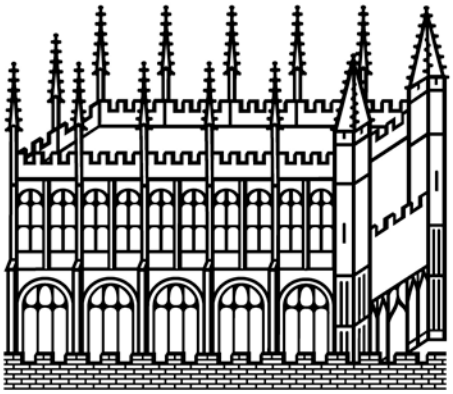

Henry Hallam

Constitutional History of England

Edward I. Henry VII.

THE

CONSTITUTIONAL HISTORY

OF

ENGLAND,

FROM EDWARD I. TO HENRY VII.

BY

HENRY HALLAM.

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THE CONSTITUTION OF ENGLAND formed Chap. VIII. of the great work of Henry Hallam, on the STATE OF EUROPE DURING THE MIDDLE AGES; and the text is given complete in this issue, by

A. MURRAY.

HENRY HALLAM

ON THE

ENGLISH CONSTITUTION.

THOUGH the undisputed accession of a prince, like Edward I., to the throne of his father, does not seem so convenient a resting-place in history, as one of those revolutions which interrupt the natural chain of events, yet the changes wrought during his reign make it an epoch in the progress of these inquiries. And, indeed, as ours is emphatically styled a government by king, lords, and commons, we cannot, perhaps, in strictness carry it farther back than the admission of the latter into parliament; so that, if the constant representation of the commons is to be referred to the age of Edward I., it will be nearer the truth to date the English constitution from that than from any earlier era.

The various statutes affecting the law of property and administration of justice, which have caused Edward I. to be named, rather hyperbolically, the English Justinian, bear no immediate relation to our present inquiries. In a constitutional point of view, the principal object is that statute, entitled the Confirmation of the Charters, which was very reluctantly conceded by the king in the twenty-fifth year of his reign. I do not know that England has ever produced any patriots to whose memory she owes more gratitude than Humphrey Bohun, earl of Hereford and Essex, and Roger Bigod, earl of Norfolk. In the Great Charter, the base spirit and deserted condition of John take off something from the glory of the triumph, though they enhance the moderation of those who pressed no farther upon an abject tyrant. But to withstand the measures of Edward, a prince unequalled by any who had reigned in England since the Conqueror for prudence, valour, and success, required a far more intrepid patriotism. Their provocations, if less outrageous than those received from John, were such as evidently manifested a disposition in Edward to reign without any control; a

constant refusal to confirm the charters, which in that age were hardly deemed to bind the king without his actual consent; heavy impositions, especially one on the export of wool, and other unwarrantable demands. He had acted with such unmeasured violence towards the clergy, on account of their refusal of further subsidies, that, although the ill-judged policy of that class kept their interests too distinct from those of the people, it was natural for all to be alarmed at the precedent of despotism. These encroachments made resistance justifiable, and the circumstances of Edward made it prudent. His ambition, luckily for the people, had involved him in foreign warfare, from which he could not recede without disappointment and dishonour. Thus was wrested from him that famous statute, inadequately denominated the Confirmation of the Charters, because it added another pillar to our constitution, not less important than the Great Charter itself.

It was enacted by the 25 E. I., that the charter of liberties, and that of the forest, besides being explicitly confirmed, should be sent to all sheriffs, justices in eyre, and other magistrates throughout the realm, in order to their publication before the people; that copies of them should be kept in cathedral churches, and publicly read twice in the year, accompanied by a solemn sentence of excommunication against all who should infringe them; that any judgment given contrary to these charters should be invalid, and holden for nought. This authentic promulgation, these awful sanctions of the Great Charter, would alone render the statute of which we are speaking illustrious. But it went a great deal farther. Hitherto, the king's prerogative of levying money, by name of tallage or prise, from his towns and tenants in demesnes, had passed unquestioned. Some impositions, that especially on the export of wool, affected all his subjects. It was now the moment to enfranchise the people, and give that security to private property which Magna Charta had given to personal liberty. By the 5th and 6th sections of this statute, "the aids, tasks, and prises," before taken are renounced as precedents; and the king "grants for him and his heirs, as well to archbishops, bishops, abbots, priors, and other folk of holy church, as also to earls, barons, and to all commonalty of the land, that for no business from henceforth we shall take such manner of aids, tasks, nor prises, but by the common assent of the realm, and for the common profit thereof, saving the ancient aids and prises due and accustomed." The toll upon wool, so far as levied by the king's mere prerogative, is expressly released by the seventh section.

We come now to a part of our subject exceedingly important, but more intricate and controverted than any other, the constitution of parliament. I have taken no notice of this in the last section, in order to present uninterruptedly to the reader the gradual progress of our legislature down to its complete establishment under the Edwards. No excuse need be made for the dry and critical disquisition of the follow-

ing pages; but among such obscure inquiries, I cannot feel myself as secure from error, as I certainly do from partiality.

One constituent branch of the great councils, held by William the Conqueror and all his successors, was composed of the bishops, and the heads of religious houses holding their temporalities immediately of the crown. It has been frequently maintained, that these spiritual lords sat in parliament only by virtue of their baronial tenure. And certainly they did all hold baronies, which, according to the analogy of lay peerages, were sufficient to give them such a share in the legislature. Nevertheless, I think that this is rather too contracted a view of the rights of the English hierarchy, and indeed, by implication, of the peerage. For a great council of advice and assent in matters of legislation or national importance was essential to all the northern governments. And all of them, except perhaps the Lombards, invited the superior ecclesiastics to their councils; not upon any feudal notions, which at that time had hardly begun to prevail, but chiefly as representatives of the church and of religion itself; next, as more learned and enlightened counsellors than the lay nobility; and in some degree, no doubt, as rich proprietors of land. It will be remembered also, that ecclesiastical and temporal affairs were originally decided in the same assemblies, both upon the continent and in England. The Norman conquest, which destroyed the Anglo-Saxon nobility, and substituted a new race in their stead, could not affect the immortality of church possessions. The bishops of William's age were entitled to sit in his councils by the general custom of Europe, and by the common law of England, which the conquest did not overturn. Some smaller arguments might be urged against the supposition, that their legislative rights are merely baronial; such as that the guardian of the spiritualities was commonly summoned to parliament during the vacancy of a bishopric, and that the five sees created by Henry VIII. have no baronies annexed to them; but the former reasoning appears less technical and confined.

Next to these spiritual lords are the earls and barons, or lay peerage of England. The former dignity was perhaps not so merely official as in the Saxon times, although the earl was entitled to the third penny of all emoluments arising from the administration of justice in the county-courts, and might, perhaps, command the militia of his county, when it was called forth. Every earl was also a baron; and held an honour or barony of the crown, for which he paid a higher relief than an ordinary baron, probably on account of the profits of his earldom. I will not pretend to say, whether titular earldoms, absolutely distinct from the lieutenancy of a county, were as ancient as the Conquest, which Madox seems to think, or were considered as irregular, so late as Henry II., according to Lord Littleton. In Dugdale's Baronage, I find none of this description in the first Norman reigns, for even that of Clare was connected with the local earldom of Hertford.

It is universally agreed, that the only baronies known for two centuries after the Conquest were incident to the tenure of land held immediately from the crown. There are, however, material difficulties in the way of rightly understanding their nature, which ought not to be passed over, because the consideration of baronial tenures will best develop the formation of our parliamentary system. Two of our most eminent legal antiquaries, Selden and Madox, have entertained different opinions as to the characteristics and attributes of this tenure.

According to the first, every tenant in chief by knight-service was an honorary or parliamentary baron by reason of his tenure. All these were summoned to the king's councils, and were peers of his court. Their baronies, or honours, as they were frequently called, consisted of a number of knight's fees, that is, of estates, from each of which the feudal service of a knight was due; not fixed to thirteen fees and a third, as has been erroneously conceived, but varying according to the extent of the barony, and the reservation of service at the time of its creation. Were they more or fewer, however, their owner was equally a baron, and summoned to serve the king in parliament with his advice and judgment, as appears by many records and passages in history.

But about the latter end of John's reign, some only of the most eminent tenants in chief were summoned by particular writs; the rest by one general summons through the sheriffs of their several counties. This is declared in the Great Charter of that prince, wherein he promises that, whenever an aid or scutage shall be required, faciemus summoneri archiepiscopos, episcopos, abbates, comites et majores barones regni sigillatim per literas nostras. Et præterea faciemus summoneri in generali per vicecomites et ballivos nostros omnes alios qui in capite tenent de nobis. Thus the barons are distinguished from other tenants in chief, as if the former name were only applicable to a particular number of the king's immediate vassals. But it is reasonable to think, that before this charter was made, it had been settled by the law of some other parliament, how these greater barons should be distinguished from the lesser tenants in chief; else what certainty could there be in an expression so general and indefinite? And this is likely to have proceeded from the pride with which the ancient and wealthy barons of the realm would regard those newly created by grants of escheated honours, or those decayed in estate, who yet were by their tenures on an equality with themselves. They procured, therefore, two innovations in their condition; first, that these inferior barons should be summoned generally by the sheriff, instead of receiving their particular writs, which made an honorary distinction; and next, that they should pay relief, not as for an entire barony, one hundred marks; but at the rate of five pounds for each knight's fee which they held of the crown. This changed their tenure to one by mere knight-service, and their denomination to tenants in chief. It was not difficult, afterwards, for

the greater barons to exclude any from coming to parliament as such, without particular writs directed to them, for which purpose some law was probably enacted in the reign of Henry III. If indeed we could place reliance on a nameless author whom Camden has quoted, this limitation of the peerage to such as were expressly summoned depended upon a statute made soon after the battle of Evesham. But no one has ever been able to discover Camden's authority, and the change was, probably, of a much earlier date.

Such is the theory of Selden, which, if it rested less upon conjectural alterations in the law, would undoubtedly solve some material difficulties that occur in the opposite view of the subject. According to Madox, tenure by knight's service in chief was always distinct from that by barony. It is not easy, however, to point out the characteristic differences of the two; nor has that eminent antiquary, in his large work, the Baronia Anglica, laid down any definition, or attempted to explain the real nature of a barony. The distinction could not consist in the number of knight's fees; for the barony of Hwayton consisted of only three; while John de Baliol held thirty fees by mere knight-service. Nor does it seem to have consisted in the privilege or service of attending parliament, since all tenants in chief were usually summoned. But whatever may have been the line between these modes of tenure, there seems complete proof of their separation long before the reign of John. Tenants in chief are enumerated distinctly from earls and barons in the charter of Henry I. Knights, as well as barons, are named as present in the parliament of Northampton in 1165, in that held at the same town in 1176, and upon other occasions. Several persons appear in the Liber Niger Scaccario, a roll of military tenants made in the age of Henry II., who held single knight's fees of the crown. It is, however, highly probable that, in a lax sense of the word, these knights may sometimes have been termed barons. The author of the Dialogus de Scaccario speaks of those holding greater or lesser baronies, including, as appears by the context, all tenants in chief. The former of these seem to be the majores barones of king John's Charter. And the secundæ dignitatis barones, said by a contemporary historian to have been present in the parliament of Northampton, were in all probability no other than knightly tenants of the crown. For the word baron, originally meaning only a man, was of very large significance, and is not unfrequently applied to common freeholders, as in the phrase of court-baron. It was used, too, for the magistrates or chief men of cities, as it is still for the judges of the exchequer, and the representatives of the Cinque-Ports.

The passage, however, before cited from the Great Charter of John affords one spot of firm footing in the course of our progress. Then, at least, it is evident that all tenants in chief were entitled to their summons; the greater barons by particular writs, the rest, through one

directed to their sheriff. The epoch when all, who, though tenants in chief, had not been actually summoned, were deprived of their right of attendance in parliament, is again involved in uncertainty and conjecture. The unknown writer quoted by Camden seems not sufficient authority to establish his assertion, that they were excluded by a statute made after the battle of Evesham. The principle was most likely acknowledged at an earlier time. Simon de Montfort summoned only twenty-three temporal peers to his famous parliament. In the year 1255, the barons complained, that many of their number had not received their writs, according to the tenor of the charter, and refused to grant an aid to the king till they were issued. But it would have been easy to disappoint this mode of packing a parliament, if an unsummoned baron could have sat by mere right of his tenure. The opinion of Selden, that a law of exclusion was enacted towards the beginning of Henry's reign, is not liable to so much objection. But perhaps it is unnecessary to frame an hypothesis of this nature. Writs of summons might probably be older than the time of John; and when this had become the customary and regular preliminary of a baron's coming to parliament, it was a natural transition to look upon it as an indispensable condition; in times when the prerogative was high, the law unsettled, and the service in parliament deemed by many still more burthensome than honourable. Some omissions in summoning the king's tenants to former parliaments may perhaps have produced the above-mentioned provisions of the Great Charter, which had a relation to the imposition of taxes, wherein it was deemed essential to obtain a more universal consent, than was required in councils held for state, or even for advice.

It is not easy to determine how long the inferior tenants in chief continued to sit personally in parliament. In the charters of Henry III., the clause which we have been considering is omitted; and I think there is no express proof remaining, that the sheriff was ever directed to summon the king's military tenants within his county, in the manner which the charter of John required. It appears, however, that they were in fact members of parliament on many occasions during Henry's reign, which shows that they were summoned, either by particular writs, or through the sheriff; and the latter is the more plausible conjecture. There is, indeed, great obscurity as to the constitution of parliament in this reign; and the passages which I am about to produce may lead some to conceive that the freeholders were *represented* even from its beginning. I rather incline to a different opinion.

In the Magna Charta of 1 Henry III.; it is said; Pro hâc donatione et concessione . . . . archiepiscopi, episcopi, comites, barones, milites, et liberè tenentes, et omnes de regno nostro dederunt nobis quintam decimam partem omnium bonorum suorum mobilium. So in a record of 19 Henry III.: Comites, et barones, et omnes alii de toto regno

nostro Angliæ, spontaneâ voluntate suâ concesserunt nobis efficax auxilium. The largeness of these words is, however, controlled by a subsequent passage, which declares the tax to be imposed ad mandatum omnium comitum et baronum et omnium aliorum *qui de nobis tenent in capite.* And it seems to have been a general practice, to assume the common consent of all ranks, to that which had actually been agreed by the higher. In a similar writ, 21 Henry III., the ranks of men are enumerated specifically; archiepiscopi, episcopi, abbates, priores, et clerici terras habentes quæ ad ecclesias suas non pertinent, comites, barones, milites, et liberi homines, pro se et suis villanis, nobis concesserunt in auxilium tricesimam partem omnium mobilium. In the close roll of the same year, we have a writ directed to the archbishops, bishops, abbots, priors, earls, barons, knights, and freeholders (liberi homines) of Ireland; in which an aid is desired of them, and it is urged, that one had been granted by his fideles Angliæ.

But this attendance in parliament of inferior tenants in chief, some of them too poor to have received knighthood, grew insupportably vexatious to themselves, and was not well liked by the king. He knew them to be dependent upon the barons, and dreaded the confluence of a multitude, who assumed the privilege of coming in arms to the appointed place. So inconvenient and mischievous a scheme could not long subsist among an advancing people, and fortunately the true remedy was discovered with little difficulty.

The principle of representation, in its widest sense, can hardly be unknown to any government not purely democratical. In almost every country the sense of the whole is understood to be spoken by a part, and the decisions of a part are binding upon the whole. Among our ancestors, the lord stood in the place of his vassals, and still more unquestionably, the abbot in that of his monks. The system, indeed, of ecclesiastical councils, considered as organs of the church, rested upon the principle of a virtual or an express representation, and had a tendency to render its application to national assemblies more familiar.

The first instance of actual representation which occurs in our history is only four years after the Conquest: when William, if we may rely on Hoveden, caused twelve persons skilled in the customs of England to be chosen from each county, who were sworn to inform him rightly of their laws; and these, so ascertained, were ratified by the consent of the great council. This, Sir Matthew Hale asserts to be "as sufficient and effectual a parliament as ever was held in England." But there is no appearance that these twelve deputies of each county were invested with any higher authority than that of declaring their ancient usages. No stress can be laid, at least, on this insulated and anomalous assembly, the existence of which is only learned from an historian of a century later.

We find nothing that can arrest our attention, in searching out the

origin of county representation, till we come to a writ in the fifteenth year of John, directed to all sheriffs in the following terms: Rex Vicecomiti N., salutem. Præcipimus tibi quod omnes milites ballivæ tuæ qui summoniti fuerunt esse apud Oxoniam ad Nos a die Omnium Sanctorum in quindecim dies venire facias cum armis suis: corpora vero baronum sine armis singulariter, et *quatuor discretos milites* de comitatu tuo, illuc venire facias ad eundem terminum, ad loquendum nobiscum de negotiis regni nostri. For the explanation of this obscure writ, I must refer to what Prynne has said; but it remains problematical, whether these four knights (the only clause which concerns our purpose) were to be elected by the county, or returned, in the nature of a jury, at the discretion of the sheriff. Since there is no sufficient proof whereon to decide, we can only say with hesitation, that there *may* have been an instance of county representation in the fifteenth year of John.

We may next advert to a practice, of which there is very clear proof in the reign of Henry III. Subsidies granted in parliament were assessed, not as in former times, by the justices upon their circuits, but by knights freely chosen in the county-court. This appears by two writs, one of the fourth, and one of the ninth year of Henry III. At a subsequent period, by a provision of the Oxford parliament in 1258, every county elected four knights to enquire into grievances, and deliver their inquisition into parliament.

