamours about merchant-ships, and a general impatience for change. No government can withstand a combination of the stupid and the foolish. In England the Tory party had always had the benefit of the weight and influence of the stupid part of the nation. The unlettered squires, with heads muddled by their own ale, embraced with cordiality the notion of the divine right of kings. Addison has given a perfect picture of one of them in a number of *The Freeholder*. His dog that has the sagacity to worry a dissenter, his complaints of trade and commerce, and his resolution to resist any government that is not for non-resistance, are characteristic of the Tory country-gentleman of that day. Even at the time of the dissolution of Walpole's

administration, Pulteney, in talking of the disposal of places said, that the Tories, not being men of calculation, or acquainted with foreign languages, did not pretend to the higher offices of the state. The Whigs, on the other hand, had in their origin derived some support from the folly of mankind. The wisdom of Somers, and the steady patriotism of Lord Cavendish, did not excite more enthusiasm than the handsome person of the Duke of Monmouth; and the story of the warming-pan brought as many, if not more adherents to their cause, than the *Habeas Corpus* Act and the Bill of Rights. The foolish were, however, naturally estranged from Walpole by his calm conduct, and the unpretending wisdom of his measures. They united themselves with the stupid, and formed, as might have been expected, an overwhelming majority in the nation.

It is astonishing to see, after twenty-five years of power, how little could be brought against Walpole, even when his enemies were in power. His conduct in the South Sea business, appears upon the whole to have been extremely judicious. Corruption in boroughs,



to an extent at which their posterity would not blush, is related by the Secret Committee. Large sums, however, are unaccounted for, which his agents persisted in keeping secret. The attempt to indemnify them from all proceedings, in order to get evidence from them against Walpole, failed in the House of Lords.

The effect of the long stagnation of public spirit in the country is lamentably seen in the changes of ministry which took place after the resignation of Sir R. Walpole. Principle seems to have made no part of the distinctions of statesmen; and all political contention was reduced to a scramble for office between little bands of men, whose rank and fortune only rendered their conduct more contemptible. Lord Melcombe's Diary affords a faithful and very disgusting picture of the manner in which these small factions rose alternately one upon the other, forming every day new combinations, and varying their connexions in every possible way, without ever deviating into an honest and consistent line of public rectitude.

It is singular, and at the same time melancholy

to observe, how much influence was retained by a person so totally devoid of clearness of head, and even of common manly spirit, as the Duke of Newcastle. By intriguing to overturn Walpole, his colleague, and by bargaining in boroughs, he became the most powerful amongst the Whigs. But his incapacity and dishonesty ruined the party, who did not for a long time recover the disgrace of having served under such a chief.

There is one man, however, whose life forms an exception to these remarks, and who did much to waken the country from the lethargy into which it was plunged. I mean, of course, Lord Chatham. He was in almost every respect the reverse of Walpole. Walpole lowered the tone of public men, till it became more like that of merchants than of statesmen: Chatham raised his voice against selfishness and corruption, and his invectives even now make the cheeks tingle with indignation. Walpole acted upon the love of ease, the prudence, and the timidity of mankind: Chatham appealed to their energy, their integrity, and their love of freedom. It must be acknowledged, that Wal-



pole had some merits which Lord Chatham wanted. He pursued from the beginning one steady and, upon the whole, useful line of state-policy: Lord Chatham acted from the impulse of the moment; and if he followed his feeling of the day he little cared how inconsistent it might be with his former sentiments. Walpole seemed to aim at what was most expedient, Chatham at what was most striking; and thus the former secured the guarantee of France to the Protestant succession, and the latter attacked her possessions and humbled her name. The one looked to prosperity, the other to glory. Sir Robert Walpole was successful nearly to the end of his life. The cause of his long power is to be found both in the steadiness of his conduct, and his care to unite together a large and respected party in favour of his government. Lord Chatham succeeded in nothing after the accession of George III. He had neither sufficient consistency of character to inspire confidence in those who were to act with him, nor did he set a proper value on the importance of party in this country. If Walpole had thought too much of individuals, Lord

Chatham consulted them too little. Provided he made up his mind to a measure, he seems to have thought that he could always find men to carry it into effect. His temper made him reject or quarrel with those who were best fitted by integrity and general views to assist him, but who differed with him in the smallest point; and he sought aid from others who flattered, ridiculed, betrayed, and supplanted him.

Hence it was that the political character of England was not raised out of the mire into which it had fallen, by the splendid talents, generous virtues, and lofty views of the first William Pitt, Earl of Chatham.

## CHAP. XIX.

## GEORGE THE THIRD — BEGINNING OF HIS REIGN.

Moreover, I have a maxim, that *the extinction of party is the origin of faction.*

*Letter of HORACE WALPOLE to Mr. Montague, Dec. 11. 1760.*

WHEN George III. came to the throne, little alteration took place in the external government of the country. An act was passed to continue the judges in their offices notwithstanding the demise of the crown, and although it was obvious that such an act diminished in no way the power of George III., but on the contrary, took away one means of influence from the successor, if that successor should act in opposition to the reigning king, yet this measure was represented as a signal addition on the part of the sovereign to the liberties of the subject.

The important feature of the new reign was the experiment of a new project of government. Among other disastrous consequences of the want of public spirit in England, was a total neglect of the political education of the young King; and hence he came to be placed in the hands of men who had but recently shaken from their minds their allegiance to the house of Stuart. It occurred to these persons that, in the general blight of political virtue and public confidence, an opportunity was given for raising the household standard of the sovereign, and rallying around his person the old relics of the Jacobite party, with the addition of all, who, in the calculation of chances, might think the favour of the Sovereign as good an interest as the countenance of any minister whatever. To form and consolidate this party they studiously spread all the doctrines which place the whole virtue of a monarchy in the supreme sanctity of the royal person. They endeavoured to obtain a certain number of seats in the House of Commons, which, with the help of a proportionate quantity of patronage, might make the

tenure of any ministry uncertain. They made loud professions of honesty and of conscience, which wholly consisted in an obstinate adherence to certain narrow-minded tenets, and which did not prevent the most shameful violations of sincerity and truth, whenever it suited their purpose to deceive and to betray. They assiduously planted their maxims of government in the mind of their royal pupil, and as he was naturally slow, obedient, good-tempered, and firm, he too easily admitted, and too constantly retained the lessons of his early masters.

The system had flourished for some years in full vigour, when Mr. Burke gave the powerful exposition, and the sound and statesmanlike refutation of it, which we read in the "Thoughts on the present Discontents." This, which is one of the few standard works on the science of government which the world possesses, did not and could not immediately destroy the monster which it attacked. But it rendered a service to this country scarcely less essential, by instilling into the minds of all young politicians, who at that time were greatly

increasing in number throughout the country, those wise and beneficial principles which their Whig ancestors had practised, but which the old intriguers of that day had entirely forgotten.



## CHAP. XX.

## THE SENSE OF JUSTICE.

Sous quelque idée de légèreté et d'inconsidération qu'on se plaise à nous représenter le peuple, j'ai éprouvé que souvent il embrasse à la vérité, certaines vues, vers lesquelles il se porte avec chaleur, ou plutôt avec fureur; mais que ces vues ont pourtant toujours pour objet quelque intérêt commun, et d'une certaine généralité, jamais un intérêt purement particulier, comme peuvent être les ressentimens et les passions d'un seul homme, ou d'un petit nombre de personnes. Je hasarde même de dire, que sur ce point, le juge le moins faillible est la voix de ce peuple même.

SULLY, l. 14.

ONE of the conditions necessary for the maintenance of that species of freedom which excludes all arbitrary power, is, that the people should be ready to take part with the weak oppressed, against the powerful oppressor. Madame de Staël remarks of the French people of her own day, that they always perceive im-

mediately where the power is, and always range themselves on that side. The truth of this observation may be demonstrated by referring to the events of the Revolution, or attending to what happens in any one year in France. The quality essential to freedom, however, is one directly the reverse. The people ought to feel a continual jealousy of power; and when they see any one man borne down unjustly, they ought to perceive immediately, that the cause of that man is the cause of the whole nation.

This is or was happily the case with the English people. Nothing but the sympathy of the people could have raised to such importance and celebrity the cause of Hampden, when he refused to pay a few shillings to the crown. The imprisonment of a Mr. Francis Jenkes, for making a patriotic speech in the Common Council of London, was the cause of the Habeas Corpus Act. Mr. Wilkes, though detested and despised by good men, as a hypocrite in public and a profligate in private life, was defended by all who loved their country, when arbitrary measures were resorted to for the pur-



pose of oppressing him. He obtained at length large damages against the ministers who had abused their power, and put an end to general warrants for ever. So, I trust, it may always be, when any individual, however humble, however odious, or however despicable, is pursued by illegal, or unjust methods!

## CHAP. XXI.

OF AN EXTREME REMEDY AGAINST THE ABUSES  
OF POWER; AND MODERATION IN THE USE OF  
THE REMEDY.

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Esto

Liberque ac sapiens.

PERSIUS.

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EVERY wise state has found it expedient to transfer a large portion of power out of the hands of the people, for whom all power is held, and to entrust it to a single person, or select council; for a very numerous body are found incapable of transacting public affairs with that secrecy, or of deciding upon them with that celerity which the foreign relations of a state so often require. Hence the great council of Venice was, by the advice of the wisest senators, excluded by degrees from

all deliberations which required delicacy and dispatch.\* Hence the republic of Holland found it necessary to name a few persons, to whom all foreign negotiations were confided.†

But for whatever purpose power may be confided to a few persons, or however worthy they may be of the trust reposed in them, human nature is such, that there ought always to remain with the people an extreme remedy by which they may punish the abuse, or restrain the power itself that has been abused. In states really free this extreme remedy will always be found to exist, either by custom or by law. Thus the Roman people, when they felt themselves aggrieved, retired to the *Mons Sacer*, or refused to be inscribed as soldiers in the army that was about to march against the foreign enemy. There could not be apparently two more dangerous expedients; but such was the moderation of the Roman people, that I know not they ever pushed their resistance beyond the bounds of reason. Indeed, the long period that elapsed before the plebeians could

\* Darn, Hist. de Venise.

† Sir W. Temple.

be elected consuls, and the long period which followed that before any plebeian was really elected, are sufficient proofs of their temperance, both in advancing a claim, and in making use of a right.

The English have, in the same manner, an extreme remedy. If the King abuses a just, or uses an oppressive power, the representatives of the people have it in their option to refuse the money required to carry on the government. This remedy, however, was for a long time far from being so efficacious as those employed by the Roman people. In spite of the resistance of the nation, Charles II. and James found means, with the aid of packed Parliaments, and drawing from the French treasury, to slip the bridle from their necks. In fact, until the expulsion of the Stuarts, our Kings enjoyed a revenue independent of Parliament, which enabled them to keep their Commons out of sight in ordinary times. The parliamentary check was made perfect at the Revolution; but the influence of the Crown in the body which ought to exercise it, has continually deadened its effect. The voice of the people,



however, has sometimes enforced the constitutional interference of the House of Commons. The most remarkable instance, perhaps, of the use of this right took place at the end of the American war. The House of Commons declared by a resolution, that the farther prosecution of offensive war on the continent of North America, tended to weaken this country, and to prevent a reconciliation with America. An address, in conformity to this vote, having been carried to the throne; and the King having returned a gracious answer, complying with the address, the House of Commons voted, that they should consider as enemies of His Majesty and this country all those who should advise the farther prosecution of the war in North America, for the purpose of reducing the revolted colonies to obedience by force. In this, as in a few other instances, although the word *supplies* is not mentioned, it must always be understood; and there is, in fact, a tacit menace of refusing supplies in every interference of the House of Commons with the exercise of the prerogative.

This power, it is quite clear, would enable the House of Commons, if so disposed, to declare themselves the sovereigns, and to take away every efficient prerogative from the Crown; but such is the moderation of the English people, that they have never desired such an increase of the power of their representatives; nor did they, at the Revolution, bate a jot of the powers necessary to maintain the monarchy. For I am convinced, the true reason that the King and the House of Lords maintain their prerogative and privileges unimpaired, lies more in the temper of the nation, than, as some would teach us, in the present composition of the House of Commons. The country has a deep-rooted affection for kingly government, and would highly resent any attempt to change or destroy this key-stone of the constitution. There appears to me, I must confess, as great an attachment to monarchy in the people of Yorkshire, as in the proprietor of Old Sarum, and fully as much loyalty in the farmers of Norfolk, as in the corporation of Devizes.

## CHAP. XXII.

## INFLUENCE OF THE CROWN.

Men are naturally propense to corruption; and if he, whose will and interest it is to corrupt them, be furnished with the means, he will never fail to do it. Power, honours, riches, and the pleasures that attend them, are the baits by which men are drawn to prefer a personal interest before the public good; and the number of those who covet them is so great, that he who abounds in them will be able to gain so many to his service as shall be sufficient to subdue the rest. It is hard to find a tyranny in the world that has not been introduced this way.

ALGERNON SIDNEY.

THE celebrated resolution of 1780, "That the influence of the Crown has increased, is increasing, and ought to be diminished," may seem to carry its own refutation along with it. A House of Commons that can vote a resolution so hostile to the crown, it may be said, can have little reason to dread its influence. This objec-

tion, however, would be more specious than solid. The influence of the crown acts by slow, but continual pressure; the opinion of the people by sudden impulse. Thus a series of measures injurious to the interests and honour of the country are persisted in for a long time by mere force of authority and the private advantages which individuals acquire by supporting the system. In government, more than any thing else, possession is nine points of the law. At length the evil is carried beyond bearing: the people see they have been misled and benighted, and determine to dismiss their guides. But even then the holders of power have innumerable means of softening, perhaps of totally averting their disgrace, and they proceed for some time longer conducting the nation through fresh morasses, and involving the state in new and greater perils. Thus it was in 1780, when the party who had carried the abstract resolution before mentioned, found themselves in a minority a few weeks after, when they attempted to deduce from it a practical result.

It was in the reign of Charles II. that the plan of influencing the members of the Lower House by gifts and favours of the crown was first systematically framed. The name of "Pensioner Parliament," given to the House of Commons which sate for seventeen years without dissolution, is a sufficient index of the general opinion concerning it. Many of the poorer members sold their vote for a very small gratuity. Offices and favours were granted to the speakers most worth buying; the rest were glad of a sum of money. The trifling sum of 12,000*l.* was allowed by Lord Clifford for the purpose of buying members. This was increased by Lord Danby. By the report of a committee of secrecy appointed in 1678, it appears that many members received money or favours of one kind or another for their votes.

There can be no doubt that the practice was continued during the reign of William. Sir John Trevor was convicted, when Speaker, of receiving bribes from the City of London, to procure the passing of the Orphans' Bill.

Mr. Hungerford was expelled for the same offence.

These facts show how unjust it is to charge Walpole with having been the first who governed England by corruption. That he carried corruption to a great extent can hardly be doubted. He did it with an openness and a coarseness which created great scandal, and which, perhaps, was more pernicious than the vice itself. He is said to have affirmed that he did not care who made members of parliament, so long as he was allowed to deal with them when they were made. Perhaps these stories were unfounded; but they threw discredit on the government.

At the time of Lord North's administration the influence of the Crown was exerted in the most profuse, most shameful, and most degrading manner. The friends and favourites of the minister were allowed to have a share in the loan, which they sold the moment after at a gain of ten per cent.\* Mr. Fox, in his speeches, more than once accuses Lord North of having devoted

\* Rose's Influence of the Crown.



900,000*l.* of a loan to conciliate votes. It is remarkable that Mr. Fox allows at the same time, that it is natural that a minister, in making a loan, should favour his own friends, and that it is not to be expected any minister will ever act otherwise. He does not venture to blame Lord North for this practice, but only for the abuse of it. Some members of parliament actually received at that time a sum of money to induce them to vote. Every office of government was a scene of confusion, waste, and prodigality, admirably adapted for the interests of all who wished to enrich themselves at the expence of honour, patriotism, and conscience. A cry for reform in the expenditure, louder than that which had overturned Walpole, was raised; and produced the resolution mentioned at the beginning of the chapter. The wish of the people extended to parliamentary as well as economical reform. Mr. Pitt skilfully made himself the organ of both, and on the strength of his professions obtained that credit from the people which was denied to the party who, after a long and unpopular opposition to the American war, had lost the fruits of their

exertions by joining the minister who carried it on.