The next writ now extant, that wears the appearance of parliamentary representation, is in the thirty-eighth of Henry III. This, after reciting that the earls, barons, and other great men (cæteri magnates) were to meet at London three weeks after Easter, with horses and arms, for the purpose of sailing into Gascony, requires the sheriff to compel all within his jurisdiction, who hold twenty pounds a year of the king in chief, or of those in ward of the king, to appear at the same time and place. And that besides those mentioned, he shall cause to come before the king's council at Westminster on the fifteenth day after Easter, two good and discreet knights of his county, whom the men of the county shall have chosen for this purpose, in the stead of all and each of them, to consider, along with the knights of other counties, what aid they will grant the king in such an emergency. In the principle of election, and in the object of the assembly, which was to grant money, this certainly resembles a summons to parliament. There are indeed anomalies, sufficiently remarkable upon the face of the writ, which distinguish this meeting from a regular parliament. But when the scheme of obtaining money from commons of shires through the consent of their representatives had once been entertained, it was easily applicable to more formal councils of the nation.

A few years later there appears another writ analogous to a sum-

mons. During the contest between Henry III. and the confederate barons in 1261, they presumed to call a sort of parliament, summoning three knights out of every county, secum tractaturos super communibus negotiis regni. This we learn only by an opposite writ issued by the king, directing the sheriff to enjoin these knights who had been convened by the earls of Leicester and Gloucester to their meeting at St. Albans, that they should repair instead to the king at Windsor, and to no other place, nobiscum super præmissis colloquium habituros. It is not absolutely certain, that these knights were elected by their respective counties. But even if they were so, this assembly has much less the appearance of a parliament, than that in the thirty-eighth of Henry III.

At length, in the year 1265, the forty-ninth of Henry III., while he was a captive in the hands of Simon de Montfort, writs were issued in his name to all the sheriffs, directing them to return two knights for the body of their county, with two citizens or burgesses for every city and borough contained within it. This, therefore, is the epoch at which the representation of the commons becomes indisputably manifest; even should we reject altogether the more equivocal instances of it which have just been enumerated.

If indeed the knights were still elected by none but the king's military tenants, if the mode of representation was merely adopted to spare them the inconvenience of personal attendance, the immediate innovation in our polity was not very extensive. This is an interesting, but very obscure topic of inquiry. Spelman and Brady, with other writers, have restrained the original right of election to tenants in chief, among whom, in process of time, those holding under mesne lords, not being readily distinguishable in the hurry of an election, contrived to slide in, till at length their encroachments were rendered legitimate by the statute 7 H. IV. c. 15, which put all suitors to the county-court on an equal footing as to the elective franchise. The argument on [this side might be plausibly urged with the following reasoning.

The spirit of a feudal monarchy, which compelled every lord to act by the advice and assent of his immediate vassals, established no relation between him and those who held nothing at his hands. They were included, so far as he was concerned, in their superiors; and the feudal incidents were due to him from the whole of his vassal's fief, whatever tenants might possess it by sub-infeudation. In England, the tenants in chief alone were called to the great councils before representation was thought of, as is evident both by the charter of John, and by the language of many records; nor were any others concerned in levying aids or escuages, which were only due by virtue of their tenure. These military tenants were become in the reign of Henry III. far more numerous than they had been under the Con-

queror. If we include those who held of the king ut de honore, that is, the tenants of baronies escheated or in ward, who may probably have enjoyed the same privileges, being subject in general to the same burthens, their number will be greatly augmented and form no inconsiderable portion of the freeholders of the kingdom. After the statute commonly called Quia emptores in the eighteenth of Edward I. they were likely to increase much more, as every licensed alienation of any portion of a fief by a tenant in chief would create a new freehold immediately depending upon the crown. Many of these tenants in capite held very small fractions of knight's fees, and were consequently not called upon to receive knighthood. They were plain freeholders holding in chief, and the liberi homines or libere tenentes of those writs which have been already quoted. The common form, indeed, of writs to the sheriff directs the knights to be chosen de communitate comitatûs. But the word communitas, as in boroughs, denotes only the superior part: it is not unusual to find mention in records of communitas populi, or omnes de regno, where none are intended but the barons, or at most the tenants in chief. If we look attentively at the earliest instance of summoning knights of shires to parliament, that in 38 H. III., which has been noticed above, it will appear that they could only have been chosen by military tenants in chief. The object of calling this parliament, if parliament it were, was to obtain an aid from the military tenants, who, holding less than a knight's fee, were not required to do personal service. None then, surely, but the tenants in chief could be electors upon this occasion, which merely respected their feudal duties. Again, to come much lower down, we find a series of petitions in the reigns of Edward III. and Richard II., which seem to lead us to a conclusion, that only tenants in chief were represented by the knights of shires. The writ for ages directed the sheriff to levy them on the commons of the county, both within franchises and without, (tam intra libertates quam extra.) But the tenants of lords holding by barony endeavoured to exempt themselves from this burthen, in which they seem to have been countenanced by the king. This led to frequent remonstrances from the commons, who finally procured a statute, that all lands, not discharged by prescription, should contribute to the payment of wages. But if these mesne tenants had possessed equal rights of voting with tenants in chief, it is impossible to conceive that they would have thought of claiming so unreasonable an exemption. Yet, as it would appear harsh to make any distinction between the rights of those who sustained an equal burthen, we may perceive how the freeholders holding of mesne lords might on that account obtain after the statute a participation in the privilege of tenants in chief. And without supposing any partiality or connivance, it is easy to comprehend, that while the nature of tenures and services was so obscure, as to give rise to continual disputes, of which the ancient records of the King's Bench are full, no

sheriff could be very accurate in rejecting the votes of common freeholders, repairing to the county-court, and undistinguishable, as must be allowed, from tenants in capite upon other occasions, such as serving on juries, or voting on the elections of coroners. To all this it yields some corroboration, that a neighbouring though long hostile kingdom, who borrowed much of her law from our own, has never admitted any freeholders, except tenants in chief of the crown, to a suffrage in county elections. These attended the parliament of Scotland in person till 1428, when a law of James I. permitted them to send representatives.

Such is, I think, a fair statement of the arguments that might be alleged by those who would restrain the right of election to tenants of the crown. It may be urged on the other side that the genius of the feudal system was never completely displayed in England; much less can we make use of that policy to explain institutions that prevailed under Edward I. Instead of aids and scutages levied upon the king's military tenants, the crown found ampler resources in subsidies upon movables, from which no class of men was exempted. But the statute that abolished all unparliamentary taxation led, at least in theoretical principle, to extend the elective franchise to as large a mass of the people as could conveniently exercise it. It was even in the mouth of our kings that what concerned all should be approved by all. Nor is the language of all extant writs less adverse to the supposition that the right of suffrage in county elections was limited to tenants in chief. It seems extraordinary that such a restriction, if it existed, should never be deducible from these instruments; that their terms should invariably be large enough to comprise all freeholders. Yet no more is ever required of the sheriff than to return two knights, chosen by the body of the county. For they are not only said to be returned pro communitate, but "per communitatem," and "de assensu totius communitatis." Nor is it satisfactory to allege, without any proof, that this word should be restricted to the tenants in chief, contrary to what must appear to be its obvious meaning. Certainly if these tenants of the crown had found inferior freeholders usurping a right of suffrage, we might expect to find it the subject of some legislative provision, or at least of some petition and complaint. And, on the other hand, it would have been considered as unreasonable to levy the wages due to knights of the shire for their service in parliament on those who had no share in their election. But it appears by writs at the very beginning of Edward II.'s reign that wages were levied "de communitate comitatus." It will scarcely be contended that no one was to contribute under this writ but tenants in chief; and yet the word communitas can hardly be applied to different persons, when it occurs in the same instrument, and upon the same matter. The series of petitions above mentioned, relative to the payment of wages, rather

tends to support a conclusion that all mesne tenants had the right of suffrage, if they thought fit to exercise it, since it was earnestly contended that they were liable to contribute towards that expense. Nor does there appear any reason to doubt that all freeholders, except those within particular franchises, were suitors to the county-court; an institution of no feudal nature, and in which elections were to be made by those present. As to the meeting to which knights of shires were summoned in 38 H. III., it ought not to be reckoned a parliament, but rather one of those anomalous conventions which sometimes occurred in the unfixed state of government. It is at least the earliest known instance of representation, and leads us to no conclusion in respect of later times, when the commons had become an essential part of the legislature, and their consent was required to all public burthens.

This question, upon the whole, is certainly not free from considerable difficulty. The legal antiquaries are divided. Prynne does not seem to have doubted but that the knights were "elected in the full county, by and for the whole county," without respect to the tenure of the freeholders. But Brady and Carte are of a different opinion. Yet their disposition to narrow the basis of the constitution is so strong, that it creates a sort of prejudice against their authority. And if I might offer an opinion on so obscure a subject, I should be much inclined to believe, that even from the reign of Edward I., the election of knights by all freeholders in the county-court, without regard of tenure, was little, if at all, different from what it is at present.

The progress of towns in several continental countries from a condition bordering upon servitude to wealth and liberty has more than once attracted our attention in other parts of the present work. Their growth in England, both from general causes and imitative policy, was very similar and nearly coincident. Under the Anglo-Saxon line of sovereigns, we scarcely can discover in our scanty records the condition of their inhabitants; except retrospectively from the great survey of Domesday-book, which displays the state of England under Edward the Confessor. Some attention to commerce had been shown by Alfred and Athelstan; and a merchant who had made three voyages beyond sea was raised by a law of the latter monarch to the dignity of a thane. This privilege was not perhaps often claimed; but the burgesses of towns were already a distinct class from the ceorls or rustics, and, though hardly free according to our estimation, seem to have laid the foundation of more extensive immunities. It is probable, at least, that the English towns had made full as great advances towards emancipation as those of France. At the Conquest, we find the burgesses or inhabitants of towns living under the superiority or protection of the king, or of some other lord, to whom they paid annual rents, and determinate dues or customs. Sometimes they belonged to different

lords; and sometimes the same burgess paid custom to one master while he was under the jurisdiction of another. They frequently enjoyed special privileges as to inheritance; and in two or three instances they seem to have possessed common property, belonging to a sort of guild or corporation; but never, as far as appears by any evidence, had they a municipal administration by magistrates of their own choice. Besides the regular payments, which were in general not heavy, they were liable to tallages at the discretion of their lords. This burthen continued for two centuries, with no limitation, except that the barons were latterly forced to ask permission of the king before they set a tallage on their tenants, which was commonly done when he imposed one upon his own. Still the towns became considerably richer; for the profits of their traffic were undiminished by competition; and the consciousness that they could not be individually despoiled of their possessions, like the villeins of the country around, inspired an industry and perseverance, which all the rapacity of Norman kings and barons was unable to daunt or overcome.

One of the earliest and most important changes in the condition of the burgesses was the conversion of their individual tributes into a perpetual rent from the whole borough. The town was then said to be affermed, or let in fee-farm to the burgesses and their successors for ever. Previously to such a grant, the lord held the town in his demesne, and was the legal proprietor of the soil and tenements, though I by no means apprehend that the burgesses were destitute of a certain estate in their possessions. But of a town in fee-farm he only kept the superiority, and the inheritance of the annual rent, which he might recover by distress. The burgesses held their lands by burgage-tenure, nearly analogous to, or rather a species of, free socage. Perhaps before the grant they might correspond to modern copy-holders. It is of some importance to observe, that the lord by such a grant of the town in fee-farm, whatever we may think of its previous condition, divested himself of his property, or lucrative dominion over the soil, in return for the perpetual rent; so that tallages subsequently set at his own discretion upon the inhabitants, however common, can hardly be considered as a just exercise of the rights of proprietorship.

Under such a system of arbitrary taxation, however, it was evident to the most selfish tyrant, that the wealth of his burgesses was his wealth, and their prosperity his interest; much more were liberal and sagacious monarchs, like Henry II., inclined to encourage them by privileges. From the time of William Rufus, there was no reign in which charters were not granted to different towns, of exemption from tolls on rivers and at markets, those lighter manacles of feudal tyranny; or of commercial franchises; or of immunity from the ordinary jurisdictions; or, lastly, of internal self-regulation. Thus, the original charter of Henry I. to the city of London concedes to the citizens, in addition to

valuable commercial and fiscal immunities, the right of choosing their own sheriff and justice, to the exclusion of every foreign jurisdiction. These grants, however, were not in general so extensive till the reign of John. Before that time, the interior arrangement of towns had received a new organisation. In the Saxon period, we find voluntary associations, sometimes religious, sometimes secular; in some cases for mutual defence against injury, in others for mutual relief in poverty. These were called guilds, from the Saxon verb *gildan*, to pay or contribute, and exhibited the natural, if not the legal character of corporations. At the time of the Conquest, as has been mentioned above, such voluntary incorporations of the burgesses possessed in some towns either landed property of their own, or rights of superiority over that of others. An internal elective government seems to have been required for the administration of a common revenue and of other business incident to their association. They became more numerous, and more peculiarly commercial after that era, as well from the increase of trade, as through imitation of similar fraternities existing in many towns of France. The spirit of monopoly gave strength to those institutions, each class of traders forming itself into a body, in order to exclude competition. Thus were established the companies in corporate towns, that of the Weavers in London being perhaps the earliest, and these were successively consolidated and sanctioned by charters from the crown. In towns not large enough to admit of distinct companies, one merchant guild comprehended the traders in general, or the chief of them; and this, from the reign of Henry II. downwards, became the subject of incorporating charters. The management of their internal concerns, previously to any incorporation, fell naturally enough into a sort of oligarchy, which the tenor of the charter generally preserved. Though the immunities might be very extensive, the powers were more or less restrained to a small number. Except in a few places, the right of choosing magistrates was first given by king John; and certainly must rather be ascribed to his poverty, than to any enlarged policy, of which he was utterly incapable. A few of an earlier date may be found in the new edition of Rymer.

From the middle of the twelfth century to that of the thirteenth, the trades of England became more and more prosperous. The towns on the southern coast exported tin and other metals in exchange for the wines of France; those on the eastern sent corn to Norway; the cinque-ports bartered wool against the stuffs of Flanders. Though bearing no comparison with the cities of Italy or the empire, they increased sufficiently to acquire importance at home. That vigorous prerogative of the Norman monarchs, which kept down the feudal aristocracy, compensated for whatever inferiority there might be in the population and defensible strength of the English towns, compared with those on the continent. They had to fear no petty oppressors, no

local hostility; and if they could satisfy the rapacity of the crown, were secure from all other grievances. London, far above the rest, our ancient and noble capital, might, even in those early times, be justly termed a member of the political system. This great city, so admirably situated, was rich and populous long before the Conquest. Bede, at the beginning of the eighth century, speaks of London as a great market, which traders frequented by land and sea. It paid £15,000 out of £82,000, raised by Canute upon the kingdom. If we believe Roger Hoveden, the citizens of London, on the death of Ethelred II., joined with part of the nobility in raising Edmund Ironside to the throne. Harold I., according to better authority, the Saxon Chronicle, and William of Malmsbury, was elected by their concurrence. Descending to later history, we find them active in the civil war of Stephen and Matilda. The famous bishop of Winchester tells the Londoners, that they are almost accounted as noblemen on account of the greatness of their city; into the community of which it appears that some barons had been received. Indeed the citizens themselves, or at least the principal of them, were called barons. It was certainly by far the greatest city in England. There have been different estimates of its population, some of which are extravagant; but I think it could hardly have contained less than thirty or forty thousand souls within its walls; and the suburbs were very populous. These numbers, the enjoyment of privileges, and the consciousness of strength, infused a free and even mutinous spirit into their conduct. The Londoners were always on the barons' side in their contests with the crown. They bore a part in deposing William Longchamp, the chancellor and justiciary of Richard I. They were distinguished in the great struggle for Magna Charta; the privileges of their city are expressly confirmed in it; and the mayor of London was one of the twenty-five barons to whom the maintenance of its provisions was delegated. In the subsequent reign, the citizens of London were regarded with much dislike and jealousy by the court, and sometimes suffered pretty severely by its hands, especially after the battle of Evesham.

Notwithstanding the influence of London in these seasons of disturbance, we do not perceive that it was distinguished from the most insignificant town by greater participation in national councils. Rich, powerful, honourable, and high spirited as its citizens had become, it was very long before they found a regular place in parliament. The prerogative of imposing tallages at pleasure, unsparingly exercised by Henry III. even over London, left the crown no inducement to summon the inhabitants of cities and boroughs. As these indeed were daily growing more considerable, they were certain, in a monarchy so limited as that of England became in the thirteenth century, of attaining, sooner or later, this eminent privilege. Although, therefore, the object of Simon de Montford in calling them to his parliament after the battle

of Lewes was merely to strengthen his own faction, which prevailed among the commonalty, yet their permanent admission into the legislature may be ascribed to a more general cause. For otherwise it is not easy to see, why the innovation of an usurper should have been drawn into precedent, though it might perhaps accelerate what the course of affairs was gradually preparing.

It is well known, that the earliest writs of summons to cities and boroughs of which we can prove the existence, are those of Simon de Montfort, Earl of Leicester, bearing date 12th December, 1264, in the forty-ninth year of Henry III. After a long controversy, almost all judicious inquirers seem to have acquiesced in admitting this origin of popular representation. The argument may be very concisely stated. We find from innumerable records that the king imposed tallages upon his demesne towns at discretion. No public instrument previous to the forty-ninth of Henry III. names the citizens and burgesses as constituent parts of parliament; though prelates, barons, knights, and sometimes free-holders are enumerated; while since the undoubted admission of the commons, they are almost invariably mentioned. No historian speaks of representatives appearing for the people, or uses the word citizen or burgess in describing those present in parliament. Such convincing, though negative, evidence is not to be invalidated by some general and ambiguous phrases, whether in writs or records, or in historians. Those monkish annalists are poor authorities upon any point where their language is to be delicately measured. But it is hardly possible, that writing circumstantially, as Roger de Hoveden and Matthew Paris sometimes did, concerning proceedings in parliament, they could have failed to mention the commons in unequivocal expressions, if any representatives from that order had actually formed a part of the assembly.

Two authorities, however, which have been supposed to prove a greater antiquity than we have assigned to the representation of the commons, are deserving of particular consideration; the cases of St. Albans and Barnstaple. The burgesses of St. Albans complained to the council in the eighth year of Edward II., that, although they held of the king in capite, and ought to attend his parliaments whenever they are summoned, by two of their number, instead of all other services, as had been their custom in all past times, which services the said burgesses and their predecessors had performed as well in the time of the late king Edward and his ancestors, as in that of the present king until the parliament now sitting, the names of their deputies having been constantly enrolled in chancery, yet the sheriff of Hertfordshire, at the instigation of the abbot of St. Albans, had neglected to cause an election and return to be made; and prayed remedy. To this petition it was answered, "Let the rolls of chancery be examined, that it may appear, whether the said burgesses were accustomed to

come to parliament, or not, in the time of the king's ancestors; and let right be done to them, vocatis evocandis, si necesse fuerit." I do not translate these words, concerning the sense of which there has been some dispute, though not, apparently, very material to the principal subject.

This is, in my opinion, by far the most plausible testimony for the early representation of boroughs. The burgesses of St. Albans claim a prescriptive right from the usage of all past times, and more especially those of the late Edward and his ancestors. Could this be alleged, it has been said, of a privilege at the utmost of fifty years' standing, once granted by an usurper, in the days of the late king's father, and afterwards discontinued till about twenty years before the date of their petition, according to those who refer the regular appearance of the commons in parliament to the twenty-third of Edward I.? Brady, who obviously felt the strength of this authority, has shown little of his usual ardour and acuteness in repelling it. It was observed, however, by Madox, that the petition of St. Albans contains two very singular allegations: it asserts that the town was part of the king's demesne, whereas it had invariably belonged to the adjoining abbey; and that its burgesses held by the tenure of attending parliament, instead of all other services, contrary to all analogy, and without parallel in the condition of any tenant in capite throughout the kingdom. "It is no wonder, therefore," says Hume, "that a petition which advances two falsehoods, should contain one historical mistake, which, indeed, amounts only to an inaccurate expression." But it must be confessed, that we cannot so easily set aside the whole authority of this record. For whatever assurance the people of St. Albans might show in asserting what was untrue, the king's councils must have been aware how recently the deputies of any towns had been admitted into parliament. If the lawful birth of the House of Commons were in 1295, as is maintained by Brady and his disciples, is it conceivable that, in 1315, the council would have received a petition, claiming the elective franchise by prescription, and have referred to the rolls of chancery to inquire whether this had been used in the days of the king's progenitors? I confess that I see no answer which can easily be given to this objection by such as adopt the *latest* epoch of borough representation, namely, the parliament of 23 E. I. But these are by no means equally conclusive against the supposition, that the communities of cities and towns, having been first introduced into the legislature during Leicester's usurpation, in the forty-ninth year of Henry III., were summoned, not, perhaps, uniformly, but without any long intermission, to succeeding parliaments. There is a strong presumption, from the language of a contemporary historian, that they sat in the parliament of 1269, four years after that convened by Leicester. It is more unequivocally stated by another annalist, that they were present in the first parlia-

ment of Edward I., held in 1271. Nor does a similar inference want some degree of support from the preambles of the statute of Marlebridge in 51 H. III., of Westminster I., in the third, and of Gloucester, in the sixth year of Edward I: And the writs are extant, which summon every city, borough, and market town to send two deputies to a council in the eleventh year of his reign. I call this a council, for it undoubtedly was not a parliament. The sheriffs were directed to summon personally all who held more than twenty pounds a year of the crown, as well as four knights for each county, invested with full powers to act for the commons thereof. The knights and burgesses thus chosen, as well as the clergy within the province of Canterbury, met at Northampton; those within the province of York, at that city. And neither assembly was opened by the king. This anomalous convention was, nevertheless, one means of establishing the representative system, and, to an enquirer free from technical prejudice, is little less important than a regular parliament. Nor have we long to look even for this. In the same year, about eight months after the councils at Northampton and York, writs were issued summoning to a parliament at Shrewsbury two citizens from London, and as many from each of twenty other considerable towns. It is a slight cavil to object, that these were not directed as usual to the sheriff of each county, but to the magistrates of each place. Though a very imperfect, this was a regular and unequivocal representation of the commons in parliament. But their attendance seems to have intermitted from this time to the twenty-third year of Edward's reign.

Those to whom the petition of St. Albans is not satisfactory will hardly yield their conviction to that of Barnstaple. This town set forth in the eighteenth of Edward III., that among other franchises granted to them by a charter of Athelstan, they had ever since exercised the right of sending two burgesses to parliament. The said charter, indeed, was unfortunately mislaid: and the prayer of their petition was to obtain one of the like import in its stead. Barnstaple, it must be observed, was a town belonging to Lord Audley, and had actually returned members ever since the twenty-third of Edward I. Upon an inquisition directed by the king to be made into the truth of these allegations, it was found that "the burgesses of the said town were wont to send two burgesses to parliament for the commonalty of the borough; but nothing appeared as to the pretended charter of Athelstan, or the liberties which it was alleged to contain. The burgesses, dissatisfied with this inquest, prevailed that another should be taken, which certainly answered better their wishes. The second jury found that Barnstaple was a free borough, from time immemorial; that the burgesses had enjoyed under a charter of Athelstan, which had been casually lost, certain franchises by them enumerated, and particularly that they should send two burgesses to parliament; and that it would

not be to the king's prejudice if he should grant them a fresh charter in terms equally ample with that of his predecessor Athelstan. But the following year we have another writ and another inquest, the former reciting that the second return had been unduly and fraudulently made; and the latter expressly contradicting the previous inquest in many points, and especially finding no proof of Athelstan's supposed charter. Comparing the various parts of this business, we shall probably be induced to agree with Willis that it was but an attempt of the inhabitants of Barnstaple to withdraw themselves from the jurisdiction of their lord. For the right of returning burgesses, though it is the main point of our inquiries, was by no means the most prominent part of their petition, which rather went to establish some civil privileges of devising their tenements, and electing their own mayor. The first and fairest return finds only that they were accustomed to send members to parliament, which an usage of fifty years (from 23 E. I. to 18 E. III.) was fully sufficient to establish, without searching into more remote antiquity.

It has, however, probably occurred to the reader of these two cases, St. Albans and Barnstaple, that the representation of the commons in parliament was not treated as a novelty, even in times little posterior to those in which we have been supposing it to have originated. In this consists, I think, the sole strength of the opposite argument. An act in the fifth year of Richard II. declares that if any sheriff shall leave out of his returns any cities or boroughs which be bound, and of old time were wont to come to the parliament, he shall be punished as was accustomed to be done in the like case in time past. In the memorable assertion of legislative right by the commons in the second of Henry V., which will be quoted hereafter, they affirm that "the commune of the land is, *and ever has been*, a member of parliament." And the consenting suffrage of our older law-books must be placed in the same scale. The first gainsayers, I think, were Camden and Sir Henry Spelman, who upon probing the antiquities of our constitution somewhat more exactly than their predecessors, declared that they could find no signs of the commons in parliament till the forty-ninth of Henry III. Prynne, some years afterwards, with much vigour and learning, maintained the same argument, and Brady completed the victory. But the current doctrine of Westminster Hall, and still more of the two chambers of parliament, was certainly much against these antiquaries; and it passed at one time for a surrender of popular principles, and almost a breach of privilege, to dispute the lineal descent of the House of Commons from the wittenagemot.

The true ground of these pretensions to antiquity was a very well founded persuasion, that no other argument would be so conclusive to ordinary minds, or cut short so effectually all encroachments of the prerogative. The populace of every country, but none so much as the

English, easily grasp the notion of right, meaning thereby something positive and definite; while the maxims of expediency or theoretical reasoning pass slightly over their minds. Happy indeed for England that it is so! But we have here to do with the fact alone. And it may be observed that several pious frauds were practised to exalt the antiquity of our constitutional liberties. These began, perhaps, very early, when the imaginary laws of Edward the Confessor were so earnestly demanded. They were carried farther under Edward I. and his successors, when the fable of privileges granted by the Conqueror to the men of Kent was devised; when Andrew Horn filled his Mirrour of Justices with fictitious tales of Alfred; and above all, when the "method of holding parliaments in the time of Ethelred" was fabricated, about the end of Richard II.'s reign; an imposture which proved to be not too gross to deceive Sir Edward Coke.

There is no great difficulty in answering the question, why the deputies of boroughs were finally and permanently engrafted upon parliament by Edward I. The government was becoming constantly more attentive to the wealth that commerce brought into the kingdom, and the towns were becoming more flourishing and more independent. But, chiefly, there was a much stronger spirit of general liberty, and a greater discontent at violent acts of prerogative, from the era of Magna Charta; after which authentic recognition of free principles, many acts which had seemed before but the regular exercise of authority were looked upon as infringements of the subject's right. Among these the custom of setting tallages at discretion would naturally appear the most intolerable; and men were unwilling to remember that the burgesses who paid them were indebted for the rest of their possessions to the bounty of the crown. In Edward I.'s reign, even before the great act of Confirmation of the Charters had rendered arbitrary impositions absolutely unconstitutional, they might perhaps excite louder murmurs than a discreet administration would risk. Though the necessities of the king, therefore, and his imperious temper often led him to this course, it was a more prudent counsel to try the willingness of his people, before he forced their reluctance. And the success of his innovation rendered it worth repetition. Whether it were from the complacency of the commons at being thus admitted among the peers of the realm, or from a persuasion that the king would take their money, if they refused it, or from inability to withstand the plausible reasons of his ministers, or from the private influence to which the leaders of every popular assembly have been accessible, much more was granted in subsidies, after the representation of the towns commenced, than had ever been extorted in tallages.

To grant money was, therefore, the main object of their meeting, and if the exigencies of the administration could have been relieved without subsidies, the citizens and burgesses might still have sat at home, and

obeyed the laws which a council of prelates and barons enacted for their government. But it is a difficult question, whether the king and the peers designed to make room for them, as it were, in legislation; and whether the power of the purse drew after it immediately, or only by degrees, those indispensable rights of consenting to laws which they now possess. There are no sufficient means of solving this doubt during the reign of Edward I. The writ in 22 E. I. directs two knights to be chosen cum plenâ potestate pro se et totâ communitate comitatûs prædicti, ad consulendum et consentiendum pro se et communitate illâ, his quæ comites, barones, et proceres prædicti concorditer ordinaverint in præmissis. That of the next year runs, ad faciendum tunc quod de communi consilio ordinabitur in præmissis. The same words are inserted in the writ of 26 E. I. In that of 28 E. I. the knights are directed to be sent cum plenâ potestate audiendi et faciendi quæ ibidem ordinari contigerent pro communi commodo. Several others of the same reign have the words ad faciendum. The difficulty is to pronounce whether this term is to be interpreted in the sense of *performing*, or of *enacting:* whether the representatives of the commons were merely to learn from the lords, what was to be done, or to bear their part in advising upon it. The earliest writ, that of 22 E. I., certainly implies the latter; and I do not know that any of the rest are conclusive to the contrary. In the reign of Edward II., the words ad consentiendum alone, or ad faciendum et consentiendum, begin; and from that of Edward III., this form has been constantly used. It must still, however, be highly questionable, whether the commons, who had so recently taken their place in parliament, gave anything more than a constructive assent to the laws enacted during this reign. They are not even named in the preamble of any statute till the last year of Edward I. Upon more than one occasion, the sheriffs were directed to return the same members who had sat in the last parliament, unless prevented by death or infirmity.

It has been a very prevailing opinion, that parliament was not divided into two houses at the first admission of the commons. If by this is only meant that the commons did not occupy a separate chamber till some time in the reign of Edward III., the proposition, true or false, will be of little importance. They may have sat at the bottom of Westminster Hall, while the lords occupied the upper end. But that they were ever intermingled in voting, appears inconsistent with likelihood and authority. The usual object of calling a parliament was to impose taxes; and these, for many years after the introduction of the commons, were laid in different proportions upon the three estates of the realm. Thus, in the 23 E. I., the earls, barons, and knights gave the king an eleventh, the clergy a tenth, while he obtained a seventh from the citizens and burgesses; in the twenty-fourth of the same king, the two former of these orders gave a twelfth, the last an eighth; in the thirty-

third year, a thirtieth was the grant of the barons and knights, and of the clergy, a twentieth of the cities and towns; in the first of Edward II., the counties paid a twentieth, the towns a fifteenth; in the sixth of Edward III., the rates were a fifteenth and a tenth. These distinct grants imply distinct grantors; for it is not to be imagined that the commons intermeddled in those affecting the lords, or the lords in those of the commons. In fact, however, there is abundant proof of their separate existence long before the seventeenth of Edward III., which is the epoch assigned by Carte, or even the sixth of that king, which has been chosen by some other writers. Thus the commons sat at Acton Burnell in the eleventh of Edward I., while the upper house was at Shrewsbury. In the eighth of Edward II., "the commons of England complain to the king and his council," &c. These must surely have been the commons assembled in parliament, for who else could thus have entitled themselves? In the nineteenth of the same king, we find several petitions, evidently proceeding from the body of the commons in parliament, and complaining of public grievances. The roll of 1 E. III., though mutilated, is conclusive to show that separate petitions were then presented by the commons, according to the regular usage of subsequent times. And, indeed, the preamble of 1 E. III., stat. 2., is apparently capable of no other inference.

As the knights of shires correspond to the lower nobility of other feudal countries, we have less cause to be surprised that they belonged originally to the same branch of parliament as the barons, than at their subsequent intermixture with men so inferior in station as the citizens and burgesses. It is by no means easy to define the point of time when this distribution was settled; but I think it may be inferred from the rolls of parliament, that the houses were divided as they are at present, in the eighth, ninth, and nineteenth years of Edward II. This appears, however, beyond doubt in the first of Edward III. Yet, in the sixth of the same prince, though the knights and burgesses are expressly mentioned to have consulted together, the former taxed themselves in a smaller rate of subsidy than the latter.

The proper business of the House of Commons was to petition for redress of grievances as much as to provide for the necessities of the crown. In the prudent fiction of English law, no wrong is supposed to proceed from the source of right. The throne is fixed upon a pinnacle, which perpetual beams of truth and justice irradiate, though corruption and partiality may occupy the middle region, and cast their chill shade upon all below. In his high court of parliament, a king of England was to learn where injustice had been unpunished, and where right had been delayed. The common courts of law, if they were sufficiently honest, were not sufficiently strong to redress the subject's injuries, where the officers of the crown, or the nobles interfered. To parliament he looked as the great remedial court for relief of private as well as

public grievances. For this cause it was ordained in the fifth of Edward II., that the king should hold a parliament once, or, if necessary, twice every year; "that the pleas which have been thus delayed, and those where the justices have differed, may be brought to a close." And a short act of 4 Edward III., which was not very strictly regarded, provides that a parliament shall be held "every year, or oftener, if need be." By what persons, and under what limitations, this jurisdiction in parliament was exercised, will come under our future consideration.

The efficacy of a king's personal character, in so imperfect a state of government, was never more strongly exemplified than in the two first Edwards. The father, a little before his death, had humbled his boldest opponents among the nobility; and as for the commons, so far from claiming a right of remonstrating, we have seen cause to doubt whether they were accounted effectual members of the legislature, for any purposes but taxation. But in the very second year of the son's reign, they granted the twenty-fifth penny of their goods, "upon this condition, that the king should take advice and grant redress upon certain articles, wherein they are aggrieved." These were answered at the ensuing parliament, and are entered, with the king's respective promises of redress, upon the roll. It will be worth while to extract part of this record, that we may see what were the complaints of the commons of England, and their notions of right in 1309. I have chosen on this as on other occasions, to translate very literally, at the expense of some stiffness, and perhaps of obscurity, in the language.

"The good people of the kingdom who are come hither to parliament, pray our lord the king that he will, if it please him, have regard to his poor subjects, who are much aggrieved by reason that they are not governed as they should be; especially as to the articles of the Great Charter; and for this, if it please him, they pray remedy. Besides which they pray their lord the king to hear what has long aggrieved his people, and still does so from day to day, on the part of those who call themselves his officers, and to amend it, if he pleases." The articles, eleven in number, are to the following purport:—1. That the king's purveyors seize great quantities of victuals without payment; 2. That new customs are set on wine, cloth and other imports; 3. That the current coin is not so good as formerly; 4, 5. That the steward and marshal enlarge their jurisdiction beyond measure to the oppression of the people: 6. That the commons find none to receive petitions addressed to the council; 7. That the collectors of the king's dues (pernours des prises) in towns and at fairs, take more than is lawful; 8. That men are delayed in their civil suits by writs of protection; 9. That felons escape punishment by procuring charters of pardon; 10. That the constables of the king's castles take cognisance of common pleas; 11. That the king's escheators oust men of lands held by good title, under a pretence of an inquest of their office.

These articles display in a short compass the nature of those grievances, which existed under almost all the princes of the Plantagenent dynasty, and are spread over the rolls of parliament for more than a century after this time. Edward gave the amplest assurances of putting an end to them all; except in one instance, the augmented customs or imports, to which he answered rather evasively, that he would take them off, till he should perceive whether himself and his people derived advantage from so doing, and act thereupon as he should be advised. Accordingly, the next year, he issued writs to collect these new customs again. But the Lords Ordainers superseded the writs, having entirely abrogated all illegal impositions. It does not appear, however, that, regard had to the times, there was anything very tyrannical in Edward's government. He set tallages sometimes, like his father, on his demesne towns without assent of parliament. In the nineteenth year of his reign, the commons show, that "whereas we and our ancestors have given many tallages to the king's ancestors to obtain the charter of the forest, which charter we have had confirmed by the present king, paying him largely on our part; yet the king's officers of the forest seize on lands, and destroy ditches, and oppress the people, for which they pray remedy, for the sake of God and his father's soul." They complain at the same time of arbitrary imprisonment, against the law of the land. To both these petitions the king returned a promise of redress; and they complete the catalogue of the customary grievances in this period of our constitution.

During the reign of Edward II. the rolls of parliament are imperfect, and we have not much assistance from other sources. The assent of the commons, which frequently is not specified in the statutes of this age, appears in two remarkable and revolutionary proceedings, the appointment of the Lords Ordainers in 1312, and that of Prince Edward as guardian of the realm in the rebellion which ended in the king's dethronement. In the former case, it indicates that the aristocratic party then combined against the crown were desirous of conciliating popularity. An historian relates, that some of the commons were consulted upon the ordinances to be made for the reformation of government. In the latter case, the deposition of Edward II., I am satisfied, that the commons' assent was pretended in order to give more speciousness to the transaction. But as this proceeding, however violent, bears evident marks of having been conducted by persons conversant in law, the mention of the commons may be deemed a testimony to their constitutional right of participation with the peers in making provision for a temporary defect of whatever nature in the executive government.