Since the close of the American war, Mr. Burke's Bills, and the regulations of Lord Shelburne, have made a diminution of 216 places. Mr. Pitt abolished 200 more.\* In 1810 about 357 were computed to have been created or added, and those not computed, or since added, would make up more than 416. Since 1783, also, we have the Stationery Office, the Police Establishment in London, a new department in the War Office, and a great number of new Boards and commissioners, as Arcot Debts, Danish Prizes, Education, &c. Since 1810, too, we have two or three new sets of commissioners, a Vice-Chancellor, an Auditor of the Civil List, and several more.

On the other side, since 1783 thirty-two placemen have been excluded by Mr. Burke's Bills, and to these Mr. Rose adds fifteen contractors. Some sinecures too have been lately abolished.

\* Rose on the Influence of the Crown. Ed. Review, vol. xvi. p. 191.

Upwards of seventy members of the House of Commons hold places, of which the salaries are altogether 156,000*l.* a-year. By the act of Queen Anne, persons accepting places are to vacate their seats, and all persons holding offices created since that act are rendered incapable of sitting in Parliament. This last provision, however, has been set aside in the instances of the third Secretary of State, and of four members of the Board of Controll. The number of placemen in the House of Commons, however, although too great, is not sufficient to make an undue influence preponderate. It is the expenditure of twenty millions in our military and civil establishments, and of four millions in the collection of taxes, the increase in the number of our colonies, the doubling and tripling of salaries, the compensations and superannuations which are allowed so frequently for purposes of patronage, the immense extent of our accounts, the organized adaptation of all offices and salaries to conciliate members of parliament, — it is all these things which have increased, and are increasing — what Blackstone calls the “per-

suasive influence” of the crown, and which may undermine our liberties, if they are not met with a new and determined spirit in the people, neither to be cajoled by specious falsehoods, nor fatigued by repeated evasions.

## CHAP. XXIII.

## CRIMINAL LAW.

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The discretion of a judge is the law of tyrants: it is always unknown: it is different in different men: it is casual, and depends upon constitution, temper, passion. In the best, it is oftentimes caprice: in the worst it is every vice, folly, and passion to which human nature is liable. LORD CAMDEN.

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THERE are some advantages in the absolute monarchies of Europe over the free government of England on the subject of criminal law. On the one hand, it must be confessed, the free government will be sooner impelled by the progress of enlightened opinions to abolish torture and cruel modes of punishment; and will be forced to relinquish, as contrary to its freedom, all iniquitous proceedings against state-criminals, and all bloody penalties on religious dissent. But, on the other hand, it must be said that the

legislators of a free state are so much more interested in the heating race of political discussion, that criminal law meets with little attention; and that the Parliament of England, when they do make laws on the subject, are far from being as impartial as an absolute sovereign; for they are continually the objects of the burglaries and larcenies against which they direct their *thunder*. Hence it is, that every man judging that to be the most deadly offence by which he is himself a sufferer, the Parliament has permitted the statute-book to be loaded with the penalty of death for upwards of two hundred offences. Among the crimes, so punishable, we find the offences of cutting down a tree; being found with the face blackened upon the high road; being in company with the persons called gipseys. These have continued to be capital crimes till the year 1820, and one, if not two of them, still remain so.

These extreme cases are not, however, the most mischievous. The absurdity of the law is an antidote to its cruelty. There are other offences, punishable with death, which are



really in themselves very serious crimes, but not of so atrocious a character as to reconcile any humane man to their being visited with so heavy a retribution. Of this kind were many offences against the bankrupt laws; privately stealing from the person; stealing from a dwelling-house to the amount of 40s.; privately stealing from a shop to the amount of 5s. and many others. The evils produced by these severe laws are not, however, as might have been expected, a very great excess of severe punishment, and general insensibility in the people.

The two evils peculiarly felt are, first, as it is justly stated by Mr. Justice Blackstone, there is a general disposition not to convict of a crime to which an inordinate punishment is affixed. A jurymen who had often served on bankrupt cases told me the juries on which he served would never take the law from Lord Ellenborough, although he was probably in the right, but persisted in affixing their own erroneous but merciful interpretation.

Mr. Harmer, who has been solicitor for two thousand persons condemned to death, informed

the Criminal Law Committee that an old offender always preferred being tried for a capital offence, as it gave him a better chance of an acquittal. It is singular that something of the same kind happened at Athens. A criminal when convicted, was asked before the people how he would be punished, and an old offender always named the most severe punishment to excite compassion in his judges. It was partly because Socrates, instead of following this custom, replied that his sentence ought to be, to be kept all his life at the expence of the state, that he was condemned to death.

Notwithstanding this well-known disposition of human nature, so accustomed are we to rely on the efficacy of severe punishments that in any discussion on repealing a criminal law, the question in men's minds always is, not whether the offence is actually prevented by that law, but whether the offence is sufficiently grave to deserve that it should be prevented by so severe a method. The members of both Houses of Parliament consult their own sense of this matter instead of looking to that of jurymen.

Secondly. Another great evil is the uncer-

tainty of the law. Two men, for instance, are tried at Launceston for sheep-stealing; both are found guilty, one is condemned to death, and the other to be transported for seven years to Botany Bay. It is evident there is no proportion in the punishments. What is the reason? The one has a good character, the other a bad one. So that in England a man is hanged, not for the crime of which he is found guilty, but for the general course of his life. Now this is a matter far above any earthly tribunal. It leads to injustice, cruelty, and confusion. It makes the punishment of death worse than useless; for every criminal will hope that his character will not be found so bad as to make him forfeit his life. It puts a man upon his trial for actions which the law does not profess to try, and upon which he cannot be prepared with a defence. Thus it was, that a man of notoriously bad character, after a course of larceny and burglary, was at last, to the great surprise of his neighbours, his jury, and his prosecutor, hanged for cutting down young trees.

There is at present greater reason than has ever yet been given to hope for a reform in

the criminal law. Many persons however thought it extremely dangerous to admit that our present law was in such a state as to require reform. Absolute sovereigns have not been affected by this danger. The King of Prussia (Frederick the Great), during part of his long reign, placed his whole system of law under discussion, and during a remaining portion a project of new laws was under the eye of the public for general criticism and consideration: the King thus taking away from the authority of the old law without substituting anything in its place. Many of the sovereigns of Europe have altered their whole criminal jurisprudence. Even the Pope has within the last few years promulgated a new code on this subject. Why is it, that all these governments have undertaken the task without fear or hesitation, and that a party in England is so fearful of any innovation whatever in our old system? The reason I believe to be this, — that a very large portion of the higher ranks in England consisting of the Tories, never have understood, and never will understand the real security of the English government. These persons seeing authority continually attacked,



imagine that the throne will be subverted, if any part of its hangings are removed. They are not aware that the real foundation of royalty and aristocracy in England is the opinion the people have of their utility to the whole, and that the retaining any absurd or bigoted or cruel institution instead of preserving, undermines and destroys the respect due to the assemblies which have the charge of improving and amending as well as of strengthening and preserving the volume of our laws.

With respect to the criminal law, my own notions of reform would go a great way. There cannot be many offences to which capital punishment ought to be attached.

All wilful acts tending directly to inflict death ought to be punished with death. Murder, stabbing, shooting at, burning of dwelling-houses, or buildings contiguous to dwelling-houses, setting fire to the clothes of a person, are crimes of this description. Highway robbery, and burglary, without any of these circumstances, when it is clear that property and not life has been attacked, might more properly be punished by long confinement, than by executions.

The question of secondary punishments is perhaps the most difficult of any. The words of Mr. Harmer afford perhaps the best rule shortly expressed on this subject. "If I were asked," said this gentleman, in an examination before a committee of the House of Commons, "what description of punishments would, in my opinion, be productive of benefit, I would answer, Such as might force the delinquent into a course of discipline wholly opposite to his habits. Idleness is assuredly a part of his character, which industry would counteract. Set him to labour. He is probably debauched, and abstinence would be advantageous to both his mind and his body: apply it. He has been accustomed to dissolute companions, separation from whom would essentially ameliorate him: keep him in solitude. He has hitherto rioted in uncontrolled liberty of action. I propose that he should be subjected to restraint, and the observance of a proper decorum." — The only remark I would make upon these suggestions is, that if the delinquent were subjected to vigilant inspection, it would not be necessary to keep him in solitude.



## CHAPTER XXIV.

## PUBLIC SCHOOLS IN ENGLAND.

As it is in the body, so it is in the mind; practice makes it what it is; and most even of those excellencies, which are looked on as natural endowments, will be found, when examined into more narrowly, to be the product of exercise, and to be raised to that pitch only by repeated actions.

*LOCKE, of the Conduct of the Understanding.*

THE education of youth, which has employed so many pens, which has produced so many sublime writings, and which has undergone so little practical alteration, is not to be thoroughly discussed in a few words. Some remarks, suggested rather by observation of the world, than by any original speculation, may, perhaps, be allowed.

Men of enlarged views, and hearts glowing with the love of mankind, have often con-

ceived that youth might be brought up to learn more knowledge and less vice than are distributed to them at the public schools of England. With this project in their heads, and the most laudable love of their children in their hearts, many parents have given their children a private education. They have taught them ten branches of knowledge instead of two, and have preserved their morals and their health during the first eighteen, or perhaps twenty years of their life. But how often have we seen these promising flowers drop off without being succeeded by fruit in due season? The lessons which are learnt by a boy in the lingering and lifeless manner of a private study, without the excitement of emulation, perhaps without the fear of correction, make no lasting impression on the mind. The restraint of a nursery of twenty years, gives a zest to the pleasures and the follies for an indulgence in which boyhood alone can be any palliation. The period when the talents and strength of the man ought to be unfolded is wasted in the new pursuits of idleness and debauchery. At the same time, the habits contracted at home, where the young



patrician met with no equal, unfit him for the rub of the great world, and fix for ever those defects of temper which early contradiction and early society might have extirpated. Such is often, though not always, the result of an education, intended to produce a faultless monster, and laid out with the hope of giving its unhappy object a pre-eminence over the ill-trained generation of his equals and contemporaries. The mistake in these instances seems to arise from the want of considering, that the object of education is not only to store the mind, but to form the character. It is of little use that a boy has a smattering of mineralogy, and is very fluent at botanical names; it will be of no avail to him to talk of argil and polyandria, if he cries when he loses at marbles, and is lifeless as a statue when he is obliged to play a game at cricket. Now a public school does form the character. It brings a boy from home, where he is a darling, where his folly is wit, and his obstinacy spirit, to a place where he takes rank according to his real powers and talents. If he is sulky, he is neglected; if he is angry, he gets a box on the ear. His cha-

acter in short is prepared for the buffetings of grown men; for the fagging of a lawyer, or the fighting of a soldier. Now, this is of much more importance than the acquisition of mere knowledge. Many men only begin to acquire their knowledge between twenty and thirty, few men change their characters after twenty. Considering the question in this view, it is of little importance to enumerate the names of eminent men in England, who have not been brought up at public schools. Many of these rose from middle life, and to them my argument does not apply. The son of a tradesman or a farmer meets buffetings enough, without being sent to any school; he is ordered to serve a customer, or look after the haymakers; and learns practical life much sooner than any gentleman's son can possibly do.

It being conceded that a boy of high expectations ought to be brought up at school, I am not disposed to contend that the education of our public schools is exactly what is right, or that it is all that is right. These schools were instituted at a time when all know-

ledge was contained in the Greek and Latin classics, and no sound opinion or polished taste was to be found out of the learned languages. From this groundwork, however, the moderns have raised a prodigious edifice, both of science and of literature, of the whole of which our school education, from eight to eighteen, takes no notice whatever. Not that I would cram the mind of a boy with the whipt cream of botany and mineralogy. The first thing to learn is how to learn: "*Il faut apprendre à apprendre*;" and for this it is requisite that the first thing taught should be difficult to learn, and necessarily retained when it is learnt. I know nothing so good for this purpose as the Latin grammar. Boys, it is said, do not understand it. What does this signify? They do understand that a nominative case goes before the verb; and they come in a short time to learn where each part of speech must be placed, and how it depends upon another. If Mr. Locke is right in his estimate of the importance of words, this is a point of great consequence. And who can doubt that he is right? It is to a dogged ap-

plication to the Latin grammar that I very much attribute the precision of men, when compared to women, in this country.

The Latin grammar learnt, I do not see that it is judicious or proper to make a boy read Ovid. I do not know that I should give him Ovid at all at school. Easy prose, then the poetry of Virgil, some arithmetic, the Greek grammar, Homer, some geometry, and a little geography, might come in their due order. Above all, I would make the boys translate into Latin an abridgement of the history of England, and of the first and last volumes of Blackstone. Many men go through the House of Commons totally ignorant that a prisoner must be furnished with a list of witnesses in cases of high treason.

French and Italian should be taught, if at all, very sparingly. It will be sufficient to lay a foundation for learning, at a more mature age, those parts of knowledge that are likely to be sought voluntarily, and may be acquired easily.

I know not whether it would be practicable to introduce improvements of the kind I have mentioned into our great public schools. If the



masters should resist it, it seems to me that an excellent opportunity for making a good school is afforded by the Military College at Sandhurst. It is very right that a certain number of the sons of men who have died for their country should be brought up at the expence of the state; but it is a very wrong thing to bring up a set of young men for military service, totally separate from all other classes of the community. "In a land of liberty," says Blackstone, "it is extremely dangerous to make a distinct order of the profession of arms. The laws, therefore, and constitution of these kingdoms know no such state as that of a perpetual standing soldier, bred up to no other profession than that of war."

What could be easier than to make a foundation for a certain number, with the qualifications of being the sons of poor officers, or officers' widows, who might afterwards choose their profession; and to institute at the same place a school where education might be conducted in a manner suitable to the knowledge of the present age?

As it is at present, there is no doubt that

women of the higher ranks have much more knowledge and information, when their education is finished, than men have. But I cannot see any reason why our men should not, whilst they have the advantages of public schools, at the same time be able to do a sum in the rule-of-three, and make themselves masters of the fact, that James I. was not the son of Queen Elizabeth.



## CHAP. XXV.

## POOR LAWS.

Generally it is to be foreseen (*i. e.* provided) that the population of a kingdom, especially if it be not mown down by wars, exceed not the stock of the kingdom, by which it is to be maintained.

BACON.

THERE is nothing, perhaps, in the whole state of England more threatening to its tranquillity and the permanence of its constitution than the present administration of the poor-laws. The perversion which has been made of them from the original meaning of the statute of Elizabeth, has at length fallen most heavily upon those who thought to draw from it a selfish gain.

The statute of the 49th of Elizabeth seems to have had its rise in a general increase of idle poor throughout the country. The notion that

this increase was owing to the dissolution of the monasteries is now given up; it having been clearly shown that the same complaint was made in Spain about the same time.\* It is more probable that the introduction of legal order, and the cessation of internal war not long before, both in England and Spain, threw upon society a great number of vagabonds, who were accustomed to live by vagrancy and plunder. The act of Elizabeth directed that the old and impotent should be provided for, and that the strong and healthy should be set to work. The first of these two directions is the law of a tender and humane people, and will, I hope, ever remain upon the statute-book of England. The second direction is not equally easy of execution. A few casual beggars, indeed, might be provided for in this way; but when, from stoppage of trade, or any other cause, there exists a superabundant population, it is manifest that any work that could be done by the unemployed, would only be augmenting

\* This important fact was first brought to light in the Edinburgh Review.

the stock of a market already overflowing. When this was found to be the case, the overseers, instead of furnishing work, supplied the unemployed with money. With the convulsions of commerce, the vast increase of taxes, and above all, in the years of scarcity a new difficulty arose: — men who had large families found themselves unable to support them, although they were themselves employed, from the very low rate of wages compared with that of food. Instead of a rise of wages, it was agreed that a certain sum of money should be paid for the support of each child at the house of his father. In this provision, introduced under the pressure of temporary distress, the farmer saw a means of reducing the price of labour. Having the market of labourers overstocked, and therefore at his command, he refused to give to the unmarried labourer more than was sufficient to support life; he gave the same to the married labourer, and paid out of the poor rates the exact sum necessary for the subsistence of his children. By this scheme the ignorant employer thought he had reduced the price of labour to the lowest possible; and

there have not been wanting men of enlightened minds disposed to exalt it as the perfection of rural economy. The natural consequence of such a scheme, however, was in the first place to lower the character of the labourer: to make him pass his life in dependence, and, instead of rearing up a steady industrious family from the savings of his wages and his own exertions, to see himself reduced to the condition of a public mendicant. This consequence, however, would not have given any disquiet to the employer; but there is another as certain and as necessary; and that is, that marriages will no longer be regulated by the demand for labour; but that a labourer, seeing his children will at all events be fed out of the public fund, will marry when it suits his inclination, without a penny in his pocket. Hence an immense growing population, with a defective and diminishing market; a rapid supply, without any demand whatever. And there is no reason why the evil should not continue to increase until, at length, the whole profits of cultivating the land are swallowed up by the expence of maintaining a colony of useless mouths. If that should hap-



pen, the farmer and the labourers must fall together; and there will be thrown upon society a number of people ignorant of all duties, deprived of all sense of independence, and accustomed to derive their means of subsistence without labour, from the public funds. Such a result, it is manifest, would be more calamitous than any revolution that has yet happened in the world. Happily the farmers have at length felt the evil themselves, and they endeavour by one way or another to apply a remedy.

Much, if not every thing, may undoubtedly be done to prevent the mischief of the poor laws, where it has yet made no great progress, and the farmers are enlightened and liberal. Good wages, and a constant system of industry and improvement will employ the labouring people *as long as things continue in a prosperous and steady course*. Labourers themselves undoubtedly prefer the hard-earned bread of independence, to the stinted and litigious charity of an officer of the poor. It is only a bad system on the part of the rich that can debase the indigent.

It is different in a manufacturing district,

where a sudden change of fashion may throw hundreds of poor upon the parish.

With respect to a legislative remedy there is but one that can be effectual. It is that of Mr. Malthus, viz. that after a certain period, labourers who marry should not be entitled to support their families from the poor-rates. The effect of this regulation would soon be to raise the price of labour, and things would again return to their old course. The poor man would be restored to his ancient independence, and the country would not have the burden of supporting an army of unproductive labourers, four times as numerous as that military force by which we withstood the power of the French empire.

## CHAP. XXVI.

## WAR WITH THE FRENCH REPUBLIC.

It is imprudent to attack a people who are divided amongst themselves, with a view of conquering them, in consequence of their disunion.

There was such disunion in the Roman republic between the people and the nobility, that the inhabitants of Veii, together with the Etruscans, thought that they could extinguish the Roman name by taking advantage of these dissensions. Having raised an army therefore, and made incursions upon the territory of Rome, the senate sent against them Cneius Manlius and Marcus Fabius, whose army encamping near the enemy, the people of Veii did not cease from attacking, both by arms and by reproaches, the Roman name; and such was their rashness and insolence, that the Romans, who were disunited, became united, and engaging the enemy, defeated and routed them. We see, therefore, how much men deceive themselves, as we have before observed, in the line of conduct they adopt, and how it frequently happens that, in thinking to obtain an object, they lose it. The people of Veii believed, that by attacking the Romans disunited, they should defeat them; and the attack, on the contrary, caused the union of the Romans, and their own ruin: for the causes of dissension in republics are generally idleness and peace; the causes of union are fear and war. \* \* \* \* The people of Veii therefore were deceived in their opinion, and were, in short, in one day overcome by the

Romans. And so for the future will be deceived whoever, in a similar way, and for a similar cause, shall think to oppress a nation.

MACHIAVEL, *Discourses*.

The people of this country loved their constitution. They had experienced its benefits; they were attached to it from habit. Why then put their love to any unnecessary test? Their love by being tried could not be made greater; nor would the fresh burdens and taxes, which war must occasion, more endear it to their affection. If there was any danger from French principles, to go to war without necessity, was to fight for their propagation.

Fox's *Speeches*, Feb. 1. 1793.

THE war against France, undertaken in 1793, exemplified at its commencement the wise observations which I have quoted from Machiavel. The more apparent the attempts of the allied powers to regulate her internal government, the greater her vigour, the more brilliant her victories, and the more extensive her conquests. At length, tempted by military trophies, and successful treaties, she confided herself to a sovereign who abused his genius and his force, and endeavoured to make himself despotic lord of the whole continent of Europe. The Whig ministry of 1806, found it impossible to make

peace with him; and with few exceptions, all parties in England agreed in thinking the continuance of the war just and necessary. At length, drunk with unexampled power and glory, and irritated by a perpetual thirst of action, the Emperor of France carried his great army of conquerors to perish amid the frosts of Russia. The nations roused themselves, and he was hurled from the throne. The republic had triumphed, the monarchy was conquered.

By a singular fortune the end of the war, however different in character from the commencement, was equally destined to prove the sagacity of Fox. The few enthusiastic Jacobins of 1793 were converted, in 1817 and the following years, into hundreds of thousands of malcontents. The pressure of sixty millions of taxes have indisposed more sound and loyal men to the constitution of their country, than the harangues of Citizen Brissot, and the fraternising decree of November could have done in a hundred years.

## CHAP. XXVII.

## NATIONAL DEBT.

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The common people do not work for pleasure generally, but from necessity. Cheapness of provisions makes them more idle; less work is then done, it is then more in demand, proportionally, and of course the price rises. Dearthness of provisions obliges the manufacturer to work more days and more hours; thus more work is done than equals the usual demand; of course it becomes cheaper, and the manufactures in consequence.

FRANKLIN'S *Political Fragments*.

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THE favourite reproach which is made to the authors of the Revolution of 1688, is, that they commenced the funding system. As a reproach, however, peculiarly applicable to the government of England of that day, this censure is totally groundless. The system of borrowing and funding had been long before adopted both by Venice and Holland.



It is, indeed, a natural step, in the history of a free state, where commerce produces capital, and liberty establishes credit. Even the arbitrary monarchies of Europe have found means to borrow to a large extent. Austria has several times transacted large loans, and has been thus enabled to commit the most flagitious frauds on the creditors of the state. In England, Charles II. borrowed a large sum from the bankers, payable on the receipt of the taxes. When the taxes came in, he closed the door of the Exchequer, and refused to pay. The infamy of this swindling transaction was, in some measure, repaired in the reign of William III. when a large part, at least, of the sum owing was funded, as stock in the national debt.

I shall not pursue any farther the defence of a measure, rendered necessary by the pressure of the great war in which we were engaged, and borrowed from Venice, the wisest, and Holland, the freest state in Europe. It is important, however, to cast our eye over the history of the national debt, from this time, and to examine its immediate and remote effects.

The capital of the national debt, at the accession of George I., and when all the war-accounts may be supposed to have been settled, amounted to 54,000,000*l.*, the interest to 3,351,000*l.* Sir Robert Walpole instituted a sinking fund, on which great eulogiums were made, and of which great hopes were entertained. In 1739 the capital of the debt was 46,954,000*l.*, the interest 1,964,000*l.*; so that he diminished the interest about 1,400,000*l.*, and the capital about 7,000,000*l.* The Spanish war, however, which commenced in 1739, increased the capital of the debt by 31,300,000*l.*, and the interest by 1,096,000*l.* The peace which followed diminished the capital by 3,700,000*l.*, and the interest by 664,000*l.* But in 1763, after the seven years' war, the national debt amounted to 146,000,000*l.*

From that time to the breaking out of the American war, the national debt was diminished by 10,739,000*l.*

At the close of the American war the national debt amounted to 257,000,000*l.*

The celebrated sinking fund of Mr. Pitt, established in 1786, reduced the national

debt, during the peace, by 4,751,000*l.*, and the interest by 143,000*l.*

On the 5th of January 1816, after the entire close of the war, the supplies of 1815 having been much more than sufficient to cover the expences of the war of 100 days, the national debt amounted to 836,255,000*l.*

In five years from that time, that is, on the 5th of January 1821, the debt amounted to 836,393,000*l.* being an increase of 140,000*l.*\* During more than a year of this time a new sinking fund has been in operation, voted by Parliament to amount to 5,000,000*l.* a-year.

Such has been the alternate progress of national debt and sinking fund; the one advancing by giant steps, and the other, although much vaunted, never having, in the course a century, made half the progress that was made by the national debt in the single year 1815. He must be a sanguine man indeed, who expects the sinking fund to overtake his opponent.

Such being the state of the case, it is more than ever necessary to examine what this debt

\* Accounts of the Funded and Unfunded Debt, presented to the House of Commons, Sess. 1821.

is, what are its effects on the prosperity of the country, and what is likely to be the ultimate result. This last inquiry is indeed one of great uncertainty. Causes the most unlooked-for may intervene, and entirely change the direction of political events.

The first operation of the national debt is as follows:—The minister borrows, we will say 300*l.*, of a merchant who has the money in his coffers. He engages to pay 15*l.* of interest. For this purpose he lays a tax of 5*l.* on a landed proprietor, another 5*l.* on a farmer, and another 5*l.* on a tradesman, all supposed for the present to have equal incomes, and to pay the tax equally. The first operation of the tax is generally the following. The farmer and tradesman add the tax to the price of their commodity. Thus the tradesman pays a part of the tax of the farmer, and the farmer part of that of the tradesman. A tax, it is evident, still remains upon the shoulders of each. The tradesman and farmer must therefore either work harder, and produce more of their own commodity, or they must retrench their expences, and buy less of the commodity of their



neighbour. The first takes place in a flourishing condition of a community; and the second in a poor, weak, and exhausted state. It is by the continual efforts of men to produce more, and grow rich, that a country rises to prosperity; it is by the saving and narrowing of consumption and expence that a nation falls into decay.

There is another manner in which a tax is paid, that is still worse. It is by diminishing profits. Thus, if a tax of great amount had been laid on shoe-buckles, the sellers of that article, unable to obtain the payment of the tax, would have been obliged to content themselves with less profit. The trade which is thus unequally taxed is soon abandoned.

We must not lose sight, however, either of the landed proprietor, or the stock-holder. The proprietor, it is evident, must pay, besides his own, a part of the tax of the farmer and the tradesman, and he has no means of repaying himself. For this reason the economists supposed that the proprietors of land paid all the taxes. But they may, if they please, retrench their consumption, and that too with

much more ease than the tradesman; as a livery-servant is more easily parted with than an artisan.

The stock-holder, in the mean time, if he is a consumer, pays to the tradesman and the farmer part of the tax which is raised for his benefit. But he has greater facilities of avoiding expence than any other branch of the community.

There can be little doubt that, for a certain time, a national debt is beneficial in its effects. It promotes a rapid circulation of money; it brings new capitalists into the market with more enterprize, and more invention than the old proprietors of land; it obliges the labourer to work harder, and at the same time produces new demands for labour. But when the national taxes have increased to a certain amount, these effects are nearly reversed. Prices are so prodigiously increased to the consumer, that all prudent men retrench both their consumption and their employment of labour. The greater proportion of the general income of the country is transferred from the hands of men who have the means of laying it out in agriculture or



manufactures, into the hands of great merchants, whose capital overflows the market, and returns in the shape of mortgages. There is, at the same time, a great want, and a great abundance of money. Such are the effects of a great national debt upon individuals. But there is another view in which this debt is an unmixed evil. I mean as it impairs and exhausts the resources of the state. The expence of former wars render it at last difficult for a nation to raise taxes for its defence. So much of the rent of the land-holder is taken from him, that the minister dares not ask for more, as it would be equivalent to the confiscation of the land itself.

Mr. Hume has speculated with great ingenuity on the consequence of the national debt arriving at this pitch. He supposes that one of three methods must be resorted to. The first is, that the scheme of some projector should be adopted, which could only tend to increase the confusion and dismay, and the nation would thus "die of the doctor." The next is a national bankruptcy; a plan that he seems to look upon with some approbation. The third, and last,

is, that the nation would persevere in paying the full interest. He continues thus: "These two events, supposed above, are calamitous, but not the most calamitous. Thousands are thereby sacrificed to the supply of millions. But we are not without danger that the contrary event may take place, and that millions may be sacrificed for ever to the temporary safety of thousands. Our popular government, perhaps, will render it dangerous for any man to venture on so desperate an expedient as that of a voluntary bankruptcy. And though the House of Lords be altogether composed of proprietors of land, and the House of Commons chiefly; and consequently can neither of them be supposed to have great property in the funds: yet the connection of the members may be so great with the proprietors, as to render them more tenacious of public faith than prudence, policy, or even justice, strictly speaking, requires. . . . The balance of power in Europe, our grand-fathers, our fathers, and we, have all esteemed too unequal to be preserved without our attention and assistance. But our children, weary of the struggle, and fettered with incumbrances, may sit down

secure, and see their neighbours oppressed and conquered; till at last they themselves and their creditors lie both at the mercy of the conqueror." The picture of things at home he draws in the following manner:—"No expedient remains for preventing or suppressing insurrections but mercenary armies: no expedient at all remains for resisting tyranny: elections are swayed by bribery and corruption alone: and the middle power between King and people being totally removed, a grievous despotism will prevail. The landholders, despised for their poverty, and hated for their oppressions, will be utterly unable to make any opposition to it."\*

If we look to foreign nations, we shall see that Venice, after wars of glory, arrived, in the beginning of the last century, at that stage of decay of which Mr. Hume speaks. Her revenue was not sufficient to pay the interest of her debt. She suspended payment, but still was unable to support the expense of her government. It requires, however, more space than we have here, to examine the complicated causes of her downfall.

\* Hume's Essays. Essay on Public Credit.

Holland was also borne down in her latter years by the weight of her debt. It is still enormous in proportion to her wealth and population.

France began the revolution with a debt she could not support. By a summary process in the middle of the war, she virtually abolished the greater part of it. No country, however, has yet been precisely in the situation of England. Commerce and credit are not confined to a spot, but run through every vein in her body. A national bankruptcy would give a sudden check to industry that would not easily be restored. Very mistaken notions prevail with respect to the good effects which would follow from applying a sponge to the debt. Of these mistakes none is more evident nor more mischievous than the notion which many entertain and inculcate, that the labourer who receives 18s. a-week, of which ten are consumed by the taxes on beer, candles, &c., would, if all these taxes were taken off, receive the same 18s., and obtain more than twice as much for them. The real price of labour, it must be recollected, is regulated by the supply and demand. The

money-price of course will vary with the money-price of the provisions, house-rent, clothes, candles, &c. which are required for the maintenance of the labourer. If the demand for labour remains the same, and by a reduction of taxes the articles which the labourer uses are reduced in price from 18s. to 8s. his wages will fall from 18s. to 8s. But it will be said that the farmer and manufacturer, having more capital to lay out on labour, the reduction of taxes will bring an increased demand. This, indeed, may ultimately be the case; but it is not likely that such effect would follow a sudden stoppage of the payment of the dividends. So many consumers are spread over this country, who derive their income, either directly or indirectly, from the funds, that the first effect of a national bankruptcy would be a great diminution of demand, and a general depreciation of agricultural and manufactured produce throughout the country.

Since the approach of peace, this country has been visited, at two periods, by severe distress. The first began in 1813, when speculators in foreign corn brought grain, raised, perhaps for

20s. some say for 12s. a quarter, in Poland, to cope, in the English market, with the English farmer, whose taxes and outgoings made it necessary for him to secure 80s. a quarter. The English farmer, of course, was brought to the brink of ruin; and, had not the legislature interfered and forbid all importation till the price rose to 80s. agriculture must have been nearly abandoned in this country. The mischief was not perceived in time by the government, and years of severe distress, which affected manufactures as well as agriculture, ensued.

The second period of distress is, perhaps, entirely to be attributed to the change which took place in the value of the currency, towards the end of the war. About the year 1807, the taxation of this country was at the highest. From this period, the pressure of the war was supported chiefly by the issue of an excessive quantity of bank paper, the holders of which could not demand the payment of the note in specie. The paper fell in value, step by step, till the depreciation amounted to about 30 per cent.

During this period of depreciation, the debt of the country was increased by above 300,000,000l.