During the long and prosperous reign of Edward III., the efforts of parliament in behalf of their country were rewarded with success in establishing upon a firm footing three essential principles of our government; the illegality of raising money without consent; the

necessity that the two houses should concur for any alterations in the law; and, lastly, the right of the commons to inquire into public abuses, and to impeach public counsellors. By exhibiting proofs of each of these from parliamentary records, I shall be able to substantiate the progressive improvement of our free constitution, which was principally consolidated during the reign of Edward III. and his two next successors. Brady indeed, Carte, and the authors of the Parliamentary History, have trod already over this ground; but none of the three can be considered as familiar to the generality of readers, and I may at least take credit for a sincerer love of liberty than any of their writings display.

In the sixth year of Edward III. a parliament was called to provide for the emergency of an Irish rebellion; wherein, "because the king could not send troops and money to Ireland without the aid of his people, the prelates, earls, barons, and other great men, and the knights of shires, and all the commons, of their free will, for the said purpose, and also in order that the king might live off his own, and not vex his people by excessive prises nor in other manner, grant to him the fifteenth penny, to levy of the commons, and the tenth from the cities, towns, and royal demesnes. And the king, at the request of the same, in ease of his people, grants that the commission lately made to certain persons assigned to set tallages on cities, towns, and demesnes throughout England shall be immediately repealed; and that in time to come he will not set such tallage, except as it has been done in the time of his ancestors, and as he may reasonably do.

These concluding words are of dangerous implication, and certainly it was not the intention of Edward, inferior to none of his predecessors in the love of power, to divest himself of that eminent prerogative, which, however illegally since the Confirmatio Chartarum, had been exercised by them all. But the parliament took no notice of this reservation, and continued with unshaken perseverance to insist on this incontestable and fundamental right, which he was prone enough to violate.

In the thirteenth year of this reign, the lords gave their answer to commissioners sent to open the parliament and to treat with them on the king's part, in a sealed roll. This contained a grant of the tenth sheaf, fleece and lamb. But, before they gave it, they took care to have letters patent shown them, by which the commissioners had power "to grant some graces to the great and small of the kingdom." "And the said lords," the roll proceeds to say, "will, that the imposition (malestoste) which now again has been levied upon wool be entirely abolished, that the old customary duty be kept, and that they may have it by charter, and by enrolment in parliament, that such custom be never more levied, and that this grant now made to the king, or any other made in time past, shall not turn hereafter to their charge nor be drawn into precedent." The commons, who gave their answers in a

separate roll, declared that they could grant no subsidy without consulting their constituents ; and therefore begged that another parliament might be summoned, and in the meantime they would endeavour, by using persuasion with the people of their respective counties, to procure the grant of a reasonable aid in the next parliament. They demanded also, that the imposition on wool and lead should be taken as it used to be in former times, "inasmuch as it has enhanced without assent of the commons, or of the lords, as we understand ; and, if it be otherwise demanded, that any one of the commons may refuse it, (le puisse arester,) without being troubled on that account, (saunz estre chalangé.)

Wool, however, the staple export of that age, was too easy and tempting a prey to be relinquished by a prince engaged in an impoverishing war. Seven years afterwards, in 20 E. III., we find the commons praying, that the great subsidy of forty shillings upon the sack of wool be taken off; and the whole custom paid as heretofore was assented to and granted. The government spoke this time in a more authoritative tone. "As to this point, (the answer runs,) the prelates and others seeing in what need the king stood of an aid before his passage beyond sea, to recover his rights, and defend his kingdom of England, consented, with the concurrence of the merchants, that he should have in aid of his said war, and in defence of his said kingdom, forty shillings of subsidy for each sack of wool that should be exported beyond sea, for two years to come. And upon this grant divers merchants have made many advances to our lord the king, in aid of his war ; for which cause this subsidy cannot be repealed without assent of the king and his lords.

It is probable, that Edward's counsellors wished to establish a distinction, long afterwards revived by those of James I., between customs levied on merchandise at the ports, and internal taxes. The statute entitled Confirmatio Chartarum had manifestly taken away the prerogative of imposing the latter, which indeed had never extended beyond the tenants of the royal demesne. But its language was not quite so explicit as to the former, although no reasonable doubt could be entertained that the intention of the legislature was to abrogate every species of imposition unauthorised by parliament. The thirtieth section of Magna Charta had provided, that foreign merchants should be free from all tributes, except the ancient customs ; and it was strange to suppose, that natives were excluded from the benefit of that enactment. Yet, owing to the ambiguous and elliptical style so frequent in our older laws, this was open to dispute, and could perhaps only be explained by usage. Edward I., in despite of both these statutes, had set a duty of threepence in the pound upon goods imported by merchant strangers. This imposition was noticed as a grievance in the third year of his successor, and repealed by the Lords Ordainers. It

was revived, however, by Edward III., and continued to be levied ever afterwards.

Edward was led by the necessities of his unjust and expensive war into another arbitrary encroachment, of which we find as many complaints as of his pecuniary extortions. The commons pray, in the same parliament of 20 E. III., that commissions should not issue for the future out of chancery, to charge the people with providing men-at-arms, hobelers, (or light cavalry,) archers, victuals, or in any other manner, without consent of parliament. It is replied to this petition, that "it is notorious how in many parliaments the lords and commons had promised to aid the king in his quarrel with their bodies and goods as far as was in their power; wherefore the said lords, seeing the necessity in which the king stood of having aid of men-at-arms, hobelers, and archers, before his passage to recover his rights beyond sea, and to defend his realm of England, ordained, that such as had five pounds a year or more in land on this side of Trent should furnish men-at-arms, hobelers, and archers, according to the proportion of land they held to attend the king at his cost; and some who would neither go themselves, nor find others in their stead, were willing to give the king wherewithal he might provide himself with some in their place. And thus the thing has been done, and no otherwise. And the king wills, that henceforth what has been thus done in this necessity be not drawn into consequence or example."

The commons were not abashed by these arbitrary pretensions; they knew that by incessant remonstrances they should gain at least one essential point, that of preventing the crown from claiming these usurpations as uncontested prerogatives. The roll of parliament in the next two years, the 21st and 22d of Edward III., is full of the same complaints on one side, and the same allegations of necessity on the other. In the latter year, the commons grant a subsidy, on condition that no illegal levying of money should take place, with several other remedial provisions; "and that these conditions should be entered on the roll of parliament, as a matter of record, by which they may have remedy, if anything should be attempted to the contrary in time to come." From this year the complaints of extortion become rather less frequent; and soon afterwards a statute was passed, "That no man shall be constrained to find men-at-arms, hobelers, nor archers, other than those which hold by such services, if it be not by common assent and grant made in parliament." Yet even in the last year of Edward's reign, when the boundaries of prerogative and the rights of parliament were better ascertained, the king lays a sort of claim to impose charges upon his subjects in cases of great necessity, and for the defence of his kingdom. But this more humble language indicates a change in the spirit of government, which after long fretting impatiently at the curb, began at length to acknowledge the controlling hand of law.

These are the chief instances of a struggle between the crown and commons as to arbitrary taxation; but there are two remarkable proceedings in the 45th and 46th of Edward, which though they would not have been endured in later times, are rather anomalies arising out of the unsettled state of the constitution and the recency of parliamentary rights than mere encroachments of the prerogative. In the former year, parliament had granted a subsidy of fifty thousand pounds, to be collected by an assessment of twenty-two shillings and threepence upon every parish, on a presumption that the parishes in England amounted to forty-five thousand, whereas they were hardly a fifth of that number. This amazing mistake was not discovered till the parliament had been dissolved. Upon its detection, the king summoned a great council, consisting of one knight, citizen and burgess, named by himself, out of two that had been returned to the last parliament. To this assembly the chancellor set forth the deficiency of the last subsidy, and proved by the certificates of all the bishops in England, how strangely the parliament had miscalculated the number of parishes; whereupon they increased the parochial assessment, by their own authority, to one hundred and sixteen shillings. It is obvious, that the main intention of parliament was carried into effect by this irregularity, which seems to have been the subject of no complaint. In the next parliament, a still more objectionable measure was resorted to; after the petitions of the commons had been answered, and the knights dismissed, the citizens and burgesses were convened before the Prince of Wales and the lords in a room near the white chamber, and solicited to renew their subsidy of forty shillings upon the ton of wine, and sixpence in the pound upon other imports, for safe convoy of shipping, during one year more; to which they assented; "and so departed."

The second constitutional principle established in the reign of Edward III. was, that the king and two houses of parliament in conjunction possessed exclusively the right of legislation. Laws were now declared to be made by the king at the request of the commons, and by the assent of the lords and prelates. Such at least was the general form, though for many subsequent ages there was no invariable regularity in this respect. The commons, who till this reign were rarely mentioned, were now as rarely omitted in the enacting clause. In fact, it is evident from the rolls of parliament, that statutes were almost always founded upon their petition. These petitions, with the respective answers made to them in the king's name, were drawn up after the end of the session in the form of laws, and entered upon the statute-roll. But here it must be remarked, that the petitions were often extremely qualified and altered by the answer, insomuch that many statutes of this and some later reigns by no means express the true sense of the commons. Sometimes they contented themselves with showing their grievance, and praying remedy from the king and his

council. Of this one eminent instance is the great statute of treasons. In the petition whereon this act is founded, it is merely prayed that, "whereas the king's justices in different counties adjudge persons indicted before them to be traitors for sundry matters not known by the commons to be treason, it would please the king, by his council and by the great and wise men of the land, to declare what are treasons in this present parliament." The answer to this petition contains the existing statute, as a declaration on the king's part. But there is no appearance that it received the direct assent of the lower house. In the next reigns, we shall find more remarkable instances of assuming a consent which was never positively given.

The statute of treasons, however, was supposed to be declaratory of the ancient law; in permanent and material innovations, a more direct concurrence of all the estates was probably required. A new statute, to be perpetually incorporated with the law of England, was regarded as no light matter. It was a very common answer to a petition of the commons, in the earlier part of this reign, that it could not be granted without making a new law. After the parliament of 14 E. III., a certain number of prelates, barons, and counsellors, with twelve knights and six burgesses, were appointed to sit from day to day in order to turn such petitions and answers, as were fit to be perpetual, into a statute; but for such as were of a temporary nature, the king issued his letters patent. This reluctance to innovate without necessity, and to swell the number of laws which all were bound to know and obey with an accumulation of transitory enactments, led, apparently, to the distinction between statutes and ordinances. The latter are indeed defined by some lawyers to be regulations proceeding from the king and lords, without concurrence of the commons. But if this be applicable to some ordinances, it is certain that the word, even when opposed to statute, with which it is often synonymous, sometimes denotes an act of the whole legislature. In the 37th of Edward III., when divers sumptuary regulations against excess of apparel were made in full parliament, "it was demanded of the lords and commons, inasmuch as the matter of their petitions was novel, and unheard of before, whether they would have them granted by way of ordinance or of statute. They answered that it would be best to have them by way of ordinance and not of statute, in order that anything which should need amendment might be amended at the next parliament." So much scruple did they entertain about tampering with the statute law of the land.

Ordinances which, if it were not for their partial or temporary operation, could not well be distinguished from laws,[1] were often established in great councils. These assemblies, which frequently occurred in Edward's reign, were hardly distinguishable, except in

[1] "If there be any difference between an ordinance and a statute, as some have collected, it is but only this, that an ordinance is but temporary till confirmed and made perpetual but a statute is perpetual at first, and so have some ordinances also been."

name, from parliaments, being constituted not only of those who were regularly summoned to the House of Lords, but of deputies from counties, cities, and boroughs. Several places that never returned burgesses to parliament have sent deputies to some of these councils. The most remarkable of these was that held in the 27th of Edward III., consisting of one knight for each county, and of deputies from all the cities and boroughs, wherein the ordinances of the staple were established. These were previously agreed upon by the king and lords, and copies given, one to the knights, another to the burgesses. The roll tells us, that they gave their opinion in writing to the council, after much deliberation, and that this was read and discussed by the great men. These ordinances fix the staple of wool in particular places within England, prohibit English merchants from exporting that article under pain of death, inflict sundry other penalties, create jurisdictions, and in short, have the effect of a new and important law. After they were passed, the deputies of the commons granted a subsidy for three years, complained of grievances, and received answers, as if in a regular parliament. But they were aware that these proceedings partook of some irregularity, and endeavoured, as was their constant method, to keep up the legal forms of the constitution. In the last petition of this council, the commons pray, "because many articles touching the state of the king, and common profit of his kingdom have been agreed by him, the prelates, lords, and commons of his land, at this council, that the said articles may be recited at the next parliament, and entered upon the roll; for this cause, that ordinances and agreements made in council are not of record, as if they had been made in a general parliament." This accordingly was done at the ensuing parliament, when these ordinances were expressly confirmed, and directed to be "holden for a statute to endure always."

It must be confessed, that the distinction between ordinances and statutes is very obscure, and perhaps no precise and uniform principle can be laid down about it. But it sufficiently appears that whatever provisions altered the common law, or any former statute, and were entered upon the statute-roll, transmitted to the sheriffs, and promulgated to the people as general obligatory enactments, were holden to require the positive assent of both houses of parliament, duly and formally summoned.

Before we leave this subject, it will be proper to take notice of a remarkable stretch of prerogative, which, if drawn into precedent, would have effectually subverted this principle of parliamentary consent in legislation. In the 15th of Edward III. petitions were presented of a bolder and more enervating cast than was acceptable to the court; that no peer should be put to answer for any trespass, except before his peers; that commissioners should be assigned to examine the accounts of such as had received public monies; that the judges and ministers should be sworn to observe the Great Charter and other laws; and that they should be appointed in parliament. The last of these was

probably the most obnoxious ; but the king, unwilling to defer a supply which was granted merely upon condition that these petitions should prevail, suffered them to pass into a statute with an alteration which did not take off much from their efficacy ; namely, that these officers should indeed be appointed by the king with the advice of his council, but should surrender their charges at the next parliament, and be there responsible to any who should have cause of complaint against them. The chancellor, treasurer, and judges entered their protestation, that they had not assented to the said statutes, nor could they observe them, in case they should prove contrary to the laws and customs of the kingdom, which they were sworn to maintain. This is the first instance of a protest on the roll of parliament against the passing of an act. Nevertheless, they were compelled to swear on the Cross of Canterbury to its observance.

This excellent statute was attempted too early for complete success. Edward's ministers plainly saw that it left them at the mercy of future parliaments, who would readily learn the wholesome and constitutional principle of sparing the sovereign, while they punished his advisers. They had recourse, therefore, to a violent measure, but which was likely in those times to be endured. By a proclamation addressed to all the sheriffs, the king revokes and annuls the statute, as contrary to the laws and customs of England, and to his own just rights and prerogatives, which he had sworn to preserve ; declaring that he had never consented to its passing, but having previously protested that he would revoke it lest the parliament should have been separated in wrath, had dissembled, as was his duty, and permitted the great seal to be affixed ; and that it appeared to the earls, barons, and other learned persons of his kingdom, with whom he had consulted, that as the said statute had not proceeded from his own good will, it was null and could not have the name or force of law. This revocation of a statute, as the price of which a subsidy had been granted, was a gross infringement of law, and undoubtedly passed for such at that time ; for the right was already clear, though the remedy was not always attainable. Two years afterwards, Edward met his parliament, when that obnoxious statute was formally repealed.

Notwithstanding the king's unwillingness to permit this control of parliament over his administration, he suffered, or rather solicited, their interference in matters which have since been reckoned the exclusive province of the crown. This was an unfair trick of his policy. He was desirous, in order to prevent any murmuring about subsidies, to throw the war upon parliament as their own act, though none could have been commenced more selfishly for his own benefit, or less for the advantage of the people of England. It is called "the war which our lord the king has undertaken against his adversary of France by common assent of all the lords and commons of his realm in divers

parliaments." And he several times referred it to them to advise upon the subject of peace. But the commons showed their humility or discretion by treating this as an invitation which it would show good manners to decline, though in the 18th of the king's reign they had joined with the lords in imploring the king to make an end of the war by a battle, or by a suitable peace. "Most dreaded lord," they say upon one occasion, "as to your war and the equipment necessary for it, we are so ignorant and simple that we know not how, nor have the power to devise; wherefore we pray your grace to excuse us in this matter, and that it please you, with advice of the great and wise persons of your council, to ordain what seems best to you for the honour and profit of yourself and your kingdom; and whatever shall be thus ordained by assent and agreement for you and your lords, we readily assent to, and will hold it firmly established." At another time, after their petitions had been answered, "it was showed to the lords and commons by Bartholomew de Burghersh, the king's chamberlain, how a treaty had been set on foot between the king and his adversary of France; and how he had good hope of a final and agreeable issue with God's help; to which he would not come without assent of the lords and commons. Wherefore the said chamberlain inquired on the king's part of the said lords and commons, whether they would assent and agree to the peace, in case it might be had by treaty between the parties. To which the said commons with one voice replied, that whatever end it should please the king and lords to make of the treaty would be agreeable to them. On which answer the chamberlain said to the commons, then you will assent to a perpetual treaty of peace if it can be had. And the said commons answered at once and unanimously, yes, yes." The lords were not so diffident. Their great station as hereditary counsellors gave them weight in all deliberations of government; and they seem to have pretended to a negative voice in the question of peace. At least they answer, upon the proposals made by David, king of Scots, in 1368, which were submitted to them in parliament, that, "saving to the said David and his heirs the articles contained therein, they saw no way of making a treaty which would not openly turn to the disherison of the king and his heirs, to which they would on no account assent; and so departed for that day." A few years before, they had made a similar answer to some other propositions from Scotland. It is not improbable, that in both these cases, they acted with the concurrence and at the instigation of the king; but the precedents might have been remembered in other circumstances.

A third important acquisition of the House of Commons during this reign was the establishment of their right to investigate and chastise the abuses of administration. In the fourteenth of Edward III., a committee of the lords' house had been appointed to examine the accounts of persons responsible for the receipt of the last subsidy; but it does

not appear that the commons were concerned in this. The unfortunate statute of the next year contained a similar provision, which was annulled with the rest. Many years elapsed before the commons tried the force of their vindictive arm. We must pass onward an entire generation of man, and look at the parliament assembled in the fiftieth of Edward III. Nothing memorable as to the interference of the commons in government occurs before, unless it be their request, in the forty-fifth of the king, that no clergyman should be made chancellor, treasurer, or other great officer; to which the king answered, that he would do that which best pleased his council.

It will be remembered by every one who has read our history, that in the latter years of Edward's life his fame was tarnished by the ascendency of the duke of Lancaster and Alice Perrers. The former, a man of more ambition than his capacity seems to have warranted, even incurred the suspicion of meditating to set aside the heir of the crown, when the Black Prince should have sunk into the grave. Whether he were wronged or not by these conjectures, they certainly appear to have operated on those most concerned to take alarm at them. A parliament met in April, 1376, wherein the general unpopularity of the king's administration, or the influence of the Prince of Wales, led to very remarkable consequences. After granting a subsidy, the commons, "considering the evils of the country, through so many wars and other causes, and that the officers now in the king's service are insufficient without further assistance for so great a charge, pray that the council be strengthened by the addition of ten or twelve bishops, lords, and others, to be constantly at hand, so that no business of weight should be despatched without the consent of all; nor smaller matters without that of four or six." The king pretended to come with alacrity into this measure, which was followed by a strict restraint on them and all other officers from taking presents in the course of their duty. After this, "the said commons appeared in parliament, protesting that they had the same good-will as ever to assist the king with their lives and fortunes; but that it seemed to them if their said liege lord had always possessed about him faithful counsellors and good officers, he would have been so rich that he would have no need of charging his commons with subsidy or tallage, considering the great ransoms of the French and Scotch kings, and of so many other prisoners; and that it appeared to be for the private advantage of some near the king, and of others by their collusion, that the king and kingdom are so impoverished, and the commons so ruined. And they promised the king that if he would do speedy justice on such as should be found guilty, and take from them what law and reason permit, with what had been already granted in parliament, they will engage that he should be rich enough to maintain his wars for a long time, without much charging his people in any manner." They next proceeded to allege three par-

ticular grievances; the removal of the staple from Calais, where it had been fixed by parliament, through the procurement and advice of the said private counsellors about the king; the participation of the same persons in lending money to the king at exorbitant usury; and their purchasing at a low rate for their own benefit old debts from the crown, the whole of which they had afterwards induced the king to repay to themselves. For these and for many other misdemeanours, the commons accused and impeached the lords Latimer and Nevil, with four merchants, Lyons, Ellis, Peachey, and Bury. Latimer had been chamberlain, and Nevil held another office. The former was the friend and creature of the duke of Lancaster. Nor was this parliament at all nice in touching a point where kings least endure their interference. An ordinance was made, that "whereas many women prosecute the suits of others in courts of justice by way of maintenance, and to get profit thereby, which is displeasing to the king, he forbids any woman henceforward, and especially Alice Perrers, to do so, on pain of the said Alice forfeiting all her goods, and suffering banishment from the kingdom."

The part which the prince of Wales, who had ever been distinguished for his respectful demeanour towards Edward, bore in this unprecedented opposition, is strong evidence of the jealousy with which he regarded the duke of Lancaster; and it was led in the House of Commons by Peter de la Mare, a servant of the earl of March, who by his marriage with Philippa, heiress of Lionel, duke of Clarence, stood next after the young prince Richard in lineal succession to the crown. The proceedings of this session were indeed highly popular. But no house of commons would have gone such lengths on the mere support of popular opinion, unless instigated and encouraged by higher authority. Without this, their petitions might perhaps have obtained, for the sake of subsidy, an immediate consent; but those who took the lead in preparing them must have remained unsheltered after a dissolution, to abide the vengeance of the crown, with no assurance that another parliament would espouse their cause as its own. Such, indeed, was their fate in the present instance. Soon after the dissolution of parliament, the prince of Wales, who, long sinking by fatal decay, had rallied his expiring energies for this domestic combat, left his inheritance to a child ten years old, Richard of Bordeaux. Immediately after this event, Lancaster recovered his influence; and the former favourites returned to court. Peter de la Mare was confined at Nottingham, where he remained two years. The citizens indeed attempted an insurrection, and threatened to burn the Savoy, Lancaster's residence, if De la Mare was not released; but the bishop of London succeeded in appeasing them. A parliament met next year, which overthrew the work of its predecessor, restored those who had been impeached, and repealed the ordinance against Alice Perrers. So little security will popular assem-

blies ever afford against arbitrary power, when deprived of regular leaders, and the consciousness of mutual fidelity.

The policy adopted by the prince of Wales and earl of March, in employing the House of Commons as an engine of attack against an obnoxious ministry, was perfectly novel, and indicates a sensible change in the character of our constitution. In the reign of Edward II. parliament had little share in resisting the government; much more was effected by the barons, through risings of their feudal tenantry. Fifty years of authority better respected, of law better enforced, had rendered these more perilous, and of a more violent appearance than formerly. A surer resource presented itself in the increased weight of the lower house in parliament. And this indirect aristocratical influence gave a surprising impulse to that assembly, and particularly tended to establish beyond question its control over public abuses. Is it less just to remark, that it also tended to preserve the relation and harmony between each part and the other, and to prevent that jarring of emulation and jealousy, which, though generally found in the division of power between a noble and a popular estate, has scarcely ever caused a dissension, except in cases of little moment, between our two houses of parliament?

The commons had sustained with equal firmness and discretion a defensive war against arbitrary power under Edward III.: they advanced with very different steps towards his successor. Upon the king's death, though Richard's coronation took place without delay, and no proper regency was constituted, yet a council of twelve, whom the great officers of state were to obey, supplied its place to every effectual intent. Among these the duke of Lancaster was not numbered; and he retired from court in some disgust. In the first parliament of the young king, a large proportion of the knights who had sat in that which impeached the Lancastrian party were returned. Peter de la Mare, now released from prison, was elected Speaker; a dignity which, according to some, he had filled in the Good Parliament, as that of the fiftieth of Edward III. was popularly styled; though the rolls do not mention either him or any other as bearing that honourable name before Sir Thomas Hungerford in the parliament of the following year. The prosecution against Alice Perrers was now revived; not, as far as appears, by direct impeachment of the commons; but articles were exhibited against her in the House of Lords on the king's part, for breaking the ordinances made against her intermeddling at court; upon which she received judgment of banishment and forfeiture. At the request of the lower house, the lords in the king's name appointed nine persons of different ranks; three bishops, two earls, two bannerets, and two bachelors, to be a permanent council about the king, so that no business of importance should be transacted without their unanimous consent. The king was even compelled to consent that, during his

minority, the chancellor, treasurer, judges, and other chief officers should be made in parliament; by which provision, combined with that of the parliamentary council, the whole executive government was transferred to the two houses. A petition, that none might be employed in the king's service, nor belong to his council, who had been formerly accused upon good grounds, struck at Lord Latimer, who had retained some degree of power in the new establishment. Another, suggesting that Gascony, Ireland, Artois, and the Scottish marches were in danger of being lost for want of good officers, though it were so generally worded as to leave the means of remedy to the king's pleasure, yet shows a growing energy, and self-confidence in that assembly, which not many years before had thought the question of peace or war too high for their deliberation. Their subsidy was sufficiently liberal; but they took care to pray the king, that fit persons might be assigned for its receipt and disbursement, lest it should any way be diverted from the purposes of the war. Accordingly, Walworth and Philpot, two eminent citizens of London, were appointed to this office, and sworn in parliament to its execution.

But whether through the wastefulness of government, or rather because Edward's legacy, the French war, like a ruinous and interminable lawsuit, exhausted all public contributions, there was an equally craving demand for subsidy at the next meeting of parliament. The commons now made a more serious stand. The speaker, Sir James Pickering, after the protestation against giving offence, which has since become more matter of form than perhaps it was then considered, reminded the lords of the council of a promise made to the last parliament, that if they would help the king for once with a large subsidy, so as to enable him to undertake an expedition against the enemy, he trusted not to call on them again, but to support the war from his own revenues; in faith of which promise there had been granted the largest sum that any king of England had ever been suffered to levy within so short a time, to the utmost loss and inconvenience of the commons; part of which ought still to remain in the treasury, and render it unnecessary to burthen anew the exhausted people. To this Scrope, lord steward of the household, protesting that he knew not of any such promise, made answer by order of the king, that, saving the honour and reverence of our lord the king, and the lords there present, the commons did not speak truth in asserting that part of the last subsidy should be still in the treasury; it being notorious that every penny had gone into the hands of Walworth and Philpot, appointed and sworn treasurers in the last parliament, to receive and expend it upon the purposes of the war, for which they had in effect disbursed the whole." Not satisfied with this general justification, the commons pressed for an account of the expenditure. Scrope was again commissioned to answer, that "though it had never

been seen, that of a subsidy or other grant made to the king in parliament or out of parliament by the commons any account had afterwards been rendered to the commons, or to any other except the king and his officers, yet the king to gratify them, of his own accord, without doing it by way of right, would have Walworth along with certain persons of the council exhibit to them in writing a clear account of the receipt and expenditure, upon condition that this should never be used as a precedent, nor inferred to be done otherwise than by the king's spontaneous command." The commons were again urged to provide for the public defence, being their own concern, as much as that of the king. But they merely shifted their ground, and had recourse to other pretences. They requested that five or six peers might come to them, in order to discuss this question of subsidy. The lords entirely rejected this proposal, and affirmed that such a proceeding had never been known except in the three last parliaments ; but allowed that it had been the course to elect a committee of eight or ten from each house, to confer easily and without noise together. The commons acceded to this, and a committee of conference was appointed, though no result of their discussion appears upon the roll.

Upon examining the accounts submitted to them, these sturdy commoners raised a new objection. It appeared that large sums had been expended upon garrisons in France and Ireland, and other places beyond the kingdom, of which they protested themselves not liable to bear the charge. It was answered that Gascony and the king's other dominions beyond sea were the outworks of England, nor could the people ever be secure from war at their thresholds, unless these were maintained. They lastly insisted that the king ought to be rich through the wealth that had devolved on him from his grandfather. But this was affirmed, in reply, to be merely sufficient for the payment of Edward's creditors. Thus driven from all their arguments, the commons finally consented to a moderate additional imposition upon the export of wool and leather, which were already subject to considerable duties, apologising on account of their poverty for the slenderness of their grant.

The necessities of government, however, let their cause be what it might, were by no means feigned ; and a new parliament was assembled about seven months after the last, wherein the king, without waiting for a petition, informed the commons, that the treasurers were ready to exhibit their accounts before them. This was a signal victory after the reluctant and ungracious concession made to the last parliament. Nine persons of different ranks were appointed at the request of the commons to investigate the state of the revenue, and the disposition which had been made of the late king's personal estate. They ended by granting a poll-tax, which they pretended to think adequate to the supply required. But in those times no one possessed any statistical knowledge, and every calculation which required it was subject to

enormous error, of which we have already seen an eminent example. In the next parliament (3 Ric. II.) it was set forth, that only £22,000 had been collected by the poll-tax, while the pay of the king's troops hired for the expedition to Britany, the pretext of the grant, had amounted for but half a year to £50,000. The king, in short, was more straitened than ever. His distresses gave no small advantage to the commons. Their speaker was instructed to declare that, as it appeared to them, if the affairs of their liege lord had been properly conducted at home and abroad, he could not have wanted aid of his commons, who now are poorer than before. They pray that as the king was so much advanced in age and discretion, his perpetual counsel (appointed in his first parliament) might be discharged of their labours; and that instead of them, the five chief officers of state, to wit, the chancellor, treasurer, keeper of the privy seal, chamberlain, and steward of the household, might be named in parliament, and declared to the commons, as the king's sole counsellors, not removable before the next parliament. They required also a general commission to be made out, similar to that in the last session, giving powers to a certain number of peers and other distinguished persons, to inquire into the state of the household, as well as into all receipts and expenses since the king's accession. The former petition seems to have been passed over; but a commission as requested was made out to three prelates, three earls, three bannerets, three knights, and three citizens. After guarding thus, as they conceived, against malversation, but in effect rather protecting their posterity than themselves, the commons prolonged the last imposition on wool and leather for another year.

It would be but repetition to make extracts from the rolls of the two next years; we have still the same tale; demand of subsidy on one side, remonstrance and endeavours at reformation on the other. After the tremendous insurrection of the villeins, in 1382, a parliament was convened to advise about repealing the charters of general manumission, extorted from the king by the pressure of circumstances. In this measure all concurred; but the commons were not afraid to say, that the late risings had been provoked by the burthens which a prodigal court had called for in the preceding session. Their language is unusually bold. "It seemed to them after full deliberation," they said, "that unless the administration of the kingdom were speedily reformed, the kingdom itself would be utterly lost, and ruined for ever, and therein their lord the king, with all the peers and commons, which God forbid. For true it is that there are such defects in the said administration, as well about the king's person, and his household, as in his courts of justice; and by grievous oppressions in the country through maintainers of suits, who are, as it were, kings in the country, that right and law are come to nothing, and the poor commons are from time to time so pillaged and ruined partly by the king's purveyors of the household,

and others who pay nothing for what they take, partly by the subsidies and tallages raised upon them, and besides by the oppressive behaviour of the servants of the king and other lords, and especially of the foresaid maintainers of suits, that they are reduced to greater poverty and discomfort than ever they were before. And, moreover, though great sums have been continually granted by and levied upon them, for the defence of the kingdom, yet they are not the better defended against their enemies, but every year are plundered and wasted by sea and land, without any relief. Which calamities the said poor commons, who lately used to live in honour and prosperity, can no longer endure. And to speak the real truth, these injuries lately done to the poorer commons more than they ever suffered before, caused them to rise, and to commit the mischief done in their late riot; and there is still cause to fear greater evils, if sufficient remedy be not timely provided against the outrages and oppressions aforesaid. Wherefore may it please our lord the king, and the noble peers of the realm now assembled in this parliament, to provide such remedy and amendment as to the said administration, that the state and dignity of the king in the first place, and of the lords may be preserved, as the commons have always desired, and the commons may be put in peace; removing, as soon as they can be detected, evil ministers and counsellors, and putting in their stead the best and most efficient, and taking away all the bad practices which have led to the last rising, or else none can imagine that this kingdom can longer subsist without greater misfortunes than it ever endured. And for God's sake let it not be forgotten, that there be put about the king and of his council, the best lords and knights that can be found in the kingdom.

"And be it known (the entry proceeds) that after the king our lord with the peers of the realm and his council had taken advice upon these requests made to him for his good and his kingdom's as it really appeared to him, willed and granted, that certain bishops, lords and others should be appointed to survey and examine in privy council both the government of the king's person, and of his household, and to suggest proper remedies wherever necessary, and report them to the king. And it was said by the peers in parliament, that as it seemed to them, if reform of government were to take place throughout the kingdom, it should begin by the chief member, which is the king himself, and so from person to person, as well churchmen as others, and place to place, from higher to lower, without sparing any degree." A considerable number of commissioners were accordingly appointed, whether by the king alone, or in parliament, does not appear; the latter, however, is more probable. They seem to have made some progress in the work of reformation, for we find that the officers of the household were sworn to observe their regulations. But in all likelihood these were soon neglected.

It is not wonderful, that with such feelings of resentment towards the crown, the commons were backward in granting subsidies. Perhaps the king would not have obtained one at all, if he had not withheld his charter of pardon for all offences committed during the insurrection. This was absolutely necessary to restore quiet among the people; and though the members of the commons had certainly not been insurgents, yet inevitable irregularities had occurred in quelling the tumults, which would have put them too much in the power of those unworthy men who filled the benches of justice under Richard. The king declared that it was unusual to grant a pardon without a subsidy; the commons still answered that they would consider about that matter; and the king instantly rejoined, that he would consider about his pardon, (s'aviseroit de sa dite grace,) till they had done what they ought. They renewed at length the usual tax on wool and leather.

This extraordinary assumption of power by the commons was not merely owing to the king's poverty. It was encouraged by the natural feebleness of a disunited government. The high rank and ambitious spirit of Lancaster gave him no little influence, though contending with many enemies at court, as well as the ill-will of the people. Thomas of Woodstock, the king's youngest uncle, more able and turbulent than Lancaster, became, as he grew older, an eager competitor for power, which he sought through the channel of popularity. The earls of March, Arundel, and Warwick bore a considerable part, and were the favourites of parliament. Even Lancaster, after a few years, seems to have fallen into popular courses, and recovered some share of public esteem. He was at the head of the reforming commission in the fifth of Richard II., though he had been studiously excluded from those preceding. We cannot hope to disentangle the intrigues of this remote age, as to which our records are of no service, and the chroniclers are very slightly informed. So far as we may conjecture, Lancaster, finding his station insecure at court, began to solicit the favour of the commons, whose hatred of the administration abated their former hostility towards him.

The character of Richard II. was now developing itself, and the hopes excited by his remarkable presence of mind in confronting the rioters on Blackheath were rapidly destroyed. Not that he was wanting in capacity, as has been sometimes imagined. For if we measure intellectual power by the greatest exertion it ever displays, rather than by its average results, Richard II. was a man of considerable talents. He possessed, along with much dissimulation, a decisive promptitude in seizing the critical moment for action. Of this quality, besides his celebrated behaviour towards the insurgents, he gave striking evidence in several circumstances which we shall have shortly to notice. But his ordinary conduct belied the abilities which on these rare occasions shone forth, and rendered them ineffectual for his security. Extreme pride and violence, with an inordinate partiality for the most worthless

favourites, were his predominant characteristics. In the latter quality, and in the events of his reign, he forms a pretty exact parallel to Edward II. Scrope, lord chancellor, who had been appointed in parliament, and was understood to be irremovable without its concurrence, lost the great seal for refusing to set it to some prodigal grants. Upon a slight quarrel with archbishop Courteney, the king ordered his temporalities to be seized, the execution of which Michael de la Pole, his new chancellor, and a favourite of his own, could hardly prevent. This was accompanied with indecent and outrageous expressions of anger, unworthy of his station and of those whom he insulted.