The expenditure of 1813 alone caused an addition to our debt of 77,000,000*l.*, and that of 1815 another of 65,000,000*l.* The burden of the interest of these loans was not much felt during the war, as (besides appropriating great part of the sinking fund to pay the interest) the weight of taxes was, in fact, diminished by the alteration of the value of the currency, and the vast expenditure of capital which took place caused trade and agriculture to flourish. The new money created by the Bank produced new speculators and new customers in every branch of industry, thus raising the price of all produce, and causing an apparent prosperity throughout the country.\* But when, by the operation of various causes, and at length by positive statute, the currency was reduced to its original value, all these agreeable symptoms disappeared. The merchant or speculator, not receiving money from the Bank of England, is unable to purchase the produce of the farm. The farmer, at the same time, is obliged to sell at low prices, to pay the country banker

\* See Hume's Essay on Money.

the money which he had borrowed to enable him to improve his land, and meet the increased demand of the war. Corn falls in value far below the price which the change in the value of the currency would indicate. The market is overstocked with labourers, created by the former demand and the injudicious administration of the poor-laws. They become a burden upon society, and form a body of unproductive labourers, many times more numerous than the army and navy of the highest war-establishment. The nation, to use a homely comparison, is like a man reduced by fever from a state of robust health, whose clothes are too large for his weakened and attenuated frame.

After the peace, 18,000,000*l.* of taxes were abolished. This was a diminution of 25 per cent. on the whole taxes, but at the same time the currency was increased in value 30 per cent. so that no relief was obtained. Not long afterwards, 3,000,000*l.* of new taxes were laid on; so that we have now more taxes than ever. The 300,000,000*l.* raised in depreciated money, is to be paid in good currency; that is to



say, about 70,000,000*l.* at the least more than we have borrowed; or, in other words, we pay more than 3,000,000*l.* a-year for money that we have never had.

In order to avoid this evil, Lord Lauderdale recommended, in 1814, that we should coin guineas of the value of 2*l.*s. of paper-currency. Had this advice been adopted, we should have avoided the misery that we have since suffered, and that, too, as we see, with a very small breach of the national faith.

Perhaps, indeed, the fundholder would have had reason to bless the day on which such a measure was adopted, for it would have retarded the period which, some time or other, will, in all probability, arrive, — when the payment of the full dividend and the safety of the state shall be found to be incompatible.

Our only consolation for not having adopted, or not adopting, this course, is, that the country gives an example of scrupulous faith, and unbending honesty, rare at all times amongst nations, but most so in our own times and among the nations of Europe.

## CHAP. XXVIII.

### PARLIAMENTARY REFORM.

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It is true that what is settled by custom, though it be not good, at least it is fit. And those things which have gone long together are, as it were, confederate within themselves. Whereas new things piece not so well; but though they help by their utility, yet they trouble by their unconformity. All this is true if time stood still; which contrariwise moveth so round, that a froward retention of custom is as turbulent a thing as an innovation; and they that reverence too much old times are but a scorn to the new. It were good, therefore, that men in their innovations would follow the example of time itself, which, indeed, innovateth greatly, but quietly.

LORD BACON.

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WE have hitherto said scarcely any thing of the constitution of the House of Commons. From the time of Edward I. it has been composed of knights, who represented the freeholders or landed property of counties, and of citizens, and burgesses, who represented the commercial interests of cities and boroughs.

What these boroughs so distinguished were is a question lost in remote antiquity. It appears clear, however, that the writ sent to the sheriff merely directed him to send to Parliament burgesses for the boroughs within his county, and that the sheriff issued his precept to such of the places called boroughs as he thought fit. Whether they were so called from charter or prescription is uncertain. This service being attended by wages to the members was considered as a burden; and several boroughs petitioned and obtained leave to be relieved from it, some on account of their bearing other burdens. During the contest of the houses of York and Lancaster, however, the House of Commons having become of more importance, and having not unfrequently a voice in the disposal of the Crown, the privilege of electing members to have a seat in it, grew into a desirable privilege. The charter of Wenlock, granted by Edward IV., which is said to be the first in which the privilege of sending members to Parliament is expressly mentioned, grants that privilege as a matter of favour, and as a reward of services performed by the proprietor of the borough. A little

before this the right of voting at county elections was restrained to 40s. freeholders, on account, it is said, of the tumults and affrays which were likely to occur at those elections: — a proof they were already objects of interest. The kings of the house of Tudor, although they raised themselves above the people, acted not without, but through the Parliament. The House of Commons began to debate according to present forms under the sovereigns of this family. Under Elizabeth it happened, for the first time, that a member was found guilty of bribing the returning officer. In the reign of James, Agmondesham, after 400 years' discontinuance, was restored to the privilege of sending members: Wendover and Marlow were restored at the same time. Amongst the arguments in favour of their right, we find, in an abstract of the case drawn in 21 Jac. 1. \* — “Thirdly, the use in these ancient times being, that the burgesses, attending in Parliament, were maintained at the charge of the boroughs; when the boroughs grew poor, the boroughs only for that reason neglected to send their

\* Broune Willis, *Notitia Parliamentaria*, vol. i. p. 120.



burgesses to the Parliament; therefore, now seeing they were contented to undergo that burthen, or to choose such burgesses as should bear their own charges, there was no reason to deny that petition. Lastly, it was urged in behalf of the burgesses, that the liberty of sending burgesses to Parliament is a liberty of that nature and quality that it cannot be lost by neglect of any borough; for every burgess so sent is a member of the great council of the kingdom, maintained at the charge of the borough; and if such a neglect may be permitted in one borough, so may it be in more, and consequently in all the boroughs in England; and then it might follow, that for want of burgesses there would be no Parliament."

In consequence of this decision, there was returned for Wendover Mr. John Hampden, "who beareth the charge." In this and the succeeding reign, the following boroughs were restored by Parliament:

Ilchester,	-	18 Jac. 1.
Agmondesham,		21 Jac. 1.
Wendover,	-	Ditto.
Great Marlow,		Ditto.

Cockermouth,		16 Car. 1.
Okehampton,		Ditto.
Honiton,	-	Ditto.
Ashburton,	-	Ditto.
Milbourn Port,		Ditto.
Malton,	- -	Ditto.
Northallerton,		Ditto.
Seaford,	- -	Ditto.

Twenty-four were restored by the Sovereign himself. These must have been all willing to bear the charge, for fifty-one boroughs that had sent members have never been restored at all. From the reign of Henry VIII. to the accession of Charles I. the House had been increased in number by 156. In Cornwall alone Edward VI. added 12 members, Mary, 4, and Elizabeth, 10.

Cornwall was chosen as the best place to fix these members, because the Crown in right of the duchy had great influence by means both of mines and lands. These additions show the desire of the Crown to obtain influence within the House of Commons. Such unhealthy excrescences, however, did not prevent the Petition of Right, or guard the throne from the Roundheads.

At a time when projects were teeming on all subjects, for the amendment of the whole body of the law, of the church, of the state, and even of the calendar, it was not to be expected that the House of Commons should be without its reformer. It was natural to expect that a plan should be recommended for making representation equal and uniform. Accordingly a proposal of this nature came from the masters of all reforms of that day, — the army. The plan was adopted in its chief principles by Cromwell in the two Parliaments he called after becoming Protector: but neither the temper of the times nor the genius of the man permitted the experiment to be made in such a manner as to give it the slightest value. From the first of these two parliaments Cromwell experienced a decided opposition to his authority; and it was dissolved because it presumed to discuss the question, whether the government should be in a single person. In the second, after various means used to influence the electors, no person was allowed to enter without a certificate from the council of state, and thus 100 members were excluded. Richard Crom-

well, either discouraged by these essays, or yielding to the growing partiality for old forms and methods, assembled a Parliament in the ancient manner. Lord Shaftesbury however, who was the first after the Restoration to violate the independence of Parliament, by insisting that all returns should be judged of in Chancery, was also the first to renew and keep alive the doctrine of parliamentary reform. In a paper published after his death, he complains not only of the undue length of Parliaments, and the corrupt practices of boroughs, but insists on the great speculative grievance that Cornwall sent more members than Wales. Some of his friends, and especially Mr. Samuel Johnson, chaplain to Lord Russell, endeavoured to move the question at the Revolution, but both parties studiously avoided the discussion. From that time to Lord Chatham, the principle of reform, though favoured by some illustrious men, chiefly Tories, seems to have slept in peace: at the same time, the grievance greatly increased. Boroughs became more and more venal; and the number of placemen in a house of 556 members is said to have been not less than 200. But the people

take little or no interest in the question of reform, except when they are suffering real evils from misgovernment. It should be mentioned, however, that in 1745 a Tory motion for annual Parliaments, intended probably to shake the Hanover succession, was rejected by a majority of only 32.

Lord Chatham, finding from experience how difficult it was to rouse the House of Commons to a due sense of ministerial abuses, proposed, as a measure of expediency, that an hundred members for counties should be added to the representative body. This plan was obviously founded on utility only: in the phrase of its illustrious author, it was a plan "to infuse new life into the constitution."

The American war having placed the misrule of our statesmen in a still more glaring light, Mr. Pitt, in 1781, in 1782, and in 1785, made motions in the House of Commons itself in favour of different plans of reform; all, however, professing to amend only a part of the representation, and resting, like those of his father, on the basis of utility and experience. There were, however, other doctrines afloat. Dr.

Jebb, and, after him, Mr. Cartwright, broached the theory of personal representation; which, following out the principles of Mr. Locke, pretended to establish, as a natural and indefeasible right, that every man ought to have a suffrage. Neither this theory, however, nor the plan of Mr. Pitt, which was supported by Horne Tooke, and all the temperate reformers of that day, met with any success. Mr. Pitt became at first cold, and then totally silent on the subject.

The question slept till the French Revolution, which disturbed every thing, woke it anew. The fever was contagious: some had it more violently, some less so. A society, consisting of many of the ablest men of that day, drew up the paper called the Petition of the Friends of the People. This was no less than a bill of indictment against the governing assembly, and, consequently, against the established constitution of Great Britain. The history and the state of the boroughs is minutely detailed; and an elaborate attempt is made to show that a few individuals have the command of the House of Commons, and of course it follows, of the persons and purses of every man in Britain.



There is one part of this statement, however, which is manifestly irrelevant to the subject. A large number of county members and others are enumerated as elected by the influence of peers or certain wealthy commoners. It is alleged, that not only do 84 persons nominate directly 157 members, but that 70 others, by indirect influence, in counties and large towns, return 150 more; and thus a pretended proof is given, that a few persons elect a majority of the House of Commons. Now every one who knows England, knows that the freeholders of the same political opinions in a county, whether magistrates or shopkeepers, generally agree to give their votes to the same candidate. The qualities which they seek for in a candidate, it is also known, are, generally, not eloquence, or even abilities, but common sense, ordinary integrity, and landed property. Property itself is supposed, in some manner, to be a guaranty of character. It therefore happens, that the person amongst them who has most land, if he has other common requisites, is the member; and if he is a peer, his brother or his son. It is not a man's own tenants, but his party in

conjunction with his tenants, who make him knight of the shire. A complaint, therefore, that the eldest son of the Earl of Derby is always returned member for Lancashire, instead of the wisest weaver, or most patriotic spinner in the county, is not a grievance fit to be stated to the House of Commons, although it might make part of an essay on the character of the English people, or, of a general treatise on human nature.

Laying this objection aside, however, the main scope of the petition admits of this answer: — "You complain of the formation of the House of Commons, such as it has existed from the Revolution to the present time. You prove that the frame of our government during that time has been a corrupt combination for private purposes. Now our fathers and our grandfathers have told us, that during that time they were very free and very happy. Their testimony is confirmed by the wisest lawyers, the greatest philosophers, the most enthusiastic poets of the times. Your theory goes to overthrow the testimony of Blackstone, Montesquieu, Voltaire, Thomson, Cowper, and a hundred

others, who have declared England to be in their time in the enjoyment of complete freedom. Now government is a matter of experience, and not of speculation; we will, therefore, not believe a word of your theory."

Such an objection as this appears to me to be sound. For the complaint is made, not of a single or particular grievance, but of the majority of the governing body of the state, such or nearly such as they had existed for a hundred years of liberty and glory. To explain this farther: if a petition were presented, complaining of the bankrupt-laws, it clearly would not be a good objection to say, "Our ancestors have been free and happy with the bankrupt-laws, therefore we will not change them." But if a petition were presented, stating that the division of our government into three powers was a most absurd one; that it was ridiculous to give one man as much power as 658 representatives of the whole people; that it was out of all reason to admit into the House of Lords a spendthrift or an idiot, because his father had been a statesman or a favourite; that the veto of the King was a barbarous invention un-

worthy of a polished nation; we should answer, "The theory may be bad, but the practice has been excellent."

Mr. Fox, fully sensible to the weight of this answer, came forward in 1797, and put the question upon totally different grounds. He declared the situation of the country to be so perilous as almost to make him despair of the safety of the state. He argued, that the conduct of the ministers had been such as to bring the commonwealth to utter ruin; and no expedient remained, but to recur to first principles, and reconstitute the state. Admitting the evil to have been fully as great as Mr. Fox represented it, his reasoning was far from proving the propriety of the remedy. For that evil arose, not from disregarding the voice of the people in the American and French wars, but from yielding to it. "Liberty is in danger of becoming unpopular to Englishmen," says Mr. Burke, in the American war. "In short," says Mr. Fox, during the French war, "liberty is not popular. The country is divided (very unequally, I admit,) betwixt the majority, who are subdued by fears or corrupted by hopes;



and the minority, who are waiting sulkily for opportunities of violent remedies." \* What a strange remedy, then, to make the legislature more democratic! They would have banished and imprisoned the minority. One remark more may be made here. The authors of the plan proposed in 1797, after having sacrificed the whole present constitution of Parliament to uniformity, break that uniformity by proposing that the country should send more members in proportion to their population than the towns. Had the plan succeeded, such a blot could not fail of being hit. The inhabitants of towns might justly have complained, that they, who were more enlightened than country labourers, were defrauded of their due share. A new plan would have followed, and the government would have been placed in the worst of all hands; viz. the population of large cities.— London alone would have sent 50 members, Manchester and Glasgow in proportion.

Such objections as those that I have mentioned

\* Letter to one of his friends. Vide article Fox, in the new edition of the *Encyclopædia Britannica*. See, also, Mr. Fox's Speeches at the beginning of the war, which are full of avowals, that he had become unpopular by his opposition to it.

might have been sufficient to deter the House of Commons from adopting a new map of representation. But when we are examining the principles of the English government, it is necessary to endeavour, as far as we are able, to lay down some general rules for the formation of the assembly of the Commons of a limited monarchy. A few may suffice, both for the author and the reader.

First, All parts of the country, and all classes of the people ought to have a share in elections, otherwise the excluded part or class of the nation will become of no importance in the eyes of the rest: its favour will never be courted in the country, and its interests will never be vigilantly guarded in the legislature. And in proportion to the general freedom of the community will be the discontent excited in the deprived class, by the sentence of nullity and inactivity pronounced upon them. Every system of uniform suffrage, except universal, contains this dark blot. And universal suffrage, in pretending to avoid it, gives the whole power to the highest and the lowest, to money and to multitude, and thus disfranchises the middle class, the most disinter-



ested, the most independent, and the most unprejudiced of all. Nor is it necessary, although every class ought to have a voice in elections, that every member of that class should have a vote. A butcher at Hackney, who gives his vote perhaps once in twelve years at an election for the county of Middlesex, has scarcely any advantage over another butcher at the same place, who has no vote at all. And even if he had, the interest of the state is in these matters the chief thing to be consulted; and that is as well served by the suffrage of some of each class, as by that of all of each class.

The privilege of giving a vote gains a value, too, from not being too generally possessed, or too frequently exercised: were it used every year, by every body, it would be as little regarded as the golden pebbles were by the children of El-Dorado.