Though no king could be less respectable than Richard, yet the constitution invested a sovereign with such ample prerogative, that it was far less easy to resist his personal exercise of power, than the unsettled councils of a minority. In the parliament 6 R. II. sess. 2. the commons pray certain lords whom they name, to be assigned as their advisers. This had been permitted in the two last sessions without exception. But the king, in granting their request, reserved his right of naming any others. Though the commons did not relax in their importunities for the redress of general grievances, they did not venture to intermeddle as before with the conduct of administration. They did not even object to the grant of the marquisate of Dublin, with almost a princely dominion over Ireland; which enormous donation was confirmed by act of parliament to Vere, a favourite of the king. A petition that the officers of state should annually visit and inquire into his household, was answered that the king would do what he pleased. Yet this was little in comparison of their former proceedings.

There is nothing, however, more deceitful to a monarch, unsupported by an armed force, and destitute of wary advisers, than this submission of his people. A single effort was enough to overturn his government. Parliament met in the tenth year of his reign, steadily determined to reform the administration, and especially to punish its chief leader, Michael de la Pole, earl of Suffolk, and lord chancellor. According to the remarkable narration of a contemporary historian, too circumstantial to be rejected, but rendered somewhat doubtful by the silence of all other writers, and of the parliamentary roll, the king was loitering at his palace of Eltham, when he received a message from the two houses requesting the dismissal of Suffolk, since they had matter to allege against him that they could not move, while he kept the office of chancellor. Richard, with his usual intemperance, answered that he would not for their request remove the meanest scullion from his kitchen. They returned a positive refusal to proceed on any public business, until the king should appear personally in parliament and displace the chancellor. The king required forty knights to be deputed from the rest, to inform him clearly of their wishes. But the commons declined a proposal, in which they feared, or affected to fear, some treachery.

At length the duke of Gloucester and Arundel bishop of Ely were commissioned to speak the sense of parliament, and they delivered it, if we may still believe what we read, in very extraordinary language, asserting that there was an ancient statute, according to which, if the king absented himself from parliament without just cause during forty days, which he had now exceeded, every man might return without permission to his own country ; and, moreover, there was another statute, and (as they might more truly say) a precedent of no remote date, that if a king, by bad counsel, or his own folly and obstinacy, alienated himself from his people, and would not govern according to the laws of the land, and the advice of the peers, but madly and wantonly followed his own single will, it should be lawful for them with the common assent of the people to expel him from his throne, and elevate to it some near kinsman of the royal blood. By this discourse the king was induced to meet his parliament, where Suffolk was removed from his office, and the impeachment against him commenced.

The charges against this minister without being wholly frivolous, were not so weighty as the clamour of the commons might have led us to expect. Besides forfeiting all his grants from the crown, he was committed to prison, there to remain till he should have paid such fine as the king might impose ; a sentence that would have been outrageously severe in many cases, though little more than nugatory in the present.

This was the second precedent of that grand constitutional resource, parliamentary impeachment ; and more remarkable, from the eminence of the person attacked, than that of Lord Latimer, in the fiftieth year of Edward III. The commons were content to waive the prosecution of any other ministers ; but they rather chose a scheme of reforming the administration, which should avert both the necessity of punishment and the malversations that provoked it. They petitioned the king to ordain in parliament certain chief officers of his household, and other lords of his council, with power to reform those abuses, by which his crown was so much blemished, that the laws were not kept, and his revenues were dilapidated, confirming by a statute a commission for a year, and forbidding, under heavy penalties, any one from opposing, in private or openly, what they should advise. With this the king complied, and a commission founded upon the prayer of parliament was established by statute. It comprehended fourteen persons of the highest eminence for rank and general estimation ; princes of the blood and ancient servants of the crown, by whom its prerogatives were not likely to be unnecessarily impaired. In fact, the principle of this commission, without looking back at the precedents in the reign of John, Henry III., and Edward II., which yet were not without their weight as constitutional analogies, was merely that which the commons had repeatedly maintained during the minority of the present king, and which had

produced the former commissions of reform in the third and fifth years of his reign. These were upon the whole nearly the same in their operation. It must be owned there was a more extensive sway virtually given to the lords now appointed, by the penalties imposed on any who should endeavour to obstruct what they might advise; the design as well as tendency of which was no doubt to throw the whole administration into their hands during the period of this commission.

Those who have written our history with more or less of a Tory bias exclaim against this parliamentary commission as an unwarrantable violation of the king's sovereignty, and even impartial men are struck at first sight by a measure that seems to overset the natural balance of our constitution. But it would be unfair to blame either those concerned in this commission, some of whose names at least have been handed down with unquestioned respect, or those high-spirited representatives of the people, whose patriot firmness has been hitherto commanding all our sympathy and gratitude, unless we could distinctly pronounce by what gentler means they could restrain the excesses of government. Thirteen parliaments had already met since the accession of Richard; in all the same remonstrances had been repeated, and the same promises renewed. Subsidies, more frequent than in any former reign, had been granted for the supposed exigencies of the war; but this was no longer illuminated by those dazzling victories, which give to fortune the mien of wisdom; the coasts of England were perpetually ravaged and her trade destroyed; while the administration incurred the suspicion of diverting to private uses that treasure which they so feebly and unsuccessfully applied to the public service. No voice of his people, until it spoke in thunder, would stop an intoxicated boy in the wasteful career of dissipation. He loved festivals and pageants, the prevailing folly of his time, with unusual frivolity: and his ordinary living is represented as beyond comparison more showy and sumptuous than even that of his magnificent and chivalrous predecessor. Acts of parliament were no adequate barriers to his misgovernment. "Of what avail are statutes," says Walsingham, "since the king with his privy council is wont to abolish what parliament has just enacted!" The constant prayer of the commons in every session, that former statutes might be kept in force, is no slight presumption that they were not secure of being regarded. It may be true that Edward III.'s government had been full as arbitrary, though not so unwise as his grandson's; but this is the strongest argument, that nothing less than an extraordinary remedy could preserve the still unstable liberties of England.

The best plea that could be made for Richard was his inexperience, and the misguided suggestions of favourites. This, however, made it more necessary to remove those false advisers, and to supply that inexperience. Unquestionably the choice of ministers is reposed in the sovereign; a trust, like every other attribute of legitimate power,

for the public good; not, what no legitimate power can ever be, the instrument of selfishness or caprice. There is something more sacred than the prerogative, or even than the constitution; the public weal, for which all powers are granted, and to which they must all be referred. For this public weal it is confessed to be sometimes necessary to shake the possessor of the throne out of his seat; could it never be permitted to suspend, though but indirectly and for a time, the positive exercise of misapplied prerogatives? He has learned in a very different school from myself, who denies to parliament at the present day a preventive as well as vindictive control over the administration of affairs; a right of resisting, by those means which lie within its sphere, the appointment of unfit ministers. These means are now indirect; they need not be the less effectual, and they are certainly more salutary on that account. But we must not make our notions of the constitution in its perfect symmetry of manhood, the measure of its infantine proportions, nor expect from a parliament just struggling into life, and "pawing to get free its hinder parts," the regularity of definite and habitual power.

It is assumed rather too lightly by some of those historians to whom I have alluded, that these commissioners, though but appointed for a twelvemonth, designed to retain longer, or would not in fact have surrendered their authority. There is certainly a danger in these delegations of pre-eminent trust; but I think it more formidable in a republican form, than under such a government as our own. The spirit of the people, the letter of the law, were both so decidedly monarchical, that no glaring attempt of the commissioners to keep the helm continually in their hands, though it had been in the king's name, would have had a fair probability of success. And an oligarchy of fourteen persons, different in rank and profession, even if we should impute criminal designs to all of them, was ill calculated for permanent union. Indeed, the facility with which Richard reassumed his full powers two years afterwards, when misconduct had rendered his circumstances far more unfavourable, gives the corroboration of experience to this reasoning. By yielding to the will of his parliament, and to a temporary suspension of prerogative, this unfortunate prince might probably have reigned long and peacefully; the contrary course of acting led eventually to his deposition and miserable death.

Before the dissolution of parliament, Richard made a verbal protestation, that nothing done therein should be in prejudice of his rights; a reservation not unusual when any remarkable concession was made, but which could not decently be interpreted, whatever he might mean, as a dissent from the statute just passed. Some months had intervened, when the king, who had already released Suffolk from prison and restored him to his favour, procured from the judges, whom he had summoned to Nottingham, a most convenient set of answers to questions concerning the late proceedings in parliament. Tresilian and

Belknap, chief justices of the King's Bench and Common Pleas, with several other judges, gave it under their seals, that the late statute and commission were derogatory to the prerogative; that all who procured it to be passed, or persuaded or compelled the king to consent to it, were guilty of treason; that the king's business must be proceeded upon before any other in parliament; that he may put an end to the session at his pleasure; that his ministers cannot be impeached without his consent; that any members of parliament contravening the three last articles, incur the penalties of treason, and especially he who moved for the sentence of deposition against Edward II. to be read: and that the judgment against the earl of Suffolk might be revoked as altogether erroneous.

These answers, perhaps extorted by menaces, as all the judges, except Tresilian, protested before the next parliament, were for the most part servile and unconstitutional. The indignation which they excited, and the measures successfully taken to withstand the king's designs, belong to general history; but I shall pass slightly over that season of turbulence, which afforded no legitimate precedent to our constitutional annals. Of the five lords appellants, as they were called, Gloucester, Derby, Nottingham, Warwick, and Arundel, the three former, at least, have little claim to our esteem; but in every age, it is the sophism of malignant and peevish men to traduce the cause of freedom itself, on account of the interested motives by which its ostensible advocates have frequently been actuated. The parliament, who had the country thoroughly with them, acted no doubt honestly, but with an inattention to the rules of law, culpable indeed, yet from which the most civilised of their successors, in the heat of passion and triumph, have scarcely been exempt. Whether all with whom they dealt severely, some of them apparently of good previous reputation, merited such punishment, is more than, upon uncertain evidence, a modern writer can profess to decide.

Notwithstanding the death or exile of all Richard's favourites, and the oath taken not only by parliament, but by every class of the people, to stand by the lords appellants, we find him, after about a year, suddenly annihilating their pretensions, and snatching the reins again without obstruction. The secret cause of this event is among the many obscurities that attend the history of his reign. It was conducted with a spirit and activity which broke out two or three times in the course of his imprudent life; but we may conjecture that he had the advantage of disunion among his enemies. For some years after this, the king's administration was prudent. The great seal, which he took away from archbishop Arundel, he gave to Wykeham, bishop of Winchester, another member of the reforming commission, but a man of great moderation and political experience. Some time after, he restored the seal to Arundel, and reinstated the Duke of Gloucester in

the council. The duke of Lancaster, who had been absent during the transactions of the tenth and eleventh years of the king, in prosecution of his Castilian war, formed a link between the parties, and seems to have maintained some share of public favour.

There was now a more apparent harmony between the court and the parliament. It seems to have been tacitly agreed that they should not interfere with the king's household expenses; and they gratified him in a point where his honour had been most wounded, declaring his prerogative to be as high and unimpaired as that of his predecessors, and repealing the pretended statute by virtue of which Edward II. was said to have been deposed. They were provident enough, however, to grant conditional subsidies, to be levied only in case of a royal expedition against the enemy; and several were accordingly remitted by proclamation, this condition not being fulfilled. Richard never ventured to recall his favourites, though he testified his unabated affection for Vere by a pompous funeral. Few complaints, unequivocally affecting the ministry, were presented by the commons. In one parliament, the chancellor, treasurer, and council resigned their offices, submitting themselves to its judgment, in case any matter of accusation should be alleged against them. The commons, after a day's deliberation, probably to make their approbation appear more solemn, declared in full parliament, that nothing amiss had been found in the conduct of these ministers, and that they held them to have faithfully discharged their duties. The king reinstated them accordingly; with a protestation that this should not be made a precedent, and that it was his right to change his servants at pleasure.

But this summer season was not to last for ever. Richard had but dissembled with those concerned in the transactions of 1388, none of whom he could ever forgive. These lords in lapse of time were divided among each other. The earls of Derby and Nottingham were brought into the king's interest. The earl of Arundel came to an open breach with the duke of Lancaster, whose pardon he was compelled to ask for an unfounded accusation in parliament. Gloucester's ungoverned ambition, elated by popularity, could not brook the ascendency of his brother Lancaster, who was much less odious to the king. He had constantly urged and defended the concession of Guienne to this prince, to be held for life, reserving only his liege homage to Richard as king of France, a grant as unpopular among the natives of that country as it was derogatory to the crown; but Lancaster was not much indebted to his brother for assistance, which was only given in order to diminish his influence in England. The truce with France, and the king's French marriage, which Lancaster supported, were passionately opposed by Gloucester. And the latter had given keener provocation, by speaking contemptuously of that misalliance with Catherine Swineford, which contaminated the blood of Plantagenet. To the parliament summoned in the twentieth of Richard, one object of which was to legitimate the

duke of Lancaster's ante-nuptial children by this lady, neither Gloucester nor Arundel would repair. There passed in this assembly something remarkable, as it exhibits not only the arbitrary temper of the king, a point by no means doubtful, but the inefficiency of the commons to resist it, without support from political confederacies of the nobility. The circumstances are thus related in the record.

During the session, the king sent for the lords into parliament one afternoon, and told them how he had heard of certain articles of complaint made by the commons in conference with them a few days before, some of which appeared to the king against his royalty, estate, and liberty, and commanded the chancellor to inform him fully as to this. The chancellor accordingly related the whole matter, which consisted of four alleged grievances ; namely, that sheriffs and escheators, notwithstanding a statute, are continued in their offices beyond a year ; that the Scottish marches were not well kept ; that the statute against wearing great men's liveries was disregarded ; and lastly, that the excessive charges of the king's household ought to be diminished, arising from the multitude of bishops, and of ladies who are there maintained at his cost.

Upon this information the king declared to the lords, that through God's gift he is by lineal right of inheritance king of England, and will have the royalty and freedom of his crown, from which some of these articles derogate. The first petition, that sheriffs should never remain in office beyond a year, he rejected ; but, passing lightly over the rest, took most offence, that the commons, who are his lieges, should take on themselves to make any ordinance respecting his royal person or household, or those whom he might please to have about him. He enjoined therefore the lords to declare plainly to the commons his pleasure in this matter ; and especially directed the duke of Lancaster to make the speaker give up the name of the person who presented a bill for this last article in the lower house.

The commons were in no state to resist this unexpected promptitude of action in the king. They surrendered the obnoxious bill, with its proposer, one Thomas Haxey, and with great humility made excuse, that they never designed to give offence to his majesty, nor to interfere with his household or attendants, knowing well that such things do not belong to them, but to the king alone ; but merely to draw his attention, that he might act therein as should please him best. The king forgave these pitiful suppliants ; but Haxey was adjudged in parliament to suffer death as a traitor. As, however, he was a clerk, the archbishop of Canterbury, at the head of the prelates, obtained of the king that his life might be spared, and that they might have the custody of his person ; protesting that this was not claimed by way of right, but merely of the king's grace.

This was an open defiance of parliament, and a declaration of

arbitrary power. For it would be impossible to contend, that after the repeated instances of control over public expenditure by the commons since the fiftieth of Edward III., this principle was novel and unauthorised by the constitution; or that the right of free speech demanded by them in every parliament was not a real and indisputable privilege. The king, however, was completely successful, and having proved the feebleness of the commons, fell next upon those he more dreaded. By a skilful piece of treachery he seized the duke of Gloucester, and spread consternation among all his party. A parliament was summoned, in which the only struggle was to outdo the king's wishes, and thus to efface their former transgressions. Gloucester, who had been murdered at Calais, was attainted after his death; Arundel was beheaded, his brother the archbishop of Canterbury deposed and banished, Warwick and Cobham sent beyond sea. The commission of the tenth, the proceedings in parliament of the eleventh year of the king, were annulled. The answers of the judges to the questions put at Nottingham, which had been punished with death and exile, were pronounced by parliament to be just and legal. It was declared high treason to procure the repeal of any judgment against persons therein impeached. Their issue male were disabled from ever sitting in parliament, or holding place in council. These violent ordinances, as if the precedent they were then overturning had not shielded itself with the same sanction, were sworn to by parliament upon the cross of Canterbury, and confirmed by a national oath, with the penalty of excommunication denounced against its infringers. Of those recorded to have bound themselves by this adjuration to Richard, far the greater part had touched the same relics for Gloucester and Arundel ten years before, and two years after swore allegiance to Henry of Lancaster.

In the fervour of prosecution this parliament could hardly go beyond that whose acts they were annulling; and each is alike unworthy to be remembered in the way of precedent. But the leaders of the former, though vindictive and turbulent, had a concern for the public interest; and after punishing their enemies, left the government upon its right foundation. In this, all regard for liberty was extinct; and the commons set the dangerous precedent of granting the king a subsidy upon wool during his life. This remarkable act of severity was accompanied by another, less unexampled, but, as it proved, of more ruinous tendency. The petitions of the commons not having been answered during the session, which they were always anxious to conclude, a commission was granted for twelve peers and six commoners to sit after the dissolution, and "examine, answer, and fully determine as well all the said petitions, and the matters therein comprised, as all other matters and things moved in the king's presence, and all things incident thereto not yet determined, as shall seem best to them." The "other matters," mentioned above, were, I suppose, private petitions to the

king's council in parliament, which had been frequently despatched after a dissolution. For in the statute which establishes this commission, 21 R. II. c. 16., no powers are committed, but those of examining petitions: which, if it does not confirm the charge afterwards alleged against Richard of falsifying the parliament roll, must at least be considered as limiting and explaining the terms of the latter. Such a trust had been committed to some lords of the council eight years before, in very peaceful times; and it was even requested, that the same might be done in future parliaments. But it is obvious what a latitude this gave to a prevailing faction. These eighteen commissioners, or some of them, (for there were who disliked the turn of affairs,) usurped the full rights of the legislature, which undoubtedly were only delegated in respect of business already commenced. They imposed a perpetual oath on prelates and lords for all time to come, to be taken before obtaining livery of their lands, that they would maintain the statutes and ordinances made by this parliament, or "afterwards by the lords and knights having power committed to them by the same." They declared it high treason to disobey their ordinances. They annulled the patents of the dukes of Hereford and Norfolk, and adjudged Henry Bowet, the former's chaplain, who had advised him to petition for his inheritance, to the penalties of treason. And thus, having obtained a revenue for life, and the power of parliament being notoriously usurped by a knot of his creatures, the king was little likely to meet his people again, and became as truly absolute as his ambition could require.