Secondly, Enlightened men of every class should be capable of being elected. The highest in rank, excepting the peers, should be admitted, because they give to a popular assembly new importance, and receive from it additional stability. Above all, their presence and con-

currence unite the aristocracy and the people in a common sympathy, planing away the pride of the one, and the envy of the other. Persons without birth, who have risen by commerce, ought, most undoubtedly, to be capable of admission, both to give an encouragement to the honest exertions of all sorts of men, and to make every class feel intimately persuaded that they are represented in fact as well as in name. These two sorts of persons require only the legal permission to enter the legislature: they are sure to find themselves there. But there is another class who ought to form a part of any good representative body, whose election is not so sure: I mean those who are distinguished by their learning and their talents, but not by their fortune, or their commerce with the world; men who have devoted their youth to the acquirement of the knowledge of English law, laws of nations, history of the constitution, political economy; but who are excluded by their want of wealth, their temper, or their habits, from popular contests. For it is not to be denied that a body of 10,000 farmers or tradesmen will choose no man who is not known to them,

either by his station in the country, or by a course of popular harangues. If, then, you make none but elections by large bodies, you either shut out the aristocracy of talent from your assembly, and constitute them into a body hostile to your institutions, or else you oblige them to become demagogues by profession: things both of them very pernicious, and very dangerous to the state. It is useful, therefore, to have some elections by persons who, by their station in society, are acquainted with the characters of the men of talent of the day. This may be done either by forming some elective bodies of a few persons, with a high qualification, or by giving to property a commanding influence in the return of a proportion of members.

Thirdly, The grand principle of all, derived from the two foregoing, is, that the representative body should be the image of the represented: not that it should represent property only, or multitude only, or farmers, or merchants, or manufacturers only; not that it should govern with the pride of an insulated aristocracy, or be carried to and fro by the breath of transient

popularity; but that it should unite somewhat of all these things, and blend these various colours into one agreeable picture. The House of Commons should be, as Mr. Pitt said, an assembly united with the people by the closest sympathies. Nor is it meant by this expression to say, that it should be for ever following the uppermost passion of the people. The decisions of the House of Commons should be such as either to satisfy the people at the moment, or capable of satisfying them upon plain reasons, when the arguments and the facts are laid before them. If the decisions of the representative body are not fit to do this, not only are they a bad House of Commons, but they would form a bad senate, or a bad privy-council. Let us now see whether the English House of Commons is formed upon principles similar to those I have mentioned:

1st. The general scheme of the representation is evidently calculated to give the right of voting to persons of all classes. Landed property is represented in counties; commercial in cities; and the boroughs contain every possible mode of suffrage, the most limited



and the most universal. These, too, are all so blended together; the towns have so much influence in county elections, and landed proprietors so much influence in the neighbouring city or town, that one kind of members does not feel much jealousy of another kind. It is always a great misfortune when they are pitted against each other.

But although no class is excluded from our constituent body, there are parts of the country very inadequately represented. The county of Lancaster, and the county of York, comprising Manchester, Bolton, Leeds, Sheffield, Halifax, and Huddersfield, and containing 2,500,000 of inhabitants, are represented by four persons. This is evidently a practical grievance, and as such it has been felt.

2d. Enlightened men of every class find their way into the English House of Commons. Those who have property in land are candidates for their respective counties; those who have made their fortune by commerce or manufactures, may easily establish an interest in cities with which they have some connection, or in towns (there are many such), where, without

bribery, the inhabitants require a man of fortune to support their public institutions, and give them his custom in laying out his income. There remains the aristocracy of talent, who arrive at the House of Commons by means of the close boroughs, where they are nominated by peers or commoners who have the property of these boroughs in their hands. In this manner the greater part of our distinguished statesmen have entered Parliament; and some of them, perhaps Sir Samuel Romilly and Mr. Horner, would never have found admittance by any other way. The use of such members to the House itself, and to the country, is incalculable. Their knowledge and talents give a weight to the deliberations, and inspire a respect for parliamentary discussion, which in these times it is difficult for any assembly to obtain. The speeches, too, of able and eloquent men produce an effect on the country, which is reflected back again on the Parliament; and thus the speech of one member for a close borough is often of more benefit to the cause of truth and justice than the votes of twenty silent senators.

Some danger as well as much anxiety, it may



be thought, arises from the power of nomination to a seat in a representative body. Theoretically it would be better if the members sent by single persons were elected by a body of rich constituents. But in practice it is not found, that the borough proprietors combine together to sell their influence: on the contrary, they are firm to their several party-connections, and oftentimes they preserve to the House a great orator, whom the clamour of the day or a fortuitous circumstance has thrown out. Such was the case with Mr. Fox.

3d. Do the Commons of England represent the people? Perfectly well when the people and the government agree; but when they separate, the decisions of the House of Commons lean more to the side of the Government than the people. This may be proved by examining the history of the two last years of the American war. The majorities on these occasions were small, and they consisted chiefly of borough members. The same thing has happened since the last peace of Paris, on divisions relating to the scale of expenditure and patronage which the ministers have kept up. The country has

been decidedly one way; and the House of Commons, by small majorities, has determined in the opposite direction. The proof of this is made by analyzing the divisions, and seeing how the county members have voted. Thus, on Mr. Dunning's motion in 1780, ministers in 215 members had only 11 county members, whilst their opponents in 233 had 69. The desertion of 20 members was then sufficient to turn the scale. On the Walcheren expedition, the English county members against ministers were nearly as three to two, but the majority was in favour of the administration. In 1817, on the question of appointing a finance committee with less than five placemen upon it, the county members divided 27 to 15 for the Opposition; the house at large 178 to 136 for ministers. On a motion for reducing two lords of the Admiralty, the county members were 35 to 16; the house 208 to 152 the other way. The boroughs generally give a large majority to ministers; but the smaller boroughs give five and six to one, and the Cornish boroughs 16 or 17 to one in their favour. There is one kind of boroughs which has not hi-

therto been mentioned, and which is the chief cause of this disorder. It is a species of borough of which the seat is sold by the electors to the highest bidder. Many of those who represent this kind of borough come in with what are called not political but commercial views. These views are to make as much as possible at the treasury, and vote on all questions and at all seasons alike. Many boroughs also have what is called a patron; sometimes an attorney, sometimes a baronet, and sometimes a peer, who sells them in the market, and takes fifty per cent. for his trouble.

These boroughs, it is true, also return men belonging to the commercial interest, who always ought to find seats in Parliament. But they send them to the House of Commons, not as representatives of the commercial body, but as representatives of that firm in the city to which they belong. Hence contracts, and licenses, and jobs, of every kind and description.

We have now arrived by regular steps at the conclusion, that the House of Commons does not adequately represent the people, and

that the small boroughs prevent that vigilant stewardship of the public revenue which is the bounden duty and peculiar function of that assembly. It follows as an immediate consequence, that the small boroughs have betrayed the trust which is reposed in them for the good of the community; and that they may without injustice be deprived of the valuable privilege they continue to possess. But we then come to another question. It is not certain, because we have a right to do this, that it would be wise to do it, or, indeed, that the remedy may not be worse than the disease. In order to enable us to take a clearer view of this part of the subject, let us first take a view of the most approved specifics of the day.

The first of these is universal suffrage. Some persons maintain, that every man has a right to a personal vote, which he has received from God, and which cannot be separated from him. If this were true, it would put an end to all question immediately. But in fact it is absurd. The right which a man possesses with respect to voting is an artificial right, and must be that which the laws allow him. It would be more





rational to say, "Every man has right to a share in the government of his country: let not the people trust their interests any longer to other hands, but meet and conduct them themselves on Salisbury Plain." The right is equally good; and Tacitus would have furnished better precedents for this practice than the reigns of our Edwards do for personal suffrage. But further;—there are two things, and not one only, to be proved: 1st, that there exists such a right; 2d, that it is wise to exercise it. Every member of the House of Commons has a right to freedom of speech; but, happily, many allow it to be dormant; and a multitude of hearers submit to an oligarchy of speakers.

The advocate of universal suffrage next maintains, that the right is one acknowledged and exercised in ancient times of our history. This is a pure vision. The members for cities and boroughs were chosen by persons who held the right by charter or prescription. The knights or members for counties were chosen by the freeholders: *i. e.* persons who were free, and possessed land. Of universal suffrage, therefore, not a vestige is to be found, except in one

or two boroughs, where this right of voting was established.

Leaving all right aside then, let us consider the expediency of universal suffrage. On this I shall not dwell long. It is manifest, that universal suffrage is calculated to produce and nourish violent opinions and servile dependance; to give in times of quiet a great preponderance to wealth, and in times of disturbance, additional power to ambitious demagogues. It is the grave of all temperate liberty, and the parent of tyranny and licence. This is not a dream, but the recorded result of the experiment in France; and every Frenchman who loves liberty speaks with horror of universal suffrage. In America the same bad effects have not followed from this system; but it has produced a monopoly extremely prejudicial to freedom, by throwing the actual elections into the hands of a very few persons, who have assumed to themselves the power of governing for the whole. Hence the real power of choosing the member resides with a small number of leaders of one party or the other.

We come next to consider the effects of a



plan to divide the country into districts, and extend the right of suffrage to all persons paying direct taxes. If this plan were accompanied by a triennial bill, it would certainly render the House of Commons an assembly very obedient to the popular voice; but many of the advantages of representation would be lost. The very scope and object of representation is to obtain a select body, who may not only have a sympathy with the people, but who may, by the habits of business which their number permits, and the judgment which their election implies, manage the interests of the country somewhat better than each town and county could do by petition and public meeting. If you render the House of Commons a mere echo of the popular cry, you lose on many questions, as Catholic Emancipation for instance, all the benefit of having a body in some degree capable of directing public opinion. I am aware that this argument may be easily pushed too far. I can only repeat, to explain my meaning, that the House of Commons ought to make such decisions as are either agreeable to the people at the time, or when

they are not so, the weight of argument should be so great as to convince the country within a short time afterwards, that the resolution or vote was adopted, not from any corrupt or sinister motive, but from an enlarged and sagacious view of the public interest.

Other arguments might be used to show that a House of Commons elected by one class only would not so fully represent the people as one chosen by many different classes. But on this topic I have already touched. These are speculations, however, of some uncertainty. In my mind, the greatest objection of all to the adoption of any broad general plan of reform is the danger it would bring with it to every other institution. The real evil of our present government is the enormous amount of the national debt. Were we to make any great and violent change in any one branch of our legislature, the people would soon enquire whether that change had lightened the burden of the debt. It would be no satisfaction to them to be told that by reductions in the army, and other establishments, savings to the amount of three or four millions had been

made. After requiring and obtaining a complete revolution in the form of the House of Commons, the seat of government, they would expect much greater alleviation than any economy could grant. New and more violent changes would be demanded. Law and prescription would be less regarded in every fresh change. The national creditor would in vain urge the justice of his claim to the payment of the interest due to him. I know there are many persons disposed to say, "Why, this is the very thing we want. We only value reform as a prelude to measures too comprehensive, or, if you will, too violent, for an old-established government to undertake." Such is the feeling of the most able, but I think not the most prudent of the reformers. It is a question, however, of feeling rather than of reasoning. For my own part, I cannot understand how a man can have read the histories of Athens, of Sparta, of Venice, of France, of Spain,—how he can have thrown a single glance at the governments existing in the world at the end of the eighteenth century, and not cling the closer to his native home. Corrupt as the administra-

tion of English affairs may be, it is impossible not to see that the laws afford a greater protection to civil, personal, and political liberty in England, than the general average of governments attain.

"The blessings of the constitution under which we live," is not, after all, an unmeaning phrase. They are acknowledged by foreigners, and by the greater portion of the people of this country. The true coin of our freedom may be clipt and worn, but still it is better than any paper security that may be offered to us. We speak, we write, we think, we act, without fear of a Bastille or an Inquisition. We wear liberty about us, as if it were a part of our clothes, and the dregs of the spirit of old times, with decayed institutions, are of sounder and better flavour than a new constitution, however admirable, which requires new maxims of conduct, and new feelings of right and justice.

There is still a third principle, or basis, upon which measures of reform may be founded.

We have seen that, towards the end of the American, and after the conclusion of the French war, the decisions of the House of



Commons were contrary to the well-known sense of the people. But the majorities were small, and perhaps an instance will hardly be found of a majority of more than one hundred, on a question on which the country itself was not extremely divided. Now, as it is a maxim of Newton and succeeding philosophers, not to admit more causes than are sufficient to explain the phenomena; so also it ought to be the maxim of a statesman not to propose more innovations than are sufficient to cure the evil.

But how begin the Reformation?—It is extremely difficult, if not impossible, to cut off some boroughs, on account of their size, without drawing an arbitrary line. If a borough with 500 votes is to be disfranchised, what is to save the borough with 560? Any reform of this kind leads to the general reconstruction of the whole building,—the plan we wish to avoid.

It has been mentioned, however, that there are a number of boroughs notorious for the general prevalence of bribery and corruption. Here we have a place for driving in our wedge;

for bribery is an offence against several well-known laws, which have been made for the purpose of restraining and preventing it. These laws of prevention having utterly failed, it is now time to see what may be done by enquiry and disfranchisement. Nor can there be a more direct method of improving the representation; for, on any division, if there be thirty-five members for Cornish boroughs in the House, the chances are, that thirty of them vote for the minister, whoever he may be.

Other measures of reform may be founded on the principle of granting a compensation for the privileges of such close corporations, and such decayed boroughs as are willing to part with them. With the terror of a bribery enquiry before their eyes, many a corporation and little borough would be glad to make their escape over a bridge of gold.

Vacancies being thus made, it would then be open to the legislature to admit to a share in their deliberations representatives for those large towns, whose exclusion I have already indicated as a blot. The merchants of London, who would lose their Grampounds and Barn-



staples, ought also to be allowed to choose a small number of members.

By such means, if applied with judgment, and sincere desire of improvement, the balance of the House of Commons might be thrown once more on the side of the people, without so violent a measure as declaring the privilege of the small boroughs to be forfeited. Undoubtedly those privileges are a trust; but so is the Crown; and we ought to have as good, and as strong, and as cogent reasons for disfranchising Old Sarum, as we had for expelling James II.

I shall only state, in conclusion, that upon the whole, the authority of our greatest statesmen seems to lean to a partial, and not a general reform. Mr. Pitt never proposed to destroy, by mere force of law, any part of the present representation. His first proposition was to add 100 members to counties; he next moved for a committee; and the last time he brought forward the subject, in conjunction with Mr. Wyvill and the great body of reformers, he proposed to buy the franchises of 36 boroughs, and of some close corporations,

who should be willing to part with them. In all these there was no violence; no pulling down the house in order to build it up again. Mr. Fox, during the war of the French revolution, went much further. But his sober opinions, as well as those of a person illustrious by his own character, as well as by his friendship for Mr. Fox, may, I think, be collected from the following passages of the speech of Lord Grey, on bringing forward a motion for a committee on the state of the nation, in 1810. In quoting these passages, I know very well, that the statesman to whom they are attributed, has never given any authority for their correctness; they may be taken, however, as the general substance of what he said:—"I have hitherto spoken of financial reform, and the reduction of needless offices: in my judgment, your Lordships' duty does not stop here. You are, my Lords, in a situation where it is incumbent upon us to look into those defects, which, having arisen through time, have injured the frame and corrupted the practice of our constitution, and to apply to the abuse such remedy as can be effected by a gradual, temperate, and

judicious reform, suited to the nature of the evil, the character of the government, and the principles of the constitution. I would not have ventured to make this avowal to your Lordships, without much previous thought, and the most deliberate circumspection. The question of reform has long engaged my most serious contemplation. At an early period of my life, I certainly took up strong opinions upon this subject, and pursued them with all that eager hope and sanguine expectation, so natural to the ardour of youth. I will not say that there may not have arisen some difference between my present sentiments and former impressions; still I beg leave to assure your Lordships, that the general opinions I then formed, I have not, in my maturer age, seen cause to change, and that whatever distinction exists between my early and my present views of reform, on its great grounds that question has not been abandoned by me. That a degree of difference exists between my present and former impressions is what I freely acknowledge; he, indeed, must have either been prematurely wise, or must have learned little by experience, who,

after a lapse of twenty years, can look upon a subject of this nature, in all respects precisely in the same light. But though I am disposed soberly and cautiously to estimate the principles of the constitution, — though, perhaps, I do not see in the same high colouring the extent of the evil sought to be redressed, and am more doubtful as to the strength and certainty of the remedy recommended to be applied; still, after as serious and dispassionate a consideration as I can give, to what I believe the most important question that can employ your Lordships' attention, it is my conscientious opinion that much good would result from the adoption of the salutary principle of reform gradually applied to the correction of those existing abuses, to which the progress of time must have unavoidably given birth; taking especial care that the measures of reform to be pursued should be marked out by the constitution itself, and in no case exceed its wholesome limits. With respect to any specific proposition of reform of the other House of Parliament, I know not how to speak of it, fearful lest, even in introducing the topic, I should



transgress the bounds of that respect due to an integral branch of the legislature, and most particularly as the propriety of any proposition of this nature must rest upon the acknowledged imperfection of that branch, together with the abuses which have rendered it less strong as a barrier for the people against the encroachments of power. But as nothing can be done on this subject without the concurrence of all the branches of the legislature, and as that which affects one branch concerns us all—as the question itself is of the highest importance to the nation at large, it is, my Lords, of particular consequence even to so humble an individual as myself, that my opinion on this subject should not be misrepresented. I therefore am ready to declare my determination to abide by the sentiments I have before expressed; and that I am now, as I was formerly, the advocate of a temperate, gradual, judicious correction of those defects which time has introduced, and of those abuses in the constitution of the other House of Parliament, which give most scandal to the public, at the same time that they furnish designing men with a pretext

for inflaming the minds of the multitude, only to mislead them from their true interest. To such a system I am a decided friend; whenever it shall be brought forward, from me it shall receive an anxious and sincere support. But as I never have, so I never will rest my ideas of salutary reform on the grounds of theoretic perfection. While I shall ever be ready to correct, by the fixed principles of the constitution, an admitted inconvenience where that inconvenience is practically felt, I continue to disapprove of all those general and vague speculations in which some men would wish to engage."

After some remarks on privilege of Parliament, he proceeds:—"If, my Lords, any consideration more than another could confirm me in the validity of this doctrine, it would be the concurrent opinion of that great statesman, by whom it is the pride of my life to have been instructed and informed in the early part of my political career; I mean Mr. Fox, whose views respecting reform I had frequent opportunities of ascertaining, in the course of many debates; and than whom there never existed one who



more fully understood the principles, or more affectionately appreciated the blessings of the venerable constitution under which he lived. If, in his political creed, there was one article which he held more steadfastly than another, it was, that while a system was practically good he would always abstain from mending it by theories. And never, my Lords, can I forget his powerful observations, when, in his place in Parliament, he stated his conviction of the absolute impossibility of providing for all the variety of human events, by any previous speculative plans: For, said he, I think, that if a number of the wisest, ablest, and most virtuous men that ever adorned and improved human life, were collected together, and seated round a table to devise, *à priori*, a constitution for a state, it is my persuasion, that notwithstanding all their ability and virtue, they would not succeed in adapting a system to the purposes required, but must necessarily leave it to be fitted by great alterations in the practice, and many deviations from the original design. And this opinion he was wont to illustrate by the familiar but apt example of building a house, which,

notwithstanding all the study and consideration previously bestowed upon the plan, was never yet known to supply every want or to provide all the accommodations which, in the subsequent occupation of it were found to be necessary. Nay, he used to remark, that, however fine to look at, a regular paper plan might be, no house was so commodious and so habitable as one which was built from time to time, piecemeal, and without any regular design. To those principles of practical reform, so wisely enforced by that great statesman, I am determined to adhere; and the acquiescence of your Lordships it is my duty also to solicit; again repeating that the remedy I seek, shall be limited by the existing defects, shall be marked by the constitution itself, and not launch out into any extravagance of theory, which even appearances may recommend."

## CHAP. XXIX.

THAT THE EXCELLENCE OF THE ENGLISH GOVERNMENT DOES NOT CONSIST IN THE LAWS ONLY, BUT IN THE SPIRIT AND GOOD SENSE OF THE NATION.

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Virtue! without thee  
There is no ruling eye, no nerve in states;  
War has no vigour, and no safety peace;  
Ev'n justice warps to party, laws oppress,  
Wide through the land their weak protection fails,  
First broke the balance, and then scorn'd the sword.

THOMSON.

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THE proposition, that good laws, without virtue in the society where they are established, are of little or no avail, is one so generally admitted, that it seems useless to waste a word respecting it. Perhaps there is not a more comprehensive or a more humane code of laws, than that which has been provided in Spain for

the government of the Indians of Mexico and Peru; but unfortunately the legislators are at Madrid, and the people to be protected working for their masters in America, without the power of enforcing their legal rights; so that the code is of no force or value whatsoever. The converse of the proposition I have selected, however, although perhaps not formally contradicted, is not so generally impressed upon our minds. Men are easily led to believe, that where liberty and wealth have flourished, there must be some very singular excellence, some unfailing virtue, inherent in the laws, by which the state has been governed. It would be an easy task to prove, that neither at Athens, nor at Rome, nor at Florence, nor in Holland, has the form of laws reached to any great perfection. But this would probably be admitted; and yet many would persevere in thinking that in England our ancestors had discovered some secret for making faultless laws. Blackstone has much contributed to spread this opinion. All that was established had, in his eye, a peculiar sanctity. The fault, indeed, was on the right side.



If he refrained from pointing out many obvious improvements, he also kept alive that respect for our ancient liberties, which unprincipled statesmen find to be the greatest (would it were an efficient!) obstacle to their arbitrary innovations. It is impossible, however, to attempt any general view of the history of our government, and not to be struck with the modifications and forced interpretations, which have been accepted, in order to make law agree with the security of the state and the safety of the subject.

The first instance I shall mention is the treason law. For three centuries, we have been accustomed to appeal to the 25 Edward III. as the perfection of wisdom and liberty on the subject of treason. Yet what is this law, when we come to examine it? The bold and spirited compact of a turbulent nobility with a feudal king, totally unfitted for a commercial and civilized society. It provides, that the penalties of treason shall apply to those only who conspire against the life of the King or actually levy war against him. Of the other offences made

treason by the bill it is not necessary to take notice here. Such a law as this, it is evident, was well calculated to protect the barons from being arrested for disaffection, and to give them the power of holding their private councils for rebellion undisturbed. In the progress of society, however, it was discovered, that a conspiracy to levy war, far from being an ordinary or light offence, was a crime of the utmost magnitude, dangerous alike to the safety of the King and the tranquillity of the country. What was to be done? It was obvious, that a conspiracy to levy war was not treason by the act, for no men could have been so absurd as to have specified the actual levying of war when they had already included a conspiracy to commit that crime, under the head of compassing the king's death. Had they wished to include this offence, they would undoubtedly have said, levying war against the King, or conspiring to levy war. Indeed, so certain was the meaning of the law of Edward, that a new law making a conspiracy to levy war high treason had been enacted, and afterwards



repealed with other new treasons at the beginning of the reign of Mary. In this dilemma, the lawyers cut the Gordian knot. They decided, that "compassing or imagining the death of the King," meant conspiring to depose him, or to imprison him, or to use force for the purpose of making him change his counsellors, or his measures; for any of these acts *might* lead to his death. They interpreted the offence of levying war against the King to mean a riot for any general purpose, as to pull down inclosures, or meeting-houses. These violent constructions of law, first imagined under the reign of the Tudors, put in force to shed the blood of good men under the Stuarts, crept in and flourished till they received the sanction of the upright and venerable Judge Foster in the reign of George the First. In those times of mild government, however, the engine was little wanted, and it was reserved for Mr. Pitt, to direct it against the lives of his old supporters the reformers, during the French revolutionary war. But juries refused to carry the construction as far as the court desired. It was proved, indeed, to their satisfaction, that Hardy and

others had joined in associations, which had no other object than to overturn the institutions, one and all, by which the throne was surrounded. The chief justice declared there could be no doubt respecting the construction of the law. But it was impossible to convict Hardy, without making all political association in opposition to the ministry liable to capital indictment, and the prisoners were acquitted. Less than two years ago, some raving demagogues went beyond any thing that appears of Hardy and the constitutional society. They resolved not to obey the laws, and they recommended in their speeches physical force, as the only means of obtaining redress. Many of them were committed for high treason. But the Government recollecting the lesson their predecessors had received, declined to prosecute for that offence; and have thus tacitly abandoned a pretension dangerous to the safety of every man in the country. The law of high treason, insufficient at first for the security of the state, and afterwards a snare for the subject, has been worked out at last into

a barrier, alike providing for the stability of the offended throne, and the safety of the innocent accused.

Let us now pass to the law of libel, — the security by which the liberty of the press is to be protected. Blackstone tells us that libels, in the sense in which we are speaking, are “malicious defamations of any person, and especially a magistrate, made public by either printing, writing, signs, or pictures, in order to provoke him to wrath, or expose him to public hatred, contempt, and ridicule.” He tells us that “the communication of a libel to any one person, is a publication in the eye of the law :” and that “it is immaterial, with respect to the essence of a libel, whether the matter be true or false !” Thus, then, a man may be punished for any writing on the conduct of a minister which may expose him to public hatred, contempt, and ridicule ; although the allegations contained in it be true, and it has only been shown to one person. To make this power more formidable, the judges were wont formerly to maintain that they alone had the power of

deciding whether the writing were libel or no ; and that the jury were only called upon to decide upon the fact of the publication. Here indeed is a law of tyrants ! How has the liberty of the press ever survived it ?

The miracle is soon explained. — The prosecutor on the part of the crown, contented himself with putting in the paper, and proving the publication. The counsel for the accused always dwelt upon the hardship of convicting any man for the publication of a writing without examining whether that writing was innocent or pernicious. The jury felt the injustice of the proceeding, and generally acquitted the accused. The libel bill of Mr. Fox, then, while it afforded a just protection to the public press, was rendered necessary by the breach which had taken place between the law and the men bound to administer it.

I cannot leave this subject of libel without mentioning the hardship to which accused persons are still subjected by being tried by special juries. These juries are, in the country, the nominees of the crown. Surely in a case where the powers of the government are brought to

bear against an individual in so delicate a matter as seditious libel, the subject ought to have a protection somewhat similar to that which he is allowed in cases of high treason, of challenging peremptorily thirty-five of the jury.

## CHAP. XXX.

## RESTRICTIVE LAWS.

Per me ho adottata nell' intero la legge d'Inghilterra, ed a quella mi attengo; nè fo mai nessuno scritto che non potesse liberissimamente e senza biasimo nessuno dell' autore essere stampato nella beata e veramente sola libera Inghilterra. Opinioni, quanti se ne vuole: individui offesi, nessuno: costumi, rispettati sempre. Queste sono state, e saranno sempre le sole mie leggi; nè altre se ne può ragionevolmente amettere, nè rispettare. AFFIERI, *Vita*, t. 2. p. 133.

THERE can be no doubt that public opinion acquired prodigious force during the late reign. Not that the power of opinion is, as some suppose, a complete novelty in this country, or an exclusive attribute of a free constitution. It was public opinion which induced the soldiers on Hounslow Heath to shout when the Bishops were acquitted; it was public opinion which obliged Sir Robert Walpole to relinquish the excise-scheme. Even in dis-



potic countries opinion has its weight: it dismissed Squillace from the government of Spain. In Turkey also we are told, that when the people are discontented, they set fire to a house. It is or was the custom for the Sultan always to assist at a fire, and thus an opportunity is found of telling him those unpleasant truths, which would never otherwise reach his ear. This to be sure is a strange method of giving constitutional advice.

The chief advantage, then, of a free government, is not the existence of public opinion, but that it is exerted in favour of the wholesome rights and established liberties of the people. Looking at the subject then in this point of view, I own, I doubt whether public opinion has increased so much in quality, value, and weight, as it has in bulk and velocity.

In the first place, it is very evident that esteem for constitutional learning, and respect for ancient forms and usages is very much diminished. This, no doubt, is owing to the increase of mercantile men, who have, not like our landed gentlemen and magistrates, the habit of looking into law-books, and referring to acts of

parliament. It is also partly owing to the pressure of great evils, which have sometimes made a necessity, real or supposed, of overlooking rules and maxims, to remedy an urgent danger. Whatever be the causes, however, the consequence is very grievous. The forms of Parliament and of the constitution, as has been before observed, oppose in themselves a great barrier to the strides of arbitrary power. The violation of those forms ought to serve as a signal that an enemy is in sight, and the people should be prepared at once to take part against a measure appearing under such inauspicious colours. This feeling, however, being now weakened, it is in the power of a minister to dispense with precedent and usage, whenever they stand in the way of convenience and expediency, and thus all the guards and outworks of freedom, on which her security so much depends, are yielded without a blow.

Another loss for the cause of liberty is to be found in the extinction of the race of the Pretender. As long as the Stuarts maintained their claim to the crown, the King was

obliged to make up in good government what he wanted in legitimate right. A great part of the church, and their peculiar adherents, allowed the doctrines of the Whigs to prevail, that they might exclude those of the Pope; they permitted liberty for the sake of religion. But at present, the King's advisers have no fear of a successful rival, and the church having been saved by the Whigs, think it consistent with propriety and dignity to calumniate them, and the cause of liberty itself. They have accordingly revived, in a less odious form, the doctrine of passive submission, and they have carried along with them that immense rabble, who think "the people are born with a saddle on their backs, and the King with a whip and spurs to ride them."

There is another cause of the corruption of public opinion to be found in the enormous growth of our manufacturing towns. The people of these towns, having grown to sudden wealth; having lost, in the rubs of a steam-engine life, all the hereditary attachment to law and liberty, which every Englishman naturally inhales at his father's fire-

side, have no guide or compass in their political opinions. It is a misfortune, too, that the greater part of these towns having no representatives, the people they contain never attend to the affairs of their country, with a view to any practical decision. Hence, their notions of government vary with every breath of prosperity or adverse fortune: at one time they are indifferent when the whole constitution is menaced; at another, they listen to revolutionary plans and incomprehensible reforms.

There is another circumstance with respect to public opinion, which is of more importance than any. It is, that opinion has become much more sensitive, and men are more disposed to go to extremes than they ever were before. Since the beginning of the present reign, a popular party has appeared, which professes itself dissatisfied with the measure of liberty secured to us at the Revolution. Others have followed them, who, generally perhaps without any serious intention, have found pleasure in trying how far violence of language would be permitted. There has naturally arisen, in the



opposite quarter of the heavens, another party, who cling to ease and quiet, and would fain see political discussion silenced altogether. In times of great ferment, the dissensions of these parties become highly dangerous to all regular and sober freedom. Thus, at the beginning of the French revolution, Mr. Burke having got a hold of the public mind, raised a spirit of the most bitter persecution against all who did not approve of the policy of the war. The extreme nervousness of the nation made it unsafe to indulge any honest difference in politics. The minister, by instituting trials for treason, gave into and promoted the popular fury; and had it not been for Mr. Erskine's eloquence, it is impossible to say whether the lives of Mr. Fox and all the chief of his party might not have been sacrificed to the rage and fear of the alarmists. The demagogues of the day, on the other hand, lose no opportunity of exciting the people, in times of distress, to acts of outrage and rebellion. The quiet and well-disposed, and indeed all persons of property, naturally take the alarm. The panic is increased by miserable wretches, who imitate the language of demagogues, in

order to inspire terror into the community, and strengthen the ministers of the day. The evil of violent language and blasphemous publications, however, admits of an easy remedy. We have laws sufficiently strong against sedition and tumult; it is only necessary to put them in force. Instead of this, two other methods have been taken; both, in my mind, injudicious, and one extremely dangerous. The first is the suspension of the Habeas Corpus Act. Now this is a very proper precaution, when a conspiracy is carried on by a few principal leaders whose imprisonment puts an end to the plot. But it is no remedy at all, when the evil consists in the discontent of some thousands of unemployed manufacturers. *Uno avulso non deficit alter*: the subalterns, in conducting these popular humours, are fully as able and audacious as the chiefs. The other remedy consists in new laws, restraining the right of speaking and writing. Acts of this kind interpose obstacles to public meetings and public newspapers, and serve to discountenance, for a time, by the authority of Parliament, the abuses of liberty which have prevailed. But



it is manifest, that it is impossible to prevent sedition and blasphemy, unless all freedom of speech and the liberty of the press be extinguished. It is impossible to provide before-hand, by act of Parliament, that all speeches and writings shall keep within the bounds of loyalty and moderation. Therefore, the restraining laws are, except for the moment, inefficient. They are also pernicious; for they admit a principle, which, if pushed to its full extent, authorises a censorship of the press. They are, therefore, in direct opposition to the maxims of the Revolution, which allowed any man to do freely, that which in itself was harmless. Even the Riot Act, which is justly reckoned a law of great severity, imposes no penalty or restraint, except upon persons who are in the actual commission of a riot. Those, indeed, who have lived in latter times, have reason to praise the moderation of the government, which preserved itself from a Pretender and his party, with so little expense to public liberty.