It had been necessary for this purpose to subjugate the ancient nobility. For the English constitution gave them such paramount rights, that it was impossible either to make them surrender their country's freedom or to destroy it without their consent. But several of the chief men had fallen or were involved with the party of Gloucester. Two, who having once belonged to it, had lately plunged into the depths of infamy to ruin their former friends, were still perfectly obnoxious to the king, who never forgave their original sin. These two, Henry of Bolingbroke, earl of Derby, and Mowbray, earl of Nottingham, now dukes of Hereford and Norfolk, the most powerful of the remaining nobility, were by a singular conjunction thrown, as it were, at the king's feet. Of the political mysteries which this reign affords none is more inexplicable than the quarrel of these peers. In the parliament at Shrewsbury, in 1398, Hereford was called upon by the king to relate what had passed between the duke of Norfolk and himself, in slander of his majesty. He detailed a pretty long and not improbable conversation, in which Norfolk had asserted the king's intention of destroying them both for their old offence of impeaching his ministers. Norfolk had only to deny the charge and throw his gauntlet at the accuser. It was referred to the eighteen commissioners who sat after the dissolution, and a trial by combat was awarded. But when this

after many delays was about to take place at Coventry, Richard interfered and settled the dispute by condemning Hereford to banishment for ten years, and Norfolk for life. This strange determination, which treated both as guilty, where only one could be so, seems to admit no other solution than the king's desire to rid himself of two peers whom he feared and hated at a blow. But it is difficult to understand by what means he drew the crafty Bolingbroke into his snare. However this might have been, he now threw away all appearance of moderate government. The indignities he had suffered in the eleventh year of his reign were still at his heart, a desire to revenge which seems to have been the main-spring of his conduct. Though a general pardon of those proceedings had been granted, not only at the time, but in his own last parliament, he made use of them as a pretence to extort money from seventeen counties, to whom he imputed a share in the rebellion. He compelled men to confess under their seals that they had been guilty of treason, and to give blank obligations, which his officers filled up with large sums. Upon the death of the duke of Lancaster, who had passively complied throughout all these transactions, Richard refused livery of his inheritance to Hereford, whose exile implied no crime, and who had letters patent enabling him to make his attorney for that purpose during its continuance. In short, his government for nearly two years was altogether tyrannical; and, upon the same principles that cost James II. his throne, it was unquestionably far more necessary, unless our fathers would have abandoned all thought of liberty, to expel Richard II. Far be it from us to extenuate the treachery of the Percys towards this unhappy prince, or the cruel circumstances of his death, or in any way to extol either his successor, or the chief men of that time, most of whom were ambitious and faithless; but after such long experience of the king's arbitrary, dissembling, and revengeful temper, I see no other course in the actual state of the constitution than what the nation sincerely concurred in pursuing.

The reign of Richard II. is, in a constitutional light, the most interesting part of our earlier history; and it has been the most imperfectly written. Some have misrepresented the truth through prejudice, and others through carelessness. It is only to be understood, and indeed there are great difficulties in the way of understanding it at all, by a perusal of the rolls of parliament, with some assistance from the contemporary historians, Walsingham, Knyghton, the anonymous biographer published by Hearne, and Froissart. These, I must remark, except occasionally the last, are extremely hostile to Richard; and although we are far from being bound to acquiesce in their opinions, it is unwarrantable in modern writers to sprinkle their margins with references to such authority in support of positions decidedly opposite.

The revolution which elevated Henry IV. to the throne was certainly so far accomplished by force, that the king was in captivity, and those

who might still adhere to him in no condition to support his authority. But the sincere concurrence, which most of the prelates and nobility, with the mass of the people, gave to changes that could not have been otherwise effected by one so unprovided with foreign support as Henry, proves this revolution to have been, if not an indispensable, yet a national act, and should prevent our considering the Lancastrian kings as usurpers of the throne. Nothing indeed looks so much like usurpation in the whole transaction, as Henry's remarkable challenge of the crown, insinuating though not avowing, as Hume has justly animadverted upon it, a false and ridiculous title by right line of descent, and one equally unwarrantable by conquest. The course of proceedings is worthy of notice. As the renunciation of Richard might well pass for the effect of compulsion, there was a strong reason for propping up its instability by a solemn deposition from the throne, founded upon specific charges of misgovernment. Again, as the right of dethroning a monarch was nowhere found in the law, it was equally requisite to support this assumption of power by an actual abdication. But as neither one nor the other filled the duke of Lancaster's wishes, who was not contented with owing a crown to election, nor seemed altogether to account for the exclusion of the house of March, he devised this claim, which was preferred in the vacancy of the throne, Richard's cession having been read and approved in parliament, and the sentence of deposition, "out of abundant caution, and to remove all scruple," solemnly passed by seven commissioners appointed out of the several estates. "After which challenge and claim," says the record, "the lords spiritual and temporal, and all the estates there present, being asked separately and together, what they thought of the said challenge and claim, the said estates, with the whole people, without any difficulty or delay, consented that the said duke should reign over them." The claim of Henry as opposed to that of the earl of March, was indeed ridiculous; but it is by no means evident that, in such cases of extreme urgency as leave no security for the common weal but the deposition of a reigning prince, there rests any positive obligation upon the estates of the realm to fill his place with the nearest heir. A revolution of this kind seems rather to defeat and confound all prior titles, though in the new settlement it will commonly be prudent as well as equitable, to treat them with some regard. Were this otherwise, it would be hard to say, why William III. reigned to the exclusion of Anne, or even of the Pretender, who had surely committed no offence at that time; or why (if such indeed be the true construction of the Act of Settlement) the more distant branches of the royal stock, descendants of Henry VII. and earlier kings, have been cut off from their hope of succession by the restriction to the heirs of the princess Sophia.

In this revolution of 1399, there was as remarkable an attention shown to the formalities of the constitution, allowance made for the

men and the times, as in that of 1688. The parliament was not opened by commission; no one took the office of president; the commons did not adjourn to their own chamber; they chose no speaker; the name of parliament was not taken, but that only of estates of the realm. But as it would have been a violation of constitutional principles to assume a parliamentary character without the king's commission, though summoned by his writ, so it was still more essential to limit their exercise of power to the necessity of circumstances. Upon the cession of the king, as upon his death, the parliament was no more; its existence, as the council of the sovereign, being dependent upon his will. The actual convention, summoned by the writs of Richard, could not legally become the parliament of Henry; and the validity of a statute declaring it to be such would probably have been questionable in that age, when the power of statutes to alter the original principles of the common law was by no means so thoroughly recognised as at the Restoration and Revolution. Yet Henry was too well pleased with his friends to part with them so readily; and he had much to effect before the fervour of their spirits should abate. Hence an expedient was devised, of issuing writs for a new parliament, returnable in six days. These neither were nor could be complied with; but the same members as had deposed Richard sat in the new parliament, which was regularly opened by Henry's commissioner as if they had been duly elected. In this contrivance, more than in all the rest, we may trace the hand of lawyers.

If we look back from the accession of Henry IV. to that of his predecessor, the constitutional authority of the House of Commons will be perceived to have made surprising progress during the course of twenty-two years. Of the three capital points in contest while Edward reigned, that money could not be levied, or laws enacted, without the commons' consent, and that the administration of government was subject to their inspection and control, the first was absolutely decided in their favour, the second was at least perfectly admitted in principle, and the last was confirmed by frequent exercise. The commons had acquired two additional engines of immense efficiency; one, the right of directing the application of subsidies, and calling accountants before them; the other, that of impeaching the king's ministers for misconduct. All these vigorous shoots of liberty throve more and more under the three kings of the house of Lancaster, and drew such strength and nourishment from the generous heart of England, that in after-times and in a less prosperous season, though checked and obstructed in their growth, neither the blasts of arbitrary power could break them off, nor the mildew of servile opinion cause them to wither. I shall trace the progress of parliament till the civil wars of York and Lancaster:—1. In maintaining the exclusive right of taxation; 2. In directing and checking the public expenditure; 3. In making supplies depend on the redress of grievances; 4. In securing the people

against illegal ordinances and interpolations of the statutes ; 5. In controlling the royal administration ; 6. In punishing bad ministers ; and lastly, in establishing their own immunities and privileges.

1. The pretence of levying money without consent of parliament expired with Edward III., who had asserted it, as we have seen, in the very last year of his reign. A great council of lords and prelates, summoned in the second year of his successor, declared that they could advise no remedy for the king's necessities, without laying taxes on the people, which could only be granted in parliament. Nor was Richard ever accused of illegal tallages, the frequent theme of remonstrance under Edward, unless we may conjecture that this charge is implied in an act which annuls all impositions on wool and leather without consent of parliament, *if any there be.* Doubtless his innocence in this respect was the effect of weakness ; and if the revolution of 1399 had not put an end to his newly-acquired despotism, this, like every other right of his people, would have been swept away. A less palpable means of evading the consent of the commons was by the extortion of loans, and harassing those who refused to pay, by summonses before the council. These loans, the frequent resource of arbitrary sovereigns in later times, are first complained of in an early parliament of Richard II. ; and a petition is granted that no man shall be compelled to lend the king money. This did not find its way to the statute book. But how little this was regarded, we may infer from a writ directed in 1386, to some persons in Boston, enjoining them to assess every person who had goods and chattels to the amount of twenty pounds, in his proportion of two hundred pounds, which the town had promised to lend the king ; and giving an assurance that this shall be deducted from the next subsidy to be granted by parliament. Among other extraordinary parts of this letter is a menace of forfeiting life, limbs, and property, held out against such as should not obey these commissioners. After his triumph over the popular party towards the end of his reign, he obtained large sums in this way.

Under the Lancastrian kings, there is much less appearance of raising money in an unparliamentary course. Henry IV. obtained an aid from a great council in the year 1400 ; but they did not pretend to charge any besides themselves ; though it seems that some towns afterwards gave the king a contribution. A few years afterwards, he directs the sheriffs to call on the richest men in their counties to advance the money voted by parliament. This, if any compulsion is threatened, is an instance of overstrained prerogative, though consonant to the practice of the late reign. There is, however, an instance of very arbitrary conduct with respect to a grant of money in the minority of Henry VI. A subsidy had been granted by parliament upon goods imported, under certain restrictions in favour of the merchants, with a provision, that if these conditions be not observed on the king's part, then the grant

should be void and of no effect. But an entry is made on the roll of the next parliament, that "whereas some disputes have risen about the grant of the last subsidy, it is declared by the duke of Bedford, and other lords in parliament, with advice of the judges and others learned in the law, that the said subsidy was at all events to be collected and levied for the king's use; notwithstanding any conditions in the grant of the said subsidy contained." The commons, however, in making the grant of a fresh subsidy in this parliament, renewed their former conditions, with the addition of another, that "it ne no part thereof be beset ne dispensed to no other use, but only in and for the defense of the said roialme."

2. The right of granting supplies would have been very incomplete, had it not been accompanied with that of directing their application. This principle of appropriating public monies began, as we have seen, in the minority of Richard; and was among the best fruits of that period. It was steadily maintained under the new dynasty. The parliament of 6 H. IV. granted two-fifteenths and two-tenths, with a tax on skins and wool, on condition that it should be expended in defence of the kingdom, and not otherwise, as Thomas Lord Furnival and Sir John Pelham, ordained treasurers of war for this parliament, to receive the said subsidies, shall account and answer to the commons at the next parliament. These treasurers were sworn in parliament to execute their trust. A similar precaution was adopted in the next session.

3. The commons made a bold attempt in the second year of Henry IV. to give the strongest security to their claims of redress, by inverting the usual course of parliamentary proceedings. It was usual to answer their petitions on the last day of the session, which put an end to all further discussion upon them, and prevented their making the redress of grievances a necessary condition of supply. They now requested that an answer might be given before they made their grant of subsidy. This was one of the articles which Richard II.'s judges had declared it high treason to attempt. Henry was not inclined to make a concession which would virtually have removed the chief impediment to the ascendency of parliament. He first said, that he would consult with the lords, and answer according to their advice. On the last day of the sessions, the commons were informed that "it had never been known in the time of his ancestors, that they should have their petitions answered before they had done all their business in parliament, whether of granting money, or any other concern; wherefore the king will not alter the good customs and usages of ancient times."

Notwithstanding the just views these parliaments appear generally to have entertained of their power over the public purse, that of the third of Henry V. followed a precedent from the worst times of Richard II., by granting the king a subsidy on wool and leather during his life. This, an historian tell us, Henry IV. had vainly laboured to

obtain, but the taking of Harfleur intoxicated the English with new dreams of conquest in France, which their good sense and constitutional jealousy were not firm enough to resist. The continued expenses of the war, however, prevented this grant from becoming so dangerous as it might have been in a season of tranquillity. Henry V., like his father, convoked parliament almost in every year of his reign.

4. It had long been out of all question that the legislature consisted of the king, lords, and commons; or, in stricter language, that the king could not make or repeal statutes without the consent of parliament. But this fundamental maxim was still frequently defeated by various acts of evasion or violence; which, though protested against as illegal, it was a difficult task to prevent. The king sometimes exerted a power of suspending the observance of statutes; as in the ninth of Richard II., when a petition that all statutes might be confirmed is granted with an exception as to one passed in the last parliament, forbidding the judges to take fees, or give counsel in cases where the king was a party; which, "because it was too severe, and needs declaration, the king would have of no effect till it should be declared in parliament." The apprehension of this dispensing prerogative and sense of its illegality, are manifested by the wary terms wherein the commons, in one of Richard's parliaments, "assent that the king make such sufferance respecting the statute of provisors, as shall seem reasonable to him, so that the said statute be not repealed; and moreover, that the commons may disagree thereto at the next parliament, and resort to the statute;" with a protestation that this assent, which is a novelty, and never done before, shall not be drawn into precedent; praying the king that this protestation may be entered on the roll of parliament. A petition in one of Henry IV.'s parliaments, to limit the number of attorneys, and forbid filazers and prothonotaries from practising, having been answered favourably as to the first point, we find a marginal entry in the roll, that the prince and council had respited the execution of this act.

The dispensing power, as exercised in favour of individuals, is quite of a different character from this general suspension of statutes, but indirectly weakens the sovereignty of the legislature. This power was exerted, and even recognised, throughout all the reigns of the Plantagenets. In the first of Henry V. the commons pray that the statute for driving aliens out of the kingdom be executed. The king assents, saving his prerogative, and his right of dispensing with it when he pleased. To which the commons replied, that their intention was never otherwise, nor, by God's help, ever should be. At the same time one Rees ap Thomas petitions the king to modify or dispense with the statute prohibiting Welshmen from purchasing lands in England, or the English towns in Wales; which the king grants. In the same parliament the commons pray that no grant or protection be made to

any one in contravention of the statute of provisors, saving the king's prerogative. He merely answers, "Let the statutes be observed:" evading any allusion to his dispensing power.

It has been observed under the reign of Edward III. that the practice of leaving statutes to be drawn up by the judges, from the petition and answer jointly, after a dissolution of parliament, presented an opportunity of falsifying the intention of the legislature, whereof advantage was often taken. Some very remarkable instances of this fraud occurred in the succeeding reigns.

An ordinance was put upon the roll of parliament, in the fifth of Richard II., empowering sheriffs of counties to arrest preachers of heresy, and their abettors, and detain them in prison till they should justify themselves before the church. This was introduced into the statutes of the year; but the assent of lords and commons is not expressed. In the next parliament, the commons, reciting this ordinance, declare that it was never assented to or granted by them, but what had been proposed in this matter was without their concurrence, (that is, as I conceive, had been rejected by them,) and pray that this statute be annulled, for it was never their intent to bind themselves or their descendants to the bishops more than their ancestors had been bound in times past. The king returned an answer, agreeing to this petition. Nevertheless, the pretended statute was untouched, and remains still among our laws, unrepealed, except by desuetude, and by inference from the acts of much later times.

This commendable reluctance of the commons to let the clergy forge chains for them produced, as there is much appearance, a similar violation of their legislative rights in the next reign. The statute against heresy in the second of Henry IV. is not grounded upon any petition of the commons, but only upon one of the clergy. It is said to be enacted by consent of the lords, but no notice is taken of the lower house in the parliament roll, though the statute reciting the petition asserts the commons to have joined in it. The petition and the statute are both in Latin, which is unusual in the laws of this time. In a subsequent petition of the commons, this act is styled "the statute made in the second year of your majesty's reign, at the request of the prelates and clergy of your kingdom;" which affords a presumption, that it had no regular assent of parliament. And the spirit of the commons during this whole reign being remarkably hostile to the church, it would have been hardly possible to obtain their consent to so penal a law against heresy. Several of their petitions seem designed indirectly to weaken its efficacy.

These infringements of their most essential right were resisted by the commons in various ways, according to the measure of their power. In the fifth of Richard II., they request the lords to let them see a certain ordinance before it is ingrossed. At another time they procured

some of their own members, as well as peers, to be present at ingrossing the roll. At length they spoke out unequivocally in a memorable petition, which, besides its intrinsic importance, is deserving of notice as the earliest instance in which the House of Commons adopted the English language. I shall present its venerable orthography without change.