It would seem, that we have now gone as far as it is possible to go safely upon the system

of restraint. If blasphemy and sedition again alarm the timid, they must be suppressed by the ordinary laws: otherwise we must either admit a censorship, or surrender the present mode of trial by jury.

It is to be hoped, that, rather than adopt either of these tyrannical expedients, England would impeach the minister, who gave such atrocious advice to his sovereign.

## CHAP. XXXI.

## LIBERTY OF THE PRESS.

If it be desired to know the immediate cause of all this free writing and free speaking, there cannot be assigned a truer than your own mild, free, and humane government; it is the liberty, Lords and Commons, which your own valorous and happy councils have purchased us; liberty, which is the nurse of all great wits. We can grow ignorant again, brutish, formal, and slavish, as ye found us; but you then must first become that which ye cannot be, oppressive, arbitrary, and tyrannous as they were from whom ye have freed us. That our hearts are now more capacious, our thoughts now more excited to the search and expectation of greatest and exactest things is the issue of your own virtue propagated in us. Give me the liberty to know, to utter, and argue freely, according to conscience, above all liberties.

MILTON.

SOME of the foregoing observations may seem to lead to a conclusion that the intense light thrown upon all public affairs, tends rather to increase the irritability, and diminish the power,

than to augment the strength and improve the vision, of our organs of sight. Allowing, however the abatement which must be made for the evils produced by an overstraining of attention to political matters, we shall yet find enough of good left to make us cherish the liberty of the press, as the guardian and guide of all other liberties.

Before I proceed to give a short view of some of the advantages of the press, let us again recall to our minds, that it is nonsense to talk of its liberty without its licentiousness. Every attempt to curb its licentiousness, otherwise than by the application of law, after an offence committed, must likewise restrain its liberty. To do one without the other, were as difficult as to provide that the sun should bring our flowers and fruits to perfection, but never scorch our faces.

Many have a mistaken notion of what the press is. They suppose it to be a regular independent power, like the Crown, or the House of Commons. The press does nothing more than afford a means of expressing, in good and able language, the opinions of large classes

of society. For if these opinions, however well sustained, are paradoxes confined to the individual who utters them, they fall as harmless in the middle of sixteen millions of people, as they would do in a private party of three or four. Nor is it the sentiment of A. the editor of one newspaper, or of B. the editor of another, which controuls the course of government. These men are little if at all known : with one or two exceptions their names are never mentioned. It is their skill in embodying in a daily journal the feelings, and the reasonings which come home to the business and the bosoms of large portions of their countrymen, that obtains for their writings same and general acceptance. But it would be vain for these persons to endeavour to make the people discontented with laws which they loved, and a minister whom they revered. They would not be dreaded, nor even read. Equally vain would it be for a vicious, oppressive, and odious government to suppress the liberty of printing. It was not the press which overturned Charles I., nor could the Inquisition preserve to Ferdinand VII. his despotic power. The dark cabal, the secret conspirator, the sudden tumult,

the solitary assassin, may all be found where the liberty of printing has never existed. And were a government to suppress it where it does exist, without taking away the matter of sedition, more crime and less security would probably be the result of their foolish panic, and powerless precaution.

In looking at the celebrated governments of antiquity, and those of modern times which have not admitted a free press, it must strike every one that they have declined, not from any vice inherent in the institutions by which they were governed, but by the gradual decay of national virtue, and the corruption of the people themselves, as well as of their leaders. In Sparta, and in Rome, this corruption may, in the beginning, be attributed to an influx of wealth acting upon a nation whose liberties and whose morals were founded upon poverty and the contempt of riches. But the precipitate fall of a state, like that of Rome, into an abyss of profligacy and venality, can only happen when the whole people, stained by political and moral vices, are delivered from a sense of shame, by the want of any effectual restraint



upon their actions. In both these circumstances, England has the advantage of Rome. Her institutions are not founded on the postulate that her manners must be rude, and her legislators poor. Commerce, and industry of every kind have been favourites of the law from the commencement. Nor is it easy to emancipate our rulers or our elective body from the sense of shame. Their actions are not submitted to the opinions of a single city, but scanned publicly by sixteen millions of people, nay, by Europe, by America, by the whole globe. The nation itself is too numerous to be generally seduced by the officers of the crown. In a village of one hundred householders, two, or perhaps four, may be gained by government-influence, but the other ninety-six are free to choose their politics and their newspaper. Nor could any anonymous writer venture to appeal to any but the good principles of our nature. No one has yet seen the newspaper or pamphlet which openly defends the venality of judges, or the infliction of torture, any more than the tragedy which holds up cowardice to our admiration, or endeavours to make envy amiable

in our eyes. Even the worst men love virtue in their studies.\*

In ordinary times, it is evident the exercise of this censorship must be beneficial to the country. No statesman can hope that his corrupt practices, his jobs, his obliquities, his tergiversations, can escape from a vigilance that never slumbers, and an industry that never wearies. Nor is it an important obstacle to truth, that the daily newspapers are the advocates of party, rather than searchers after truth. The nation, after hearing both sides, may decide between them. Neither are the advantages to be derived from publicity merely speculative. We see instances of them every day. One of the most remarkable effects of public opinion that can be quoted is, perhaps, the personal integrity of our

\* The only resemblance to this influence of public opinion is to be found in the censorship at Rome. Montesquieu says of it, — "Il faut que je parle d'une magistrature qui contribua beaucoup a maintenir le gouvernement de Rome : ce fut celle des censeurs. Ils corrigeoient les abus que la loi n'avoit prévus, ou que le magistrat ordinaire ne pouvoit pas punir. Il y a de mauvais exemples que sont pires que les crimes ; et plus d'états ont péri parcequ'on a violé les mœurs que parcequ'on a violé les lois." But the censors were men ; and men at length disregarded them.

statesmen with respect to money. In the time of Charles II., and a long time afterwards, the greatest men in the country were not inaccessible to what, in these days, we should call bribery. In the time of Lord North, many members of Parliament were influenced by money in its most gross and palpable shape. In these days, (however the same influence may prevail in another form,) it is impossible not to allow that there is much more personal delicacy, and, I will add, a higher sense of honour. Thus, instead of growing more corrupt, as states have always done before, the nation generally contains more political honesty than ever. Even in the House of Commons, where there are still seventy members holding places, there are one hundred and thirty fewer placemen than in the reign of George I.

The greatest benefit, however, that we derive from publicity, is, that it corrects and neutralizes the vices of our institutions, even when they are not immediately amended by it. Thus, to come at once to the greatest instance of this; the House of Commons is at present so composed, that were it shut up, and admitted

no influence from without, the people would soon find that its spirit was so gone, its organs so decayed, its acts so unpalatable, that they would submit to such a government no longer. But we continually find, that the talent of a single member outweighs the sense of the whole House; and a minister, after protecting a favourite abuse, year after year, by confident speeches and overwhelming majorities, silently retreats, and abandons the ground on which he appeared to have taken an impregnable position. The House of Commons themselves, too, cannot fail to be influenced on great questions by the general opinion of the people out of doors. If they could meet and discuss measures of state day after day, make speeches, that are to be read in Caithness and in Cork, expose their whole conduct and arguments to the view of the country, and yet pay no attention to the feelings of that country, they would be more or less than human.

Among other questions, upon which, it appears to me, the House of Commons is disposed to give way, is one on which they must be expected to feel like other individuals and bodies, as it





intimately concerns their own power. I mean the question of privilege. On the one hand it cannot well be denied, that the House of Commons, like other courts, must have the power of protecting their own proceedings from interruption; and that it would not be consistent, either with the dignity of the assembly, or the safety of the state, to allow other courts to define in what that interruption consists, or to reverse the orders which the House have thought it necessary to make, to secure the freedom of their own deliberations. This concession made, it cannot be denied, on the other hand, that what is called privilege of Parliament, has been at various times grossly abused. In 1621, one Floyd, a Roman Catholic member, having used some expressions offensive to the daughter of James I. and her husband, was sentenced by the House of Commons to be pilloried twice, to ride on horseback through the streets with the tail of the horse in his hand, and to be fined 1000*l*. In 1759, a poacher, who had trespassed on the fishery of Admiral Griffiths, a member, was voted guilty of a breach of privilege, and reprimanded on

his knees. These are clearly acts of tyranny and caprice. Indeed, every commitment by the House of Commons for a libel on the House, not directly tending to interrupt their proceedings, may be considered an abuse of privilege. The proper remedy for such an offence is to pray the Crown to order the Attorney General to prosecute the offender in a court of law. For the people of England are naturally jealous, when they perceive accusers becoming judges; and awarding punishment without a trial, for a crime committed against themselves. Such, indeed, is the public opinion on this subject, that I am persuaded the fury of privilege is past.

I have here spoken only of the House of Commons; but all other courts, powers, and pre-eminences, are subject to the same controul, and are saved from the decay, to which they are naturally subject, by the same antiseptic virtue. It is true, as we have observed in a former chapter, that in times of great ferment, the preserving force is not in operation; but if the constitution is not wholly overthrown in the struggle, the nation in a short time re-



views its acts, and often contracts a species of religious horror, of the violence which has been done to its most sacred rights. Hence a greater love than ever for the laws which appeared most in danger of being swept away, and a new jealousy of the ancient privileges of the land.

Reflections of the kind that have here been made, seem to hold out a glorious and singular prospect of the permanency of our constitution for ages yet to come. Such, I am satisfied, would be the natural life of our institutions. But the aid of an empiric has been admitted, and it is impossible to say whether he has not brought on the premature dissolution of this mighty parent of our liberties, our happiness, and our glory. Mr. Pitt, entrusted at an early age with the care of the government, seems to have indulged, in his subsequent conduct of the state, those vices of youth, from which his own private life had been exempt. He made the country live too fast. Prodigality and profusion every where prevailed; the nation borrowed year after year, with increased and thoughtless extravagance; new and artificial

facilities were invented to enable us to run in debt; the peerage was depreciated by creations, which, at the same time, enfeebled the gentry of the kingdom; a factitious vigour was produced by the application, from time to time, of the most hurtful stimulants, and a temporary repose was obtained at the expense of permanent strength, and the stamina of life itself. Hence a frame, which was formed to endure longer than the ordinary period, may be cut off by a sudden failure of its powers. Nations which have been our inferiors, or our rivals, are watching us with envious pleasure, in the hope of seeing us starved into inanition, or perish in convulsions. Whatever may be our fate, however, I feel confident, that in some shape or another, this country will still be formidable to her enemies. I would fain hope more: I trust that the people of this great community, supported by their gentry, will afford a spectacle worthy of the admiration of the world. I hope that the gentry will act honestly by their country, and that the country will not part with the blessings which it obtained by all the miseries which a nation can encounter, — by suffering per-

secutions, by affronting tyranny, by encountering civil war, by submitting to martyrdom, by contending in open war against powers that were the terror of the rest of Europe. I would fain believe that all ranks and classes of this country, have still impressed upon their minds, the sentiment of her immortal Milton—"Let not England forget her precedence of teaching nations how to live."

## NOTES.

### NOTE (A.)

SIR Thomas Smith is perhaps the first author who takes notice of the difference of the title of gentleman in England and on the Continent. I subjoin an extract from his work.—“Ordinarily the King doth only make knights and create barons, or higher degrees; for as for gentlemen, they be made good cheap in England. For whosoever studieth the laws of the realm, who studieth in the universities, who professeth liberal sciences, and, to be short, who can live idly and without manual labour, and will bear the port, charge, and countenance of a gentleman, he shall be called Master, for that is the title which men giye to esquires and other gentlemen, and shall be taken for a gentleman: for true it is with us as is said, *Tanti cras aliis quanti tibi feceris*; and, if need be, a king of heralds shall also give him, for money, arms newly made and invented, the title whercof shall pretend to have been found by the said herald in perusing and viewing of old registers, where his ancestors, in times past, had been recorded to bear the same. \* \* \* A man may make doubt

and question whether this manner of making gentlemen is to be allowed or no; and for my part I am of that opinion, that it is not amiss. For first, the prince loseth nothing by it, as he should do, if it were as in France; for the yeoman or husbandman is no more subject to taile or tax in England than the gentleman: no, in every payment to the King, the gentleman is more charged, which he beareth the gladlier, and dareth not gainsay for to save and keep his honour and reputation." — *De Republicâ Anglorum*, lib. i. chap. 20. & 21.

## NOTE (B.)

"For their images, some of them were brought to London, and were there at St. Paul's cross in the sight of all the people, broken; that they might be fully convinced of the juggling impostures of the monks. And in particular, the crucifix of Boxley, in Kent, commonly called the *Rood of Grace*, to which many pilgrimages had been made; because it was observed sometimes to bow, and to lift itself up, to shake, and to stir head, hands, and feet, to roll the eyes, move the lips, and bend the brows; all which were looked on by the abused multitude, as the effects of a divine power. These were now publicly discovered to have been cheats. For the springs were showed by which all these motions were made. Upon which John Hilsey, then bishop of Rochester, made a sermon, and broke the rood in pieces. There was also another famous imposture discovered at Hailes, in Gloucestershire; where the blood of Christ was showed in a vial of chrystal, which the people sometimes saw, but sometimes they could not see it: so they were made believe, that they were not capable of so signal a favour as long as they were in mortal

sin; and so they continued to make presents, till they bribed heaven to give them the sight of so blessed a relic. This was now discovered to have been the blood of a duck, which they renewed every week: and the one side of the vial was so very thick, that there was no seeing through it, but the other was clear and transparent: and it was so placed near the altar, that one in a secret place behind could turn either either side of it outward. So when they had drained the pilgrims that came thither, of all they had brought with them, then they afforded them the favour of turning the clear side outward; who upon that went home very well satisfied with their journey, and the expence they had been at. There was brought out of Wales a huge image of wood, called *Darvel Gatheren*, of which one Ellis Price, visitor of the diocese of St. Asaph, gave this account: On the 6th of April, 1537, 'That the people of the country had a great superstition for it, and many pilgrimages were made to it; so that the day before he wrote, there were reckoned to be above five or six hundred pilgrims there: some brought oxen and cattle, and some brought money; and it was generally believed, that if any offered to that image, he had power to deliver his soul from hell.' So it was ordered to be brought to London, where it served for fuel to burn Friar Forrest. There was an huge image of our Lady at Worcester, that was had in great reverence; which, when it was stripped of some veils that covered it, was found to be the statue of a bishop." — *Burnet's History of the Reformation*, vol. i. p. 242.

"But the richest shrine in England, was that of Thomas Becket, called St. Thomas of Canterbury the Martyr. For 500 years, he was accounted one of the greatest saints in heaven, as may appear from the accounts in the Ledger-books, of the offerings made to the three greatest altars



in Christ's Church, Canterbury. The one was to Christ, the other to the Virgin, and the third to St. Thomas. In one year there was offered at Christ's altar *3l. 2s. 6d.*; to the Virgin's altar, *65l. 5s. 6d.*; but to St. Thomas's altars, *832l. 12s. 5d.* But the next year the odds grew greater; for there was not a penny offered at Christ's altar, and at the Virgin's only *4l. 1s. 8d.*; but at St. Thomas's, *954l. 6s. 5d.* By such offerings it came, that his shrine was of inestimable value. There was one stone offered there by Louis VII. of France, who came over to visit it, in a pilgrimage, that was believed the richest in Europe." — Burnet's History of the Reformation, vol. i. p. 244.

## NOTE (C.)

THE following speech of Secretary Cecil on monopolies, is altogether characteristic of the reign of Elizabeth: —

Mr. Secretary Cecil stood up, and said, "There needs no supply of the memory of the Speaker: but, because it pleased him to desire some that be about him to aid his delivery, and because the rest of my fellows be silent, I will take upon me to deliver something which I both then heard, and since know. I was present with the rest of my fellow-counsellors, and the message was the same that hath been told you; and the cause hath not succeeded from any particular course thought upon, but from private informations of some particular persons. I have been very inquisitive of them, and of the cause why more importunity was now used than afore; which, I am afraid, comes by being acquainted with some course of proceeding in this house. There are no patents now of force, which shall not presently be revoked; for what patent soever is granted, there shall be left to the overthrow of

that patent a liberty agreeable to the law. There is no patent if it be '*malum in se*,' but the queen was ill apprized in her grant. But all to the generality be unacceptable, I take it, there is no patent whereof the execution hath not been injurious. Would that they had never been granted! I hope there shall never be more. (All the House said Amen.) In particular, most of these patents have been supported by letters of assistance from Her Majesty's privy-council; but whosoever looks upon them shall find, that they carry no other style, than with relation to the patent. I dare assure you, from henceforth there shall be no more granted. They shall all be revoked. But to whom do they repair with these letters? To some out-house, to some desolate widow, to some simple cottage, or poor ignorant people, who rather than they would be troubled, and undo themselves by coming up hither, will give any thing in reason for these caterpillars' satisfaction. The notice of this is now public, and you will, perhaps, judge this to be a tale to serve the time. But I would have all men to know thus much that it is no jesting with a court of Parliament, neither dares any man (for my own part, I dare not) so mock and abuse all the states of this kingdom, in a matter of this consequence and importance. I say, therefore, there shall be a proclamation general throughout the realm, to notify Her Majesty's resolution in this behalf. And because you may eat your meat more savoury than you have done, every man shall have salt as good and cheap as he can buy it or make it, freely, without danger of that patent, which shall be presently revoked. The same benefit shall they have which have cold stomachs, both for *aqua vitæ* and *aqua composita*, and the like. And they that have weak stomachs, for their satisfaction, shall have vinegar and alegar, and the like, set at liberty. Train-oil



shall go the same way; oil of blubber shall march in equal rank; brushes and bottles endure the like judgment. The patent for pouldavy, if it be not called in, it shall be. Woade, which, as I take it, is not restrained, either by law or statute, but only by proclamation, (I mean from the former sowing,) though for the saving thereof, it might receive good disputation; yet for your satisfaction, the Queen's pleasure is to revoke that proclamation; only she prayeth thus much, that when she cometh on progress to see you in your counties, she be not driven out of your towns by suffering it to infect the air too near them. Those that desire to go sprucely in their ruffs, may, at less charge than accustomed, obtain their wish; the patent for starch, which hath so much been prosecuted, shall now be repealed. But not to make any further performance of the well-uttered and gravely and truly delivered speech of the Speaker, I must crave your favours a little longer to make an apology for myself. I have held the favour of this House as dear as my life, and I have been told that I deserved to be taxed yesterday of the House. I protest my zeal to have the business go forward in a right and hopeful course; and my fear to displease Her Majesty by a harsh and rash proceeding, made me so much to lay aside my discretion, that I said, it might rather be termed a school than a council, or to that effect. But by this speech, if any think I called him school-boy, he both wrongs me and mistakes me.

Shall I tell you what Demosthenes said to the clamours which the Athenians made? That they were '*pueriles et dignos pueris.*' And yet that was to a popular state. And I wish that, whatsoever is here spoken, may be buried within these walls. Let us take example of the Jewish synagogue, who would always '*sepelire senatum cum honore*, and not blast their own follies and imperfec-

tions. If any man in this House speak wisely, we do him great wrong to interrupt him; if foolishly, let us hear him out, we shall have the more cause to tax him. And I do heartily pray, that no member of this House may '*plus verbis offendere quam consilio juvare.*' — New Parliamentary History, vol. i. p. 934. 1601.

## NOTE (D.)

SPEAKING of the imprisonment of Mr. Wentworth, who was committed, by order of the House, to the Tower, for a speech, in which he said the Queen had committed dangerous faults, Mr. Hume says, "The issue of the affair was, that, after a month's confinement, the Queen sent to the Commons, informing them, that, from her special grace and favour, she had restored him to his liberty, and to his place in the House. By this seeming lenity, she indirectly retained the power, which she had assumed, of imprisoning the members, and obliging them to answer before her for their conduct in Parliament. And Sir Walter Mildmay endeavoured to make the House sensible of Her Majesty's goodness, in so gently remitting the indignation, which she might justly conceive at the temerity of their member. But he informed them, that they had not the liberty of speaking what and of whom they pleased; and that indiscreet freedoms, used in that House, had, both in the present and foregoing ages, met with a proper punishment. He warned them, therefore, not to abuse farther the Queen's clemency, lest she be constrained, contrary to her inclination, to turn an unsuccessful lenity into a necessary severity."\*

\* Hume, vol. v. 4to. p. 240



This account is somewhat incorrect. Upon referring to the journal of Sir Simon D'Ewes, which Mr. Hume has quoted, we find that the Queen did not inform the House by her message, that she had restored Mr. Wentworth to his liberty and his place in the House; but that "whereas a member of the same, on the 1st day of this session, February 8th, in a set speech, uttered divers offensive matters against Her Majesty, and for the same had been committed prisoner to the Tower *by that House*; yet Her Majesty was graciously pleased to remit her justly occasioned displeasure for the said offence; and to refer the enlargement of the party *to the House*." So that she by no means "indirectly retained the power which she had assumed of imprisoning the members," by her proceedings in this case, whatever they may have been on other occasions. This explanation, too, takes away the edge from Sir Walter Mildmay's speech, the important part of which I here subjoin. It will be seen, that it consists of generalities, and that Mr. Hume has culled out those parts only which suited his theory. It must never be forgotten in reading Mr. Hume, that he found an opinion established in England, that the Stuarts had governed like tyrants, and Elizabeth like a good patriot. He attacked this, as he did all other established opinions, from a love of argument and of paradox. He is to the Whig writers and historians what Bayle is to the ancient and modern philosophers. Sometimes he goes so far as to doubt the benefit of liberty altogether. But it is time to pass to Sir Walter Mildmay. — "That for so gracious a dealing, it was our bounden duties to yield unto Her Majesty our most humble and hearty thanks, and to beseech Almighty God to enlarge her days as the only stay of our felicity; and not only so, but to learn also, by this example, how to behave ourselves hereafter; and not, under the pretence

of liberty, to forget our bounden duty to so gracious Queen. True it is, that nothing can be well concluded in a council, where there is not allowed, in debating of causes brought in, deliberation, liberty, and freedom of speech; otherwise, if in consultation men be either interrupted or terrified, so as they cannot, nor dare not, speak their opinions freely, like as that council cannot but be reputed for a servile council; even so all the proceedings therein shall be rather to satisfy the wills of a few, than to determine that which shall be just and reasonable. But herein we may not forget to put a difference between liberty of speech and licentious speech; for by the one men deliver their opinions freely, and with this caution, that all be spoken, pertinently, modestly, reverently, and discreetly; the other contrariwise uttereth all impertinently, rashly, arrogantly, and irreverently, without respect of person, time, or place; and though freedom of speech hath always been used in this great council of Parliament, and is a thing most necessary to be preserved amongst us, yet the same was never, nor ought to be, extended so far, as though a man in this House may speak what and of whom he list. The contrary whereof, both in our own days and in the days of our predecessors, by the punishment of such inconsiderate and disorderly speakers, hath appeared. And so to return, let this serve us for an example, to beware that we offend not in the like hereafter, lest that, in forgetting our duties so far, we may give just cause to our gracious Sovereign to think that this her clemency hath given occasion of further boldness, and thereby so much grieve and provoke her, as, contrary to her most gracious and mild consideration, she be constrained to change her natural clemency into necessary and just severity; a thing that I trust shall never happen



amongst wise and dutiful men, such as the members of this House are thought always to be."

## NOTE (E.)

It is singular, that in the rest of the chapter, Machiavel seems to have given directions to persons in the situation of Cromwell and Bonaparte. He tells us, that those who have become '*tiranni*' of their country ought to examine what the people wish for; and that they will always find they wish for two things: the one, revenge upon those who have been the cause of their servitude; and the other, the restoration of their liberty. In the first of these, the new prince may satisfy them completely. In the second, he may satisfy them in part. For if he analyses the wish of the people for liberty, he will find, that a small part only desire it for the sake of power, and that the great majority only desire liberty, that they may live in security. The few he may either remove, or raise to such posts and dignities as will satisfy them; the many will be contented by the enactment of just laws, and a strict observance of them on the part of the sovereign. Thus, he says, the kings of France disposed of the arms and money of the state; but in other things, obeyed the laws. Napoleon, who was a great reader of Machiavel, seems to have taken the advice which is here given by the most profound of political writers.

## NOTE (F.)

It may not be uninteresting to the reader, to read an account of two cases in which the poor man, with the law

on his side, triumphed over the pretensions of the highest persons in the kingdom. The first is the more curious, as a relation of it is contained in a letter of Lord Thurlow to a nephew of Mr. Justice Foster. It was a prosecution against the Princess Amelia, for stopping up a foot-path in Richmond Park.

"DEAR SIR,

"I write, at the hazard of your thinking me impertinent, to give you the pleasure of hearing that of your uncle, which, in all probability, you will not hear from him; I mean the great honour and general esteem which he has gained, or rather accumulated, by his inflexible and spirited manner of trying the Richmond cause, which has been so long depending, and so differently treated by other judges. You have heard what a deficiency there was of the special jury, which was imputed to their backwardness to serve a prosecution against the Princess. He has fined all the absentees 20*l.* a-piece. They made him wait two hours, and, at last, resort to a *tales*. When the prosecutors had gone through part of their evidence, Sir Richard Lloyd, who went down on the part of the Crown, said, that it was needless for them to go on upon the right, as the Crown was not prepared to try that, this being an indictment which could not possibly determine it, because the obstruction was charged to be in the parish of Wimbleton, whereas it was, in truth, in Mortlake, which was a distinct parish from Wimbleton. They maintained their own poor, upheld their own church, and paid tithes to their own parson; and Domesday Book mentions Mortlake. On the other side, it was said, that Domesday Book mentions it as a baron's fee, and not as a parish; and that the survey in the time of Henry VIII. mentions Wimbleton *cum capellis suis annexis*, and also, that a grant of it in the

time of Edward VI. makes a provision of tithes for the vicar, to officiate in the chapel of Mortlake. The judge turned to the jury, and said, he thought they were come there to try a right, which the subject claimed to a way through Richmond Park, and not to cavil about little law objections, which have no relation to that right. He said, it is proved to be in Wimbleton parish; but it would have been enough, if the place, in which the obstruction was charged, had been only reputed to be in Wimbleton, because the defendant and jury must have been as sensible of that reputation, as the prosecutors; but had it not been so, he should have thought it below the honour of the Crown, after this business had been depending three assizes, to send one of their select council, not to try the right, but to hinge upon so small a point as this. Upon which Sir Richard Lloyd made a speech, setting forth the gracious disposition of the King in suffering this cause to be tried, which he could have suppressed with a single breath, by ordering a *nolle prosequi* to be entered. The judge said, he was not of that opinion. The subject is interested in such indictments as these, for continuing nuisances, and can have no remedy but this, if their rights be encroached upon; wherefore he should think it a denial of justice to stop a prosecution for a nuisance, which his whole prerogative does not extend to pardon. After which, the evidence was gone through; and the judge summed up shortly, but clearly, for the prosecutors.\*

It gave me, who am a stranger to him, great pleasure to hear, that we have one English judge, whom nothing can tempt or frighten, ready and able to hold up the laws of his country, as a great shield of the rights of the people. I presume it will give you still greater to hear, that your

\* The defendant was convicted. See Burr. 908, 909.

friend and relation is that judge: and that is the only apology I have to make for troubling you with this.

I am, dear Sir,

Your most humble servant,

E. THURLOW.

*Fig-Tree Court, Inner Temple,*

*April 11. 1758.*

Life of Sir M. Foster, p. 85.

The other case is related of the father of Mr. Horne Tooke, a poulterer, in London.

"As Mr. Horne lived in Newport-Street, he was, of course, a near neighbour to his royal highness, Frederic Prince of Wales, father to His present Majesty, who then kept his court at Leicester House. Some of the officers of the household, imagining that an outlet towards the market would be extremely convenient to them, as well as the inferior domestics, orders were immediately issued for this purpose. Accordingly, an adjoining wall was cut through, and a door placed in the opening, without any ceremony whatsoever, notwithstanding it was a palpable encroachment on, and violation of, the property of a private individual. In the midst of this operation, Mr. Horne appeared, and calmly remonstrated against so glaring an act of injustice, as the brick partition actually appertained to him, and the intended thoroughfare would lead through, and consequently depreciate the value of his premises.

"It soon appeared, however, that the representations of a dealer in geese and turkies, although backed by law and reason, had but little effect on those, who acted in the name, and, in this instance, abused the authority of a prince, who was probably unacquainted with the circumstances of the transaction.



"On this, he appealed from 'the insolence of office' to the justice of his country; and, to the honour of our municipal jurisprudence, the event proved different from what it would have been, perhaps, in any other kingdom of Europe; for a tradesman of Westminster triumphed over the heir-apparent of the English crown, and orders were soon after issued for the removal of the obnoxious door." — *Life of Horne Tooke*, vol. i. p. 11.

## NOTE (G.)

MR. HUME makes what I conceive to be a remark calculated to mislead, when he says, in his history of Charles I., — "Some men of the greatest parts and most extensive knowledge that the nation at this time produced, could not enjoy any peace of mind; because obliged to hear prayers offered up to the divinity by a priest covered with a white linen vestment."

The point is certainly ingenious, but, as I conceive, obtained by a sacrifice of candour. Both parties allowed that the surplice was in itself a matter of indifference. The objections to the orders concerning the surplice alleged on the part of the Puritans were three: —

1st, That as it was in its essence a matter of indifference, it ought not to be enjoined like an article of faith, but every one should be left to do as he pleased.

2d, That although in itself a matter of indifference, it was not so to the common people; for many of them thought no worship to God could be effectual, unless performed in a consecrated garment, and thus the practice kept alive a superstitious notion.

3d, Above all, the Puritans urged that no secular person had the right to give orders on this subject. Mr. Cartwright says — "Christ, and no other, is head of the

church. No civil magistrate, in councils or assemblies for church matters, can either be chief moderator, overruler, judge, or determiner; nor has he such authority as that without his consent it should not be lawful for ecclesiastical persons to make church-orders or ceremonies." \*

In the same sense Mr. Axton, when examined by his bishop, said, "I admit Her Majesty's supremacy so far as if there be any error in the governors of the church, she has power to reform it; but I do not admit her to be an ecclesiastical elder, or church governor." † It is true the Puritans would call the surplice "idolatrous gear," and other worse names, when they had grown warm in controversy; but they told Archbishop Parker that had the habits and a few ceremonies been left indifferent, they never would have left the church; but "it was the compelling these things by law made them separate." ‡

In fine, the doctrine of the Puritans, or Presbyterians asserted the "word of God contained in the Old and New Testament to be a perfect rule of faith and manners." § They maintained that the church ought to be governed by this rule only, — that ceremonies and observances should be as few as possible, and should not be imposed by command of any superior whatever, but left to the free choice of the church itself. They condemned not other churches that differed in ceremonies from theirs, but protested against all dictation on the subject. They held that "no pastor ought to usurp dominion over another;" and that "the pastor should be chosen by the congregation." ||

\* Neale, vol. i. p. 133. † Ibid. p. 260. ‡ Ibid. p. 230.

§ Confession of Faith of Members of the Prophesyings, Neale, p. 276.

|| Confession of Faith of the Prisoners in Newgate. — Neale.



Thus we see that the question of the surplice was connected with a great scheme of ecclesiastical reform; a scheme adopted and established in the native country of Mr. Hume; and which, whatever may be thought of its efficacy to make men better and wiser, was at least not unworthy of "men of the greatest parts and most extensive knowledge."

## NOTE (H.)

THIS Act was passed in 1664. There is nothing more remarkable in our history, or less noticed, than the noble manner in which the Dissenters forgot, in favour of the common cause, the severity with which they were treated. In 1672 they urged the House of Commons to pass the Test Act without any clause in their favour, contenting themselves with a motion for a separate bill of toleration, which was not likely to pass. After the persecution of the reign of Charles II. they joined the church during the reign of James; neither alienated by the harsh treatment they had received, nor allured by the indulgence offered on the part of the King. It is to be regretted that the church have found it inconsistent with their duty to imitate the liberality and public spirit of their dissenting brethren.

THE END.

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