"Oure soverain lord, youre humble and trewe lieges that ben come for the comune of youre lond bysechyn unto youre rizt riztwesnesse, That so as hit hath ever be thair libte and fredom, that thar sholde no statut no lawe be made offlasse than they yaf therto their assent: consideringe that the comune of youre lond, the whiche that is, and ever hath be, a membre of youre parlemente, ben as well assenters as peticioners, that fro this tyme foreward, by compleynte of the comune, of any myschief axknyge remedie by mouthe of their speker for the comune, other ellys by petition writen, that ther never be no lawe made theruppon, and engrossed as statut and lawe, nother by addicions, nother by diminucions, by no manner of terme ne termes, the whiche that sholde chaunge the sentence, and the entente axked by the speker mouthe, or the petitions beforesaid yeven up yn writyng by the manere foresaid, withoute assent of the forsaid comune. Consideringe oure soverain lord, that it is not in no wyse the entente of youre comunes, zif yet be so that they aske you by spekyng, or by writyng, two thynges or three, or as manye as theym lust: But that ever it stande in the fredom of youre hie regalie, to graunte whiche of thoo that you lust, and to werune the remanent."

"The kyng of his grace especial graunteth that fro hensforth nothyng be enacted to the peticions of his comune, that be contrarie of hir askyng, wharby they shuld be bounde withoute their assent. Savyng alwey to our liege lord his real prerogatif, to graunte and denye what him lust of their petitions and askynges aforesaide."

Notwithstanding the fulness of this assent to so important a petition, we find no vestige of either among the statutes, and the whole transaction is unnoticed by those historians, who have not looked into our original records. If the compilers of the statute-roll were able to keep out of it the very provision that was intended to check their fraudulent machinations, it was in vain to hope for redress without altering the established practice in this respect; and indeed where there was no design to falsify the roll, it was impossible to draw up statutes which should be in truth the acts of the whole legislature, so long as the king continued to grant petitions in part, and to engraft new matters upon them. Such was still the case, till the commons hit upon an effectual expedient, for screening themselves against these encroachments, which has lasted without alteration to the present day. This was the introduction of complete statutes, under the name of bills, instead of the old petitions; and these containing the royal assent, and the whole

form of a law, it became, though not quite immediately, a constant principle, that the king must admit or reject them without qualification. This alteration, which wrought an extraordinary effect upon the character of our constitution, was gradually introduced in the reign of Henry VI.

From the first years of Henry V., though not, I think, earlier, the commons began to concern themselves with the petitions of individuals to the lords or council. The nature of the jurisdiction exercised by the latter will be treated more fully hereafter; it is only necessary to mention in this place, that many of the requests preferred to them were such as could not be granted without transcending the boundaries of law. A just inquietude as to the encroachments of the king's council had long been manifested by the commons; and finding remonstrances ineffectual, they took measures for preventing such usurpations of legislative power, by introducing their own consent to private petitions. These were now presented by the hands of the commons, and in very many instances passed in the form of statutes, with the express assent of all parts of the legislature. Such was the origin of private bills, which occupy the greater part of the rolls in Henry V. and VI.'s parliament. The commons once made an ineffectual endeavour to have their consent to all petitions presented to the council in parliament rendered necessary by law; if I rightly apprehend the meaning of the roll in this place, which seems obscure or corrupt.

5. If the strength of the commons had lain merely in the weakness of the crown, it might be inferred, that such harassing interference with the administration of affairs as the youthful and frivolous Richard was compelled to endure would have been sternly repelled by his experienced successor. But, on the contrary, the spirit of Richard might have rejoiced to see that his mortal enemy suffered as hard usage at the hands of parliament as himself. After a few years, the government of Henry became extremely unpopular. Perhaps his dissension with the great family of Percy, which had placed him on the throne, and was regarded with partiality by the people, chiefly contributed to this alienation of their attachment. The commons requested, in the fifth of his reign, that certain persons might be removed from the court; the lords concurred in displacing four of these, one being the king's confessor. Henry came down to parliament and excused these four persons, as knowing no special cause why they should be removed; yet, well understanding, that what the lords and commons should ordain would be for his and his kingdom's interest, and therefore anxious to conform himself to their wishes, consented to the said ordinance, and charged the persons in question to leave his palace; adding that he would do as much by any other about his person, whom he should find to have incurred the ill affection of his people. It was in the same session that the archbishop of Canterbury was commanded to declare before the

lords the king's intention respecting his administration ; allowing that some things had been done amiss in his court and household ; and therefore, wishing to conform to the will of God and laws of the land, protested that he would let in future no letters of signet or privy seal go in disturbance of law, beseeched the lords to put his household in order, so that every one might be paid, and declared that the money granted by the commons for the war should be received by treasurers appointed in parliament, and disbursed by them for no other purpose, unless in case of rebellion. At the request of the commons, he named the members of his privy council ; and did the same, with some variation of persons, two years afterwards. These, though not nominated with the express consent, seem to have had the approbation of the commons ; for a subsidy is granted, in 7 H. IV., among other causes, for the great trust that the commons have in the lords lately chosen, and ordained to be of the king's continual council, that there shall be better management than heretofore.

In the sixth year of Henry, the parliament, which Sir E. Coke derides as unlearned, because lawyers were excluded from it, proceeded to a resumption of grants, and a prohibition of alienating the ancient inheritance of the crown without consent of parliament ; in order to ease the commons of taxes, and that the king might live on his own. This was a favourite, though rather chimerical project. In a later parliament, it was requested that the king would take his council's advice how to keep within his own revenue. He answered, that he would willingly comply, as soon as it should be in his power.

But no parliament came near, in the number and boldness of its demands, to that held in the eighth year of Henry IV. The commons presented thirty-one articles, none of which the king ventured to refuse, though pressing very severely upon his prerogative. He was to name sixteen counsellors, by whose advice he was solely to be guided, none of them to be dismissed without conviction of misdemeanour. The chancellor and privy seal to pass no grants or other matter, contrary to law. Any persons about the court stirring up the king or queen's minds against their subjects, and duly convicted thereof, to lose their offices, and be fined. The king's ordinary revenue was wholly appropriated to his household and the payment of his debts ; no grant of wardship or other profit to be made thereout, nor any forfeiture to be pardoned. The king, "considering the wise government of other Christian princes, and conforming himself thereto," was to assign two days in the week for petitions, "it being an honourable and necessary thing that his lieges who desired to petition him should be heard." No judicial officer, nor any in the revenue or household to enjoy his place for life or term of years. No petition to be presented to the king by any of his household, at times when the council were not sitting. The council to determine nothing cognisable at common law, unless for a

reasonable cause and with consent of the judges. The statutes regulating purveyance were affirmed; abuses of various kinds in the council and in courts of justice enumerated and forbidden; elections of knights for counties put under regulation. The council and officers of state were sworn to observe the common law, and all statutes, those especially just enacted.

It must strike every reader, that these provisions were of themselves a noble fabric of constitutional liberty, and hardly, perhaps, inferior to the petition of right under Charles I. We cannot account for the submission of Henry to conditions far more derogatory than ever were imposed on Richard, because the secret politics of his reign are very imperfectly understood. Towards its close he manifested more vigour. The speaker, Sir Thomas Chaucer, having made the usual petition for liberty of speech, the king answered that he might speak as others had done in the time of his (Henry's) ancestors, and his own, but not otherwise; for he would by no means have any innovation, but be as much at his liberty as any of his ancestors had ever been. Some time after he sent a message to the commons, complaining of a law passed at the last parliament, infringing his liberty and prerogative, which he requested their consent to repeal. To this the commons agreed, and received the king's thanks, who declared at the same time that he would keep as much freedom and prerogative as any of his ancestors. It does not appear what was the particular subject of complaint; but there had been much of the same remonstrating spirit in the last parliament, that was manifested on preceding occasions. The commons, however, for reasons we cannot explain, were rather dismayed. Before their dissolution, they petition the king, that, whereas he was reported to be offended at some of his subjects in this and in the preceding parment, he would openly declare, that he held them all for loyal subjects. Henry granted this, "of his special grace;" and thus concluded his reign more triumphantly with respect to his domestic battles than he had gone through it.

Power deemed to be ill-gotten is naturally precarious; and the instance of Henry IV. has been well quoted to prove that public liberty flourishes with a bad title in the sovereign. None of our kings seem to have been less beloved; and indeed he had little claim to affection. But what men denied to the reigning king, they poured in full measure upon the heir of his throne. The virtues of the prince of Wales are almost invidiously eulogised by those parliaments who treat harshly his father, and these records afford a strong presumption, that some early petulance or riot has been much exaggerated by the vulgar minds of our chroniclers. One can scarcely understand at least, that a prince, who was three years engaged in quelling the dangerous insurrection of Glendour, and who in the latter part of his father's reign presided at the council, was so lost in a cloud of low debauchery as common fame

represents. Loved he certainly was throughout his life, as so intrepid, affable, and generous a temper well deserved; and this sentiment was heightened to admiration by successes still more rapid and dazzling than those of Edward III. During his reign, there scarcely appears any vestige of dissatisfaction in parliament; a circumstance very honourable, whether we ascribe it to the justice of his administration, or to the affection of his people. Perhaps two exceptions, though they are rather one in spirit, might be made: the first, a petition to the duke of Gloucester, then holding parliament as guardian of England, that he would move the king and queen to return, as speedily as might please them, in relief and comfort of the commons; the second, a request that their petitions might not be sent to the king beyond the sea, but altogether determined "within this kingdom of England, during this parliament;" and that this ordinance might be of force in all future parliaments to be held in England. This prayer, to which the guardian declined to accede, evidently sprang from the apprehensions, excited in their minds by the treaty of Troyes, that England might become a province of the French crown, which led them to obtain a renewal of the statute of Edward III., declaring the independence of this kingdom.

It has been seen already, that even Edward III. consulted his parliament upon the expediency of negociations for peace; though at that time the commons had not acquired boldness enough to tender their advice. In Richard II.'s reign they answered to a similar proposition with a little more confidence, that the dangers each way were so considerable they dared not decide, though an honourable peace would be the greatest comfort they could have; and concluded by hoping that the king would not engage to do homage for Calais or the conquered country. The parliament of the tenth of his reign was expressly summoned in order to advise concerning the king's intended expedition beyond the sea; a great council, which had previously been assembled at Oxford, having declared their incompetence to consent to this measure without the advice of the parliament. Yet a few years afterwards, on a similar reference, the commons rather declined to give any opinion. They confirmed the league of Henry V. with the emperor Sigismund. And the treaty of Troyes, which was so fundamentally to change the situation of Henry and his successors, obtained, as it evidently required, the sanction of both houses of parliament. These precedents, conspiring with the weakness of the executive government, in the minority of Henry VI., to fling an increase of influence into the scale of the commons, they made their concurrence necessary to all important business, both of a foreign and domestic nature. Thus commissioners were appointed to treat of the deliverance of the king of Scots, the duchesses of Bedford and Gloucester were made denizens, and mediators were appointed to reconcile the dukes of Gloucester and Burgundy, by authority of the three estates assembled in parliament.

Leave was given to the dukes of Bedford and Gloucester, and others in the king's behalf, to treat of peace with France, by both houses of parliament, in pursuance of an article in the treaty of Troyes, that no treaty should be set on foot with the dauphin without consent of the three estates of both realms. This article was afterwards repealed.

Some complaints are made by the commons, even during the first years of Henry's minority, that the king's subjects underwent arbitrary imprisonment, and were vexed by summonses before the council, and by the newly invented writ of subpœna out of chancery. But these are not so common as formerly; and so far as the rolls lead us to any inference, there was less injustice committed by the government under Henry VI. and his father, than at any former period. Wastefulness indeed might justly be imputed to the regency, who had scandalously lavished the king's revenue. This ultimately led to an act for resuming all grants since his accession, founded upon a public declaration of the great officers of the crown, that his debts amounted to £372,000, and the annual expense of the household to £24,000, while the ordinary revenue was not more than £5000.

6. But before this time the sky had begun to darken, and discontent with the actual administration pervaded every rank. The causes of this are familiar; the unpopularity of the king's marriage with Margaret of Anjou, and her impolitic violence in the conduct of affairs, particularly the imputed murder of the people's favourite, the duke of Gloucester. This provoked an attack upon her own creature, the duke of Suffolk. Impeachment had lain still, like a sword in the scabbard, since the accession of Henry IV.; when the commons, though not preferring formal articles of accusation, had petitioned the king that justice Rickhill, who had been employed to take the duke of Gloucester's confession at Calais, and the lords appellants of Richard II.'s last parliament, should be put on their defence before the lords. In Suffolk's case, the commons seem to have proceeded by bill of attainder, or at least to have designed the judgment against that minister to be the act of the whole legislature. For they delivered a bill containing articles against him to the lords, with a request that they would pray the king's majesty to enact that bill in parliament, and that the said duke might be proceeded against upon the said articles in parliament according to the law and custom of England. These articles contained charges of high treason; chiefly relating to his conduct in France, which, whether treasonable or not, seems to have been grossly against the honour and advantage of the crown. At a later day, the commons presented many other articles of misdemeanour. To the former he made a defence, in presence of the king as well as the lords both spiritual and temporal; and indeed the articles of impeachment were directly addressed to the king, which gave him a reasonable pretext to interfere in the judgment. But, from apprehension, as it is said, that Suffolk could not escape

conviction upon at least some part of these charges, Henry anticipated with no slight irregularity the course of legal trial; and summoning the peers into a private chamber, informed the duke of Suffolk, by mouth of his chancellor, that, inasmuch as he had not put himself upon his peerage, but submitted wholly to the royal pleasure, the king, acquitting him of the first articles containing matter of treason, by his own advice, and not that of the lords, nor by way of judgment, not being in a place where judgment could be delivered, banished him for five years from his dominions. The lords then present besought the king to let their protest appear on record, that neither they nor their posterity might lose their right of peerage by this precedent. It was justly considered as an arbitrary stretch of prerogative, in order to defeat the privileges of parliament, and screen a favourite minister from punishment. But the course of proceeding by bill of attainder, instead of regular impeachment, was not judiciously chosen by the commons.

7. Privilege of parliament, an extensive and singular branch of our constitutional law, begins to attract attention under the Lancastrian princes. It is true, indeed, that we can trace long before by records, and may infer with probability as to times whose records have not survived, one considerable immunity, a freedom from arrest for persons transacting the king's business in his national council. Several authorities may be found in Mr. Hatsell's precedents; of which one, in the ninth of Edward II., is conclusive. But in those rude times, members of parliament were not always respected by the officers executing legal process, and still less by the violators of law. After several remonstrances, which the crown had evaded, the commons obtained the statute 11 H. VI. c. 11. for the punishment of such as assault any on their way to the parliament, giving double damages to the party. They had more difficulty in establishing, notwithstanding the old precedents in their favour, an immunity from all criminal process, except in charges of treason, felony, and breach of the peace, which is their present measure of privilege. The truth was, that with a right pretty clearly recognised, as is admitted by the judges in Thorp's case, the House of Commons had no regular compulsory process at their command. In the cases of Lark, servant of a member, in the eighth of Henry VI., and of Clerke, himself a burgess, in the thirty-ninth of the same king, it was thought necessary to effect their release from a civil execution by special acts of parliament. The commons, in a former instance, endeavoured to make the law general, that no members nor their servants might be taken, except for treason, felony, and breach of peace; but the king put a negative upon this part of their petition.

The most celebrated, however, of these early cases of privilege is that of Thomas Thorp, speaker of the commons in 31 H. VI. This person, who was moreover a baron of the exchequer, had been imprisoned on an execution at suit of the duke of York. The commons sent some of their

members to complain of a violation of privilege to the king and lords in parliament, and to demand Thorp's release. It was alleged by the duke of York's counsel, that the trespass done by Thorp was since the beginning of parliament, and the judgment thereon given in time of vacation, and not during the sitting. The lords referred the question to the judges, who said, after deliberation, that "they ought not to answer to that question, for it hath not been used aforetime, that the judges should in any wise determine the privileges of this high court of parliament; for it is so high and so mighty in its nature, that it may make law, and that that is law it may make no law; and the determination and knowledge of that privilege belongeth to the lords of the parliament, and not to the justices." They went on, however, after observing that a general writ of supersedeas of all processes upon ground of privilege had not been known, to say, that, "if any person that is a member of this high court of parliament be arrested in such cases as be not for treason or felony, or surety of the peace, or for a condemnation, had before the parliament, it is used that all such persons should be released of such arrests and make an attorney, so that they may have their freedom and liberty, freely to intend upon the parliament."

Notwithstanding this answer of the judges, it was concluded by the lords, that Thorp should remain in prison, without regarding the alleged privilege; and the commons were directed in the king's name to proceed "with all goodly haste and speed" to the election of a new speaker. It is curious to observe, that the commons, forgetting their grievances, or content to drop them, made such haste and speed according to this command, that they presented a new speaker for approbation the next day. (Hatsell's Precedents, p. 49).

This case, as has been strongly said, was begotten by the iniquity of the times. The state was verging fast towards civil war; and Thorp, who afterwards distinguished himself for the Lancastrian cause, was an inveterate enemy of the duke of York. That prince seems to have been swayed a little from his usual temper, in procuring so unwarrantable a determination. In the reign of Edward IV., the commons claimed privilege against any civil suit during the time of their session; but they had recourse, as before, to a particular act of parliament to obtain a writ of supersedeas in favour of one Atwell, a member, who had been sued. The present law of privilege seems not to have been fully established, or at least effectually maintained, before the reign of Henry VIII.

No privilege of the commons can be so fundamental as liberty of speech. This is claimed at the opening of every parliament by their speaker, and could never be infringed without shaking the ramparts of the constitution. Richard II.'s attack upon Haxey has been already mentioned as a flagrant evidence of his despotic intentions. No other

case occurs until the thirty-third year of Henry VI., when Thomas Young, member for Bristol, complained to the commons, that, "for matters by him showed in the house accustomed for the commons in the said parliaments, he was therefore taken, arrested, and rigorously in open wise led to the Tower of London, and there grievously in great duress long time imprisoned against the said freedom and liberty," with much more to the like effect. The commons transmitted this petition to the lords, and the king "willed that the lords of his council do and provide for the said suppliant, as in their discretions shall be thought convenient and reasonable." This imprisonment of Young, however, had happened six years before, in consequence of a motion made by him, that the king then having no issue, the duke of York might be declared heir apparent of the crown. In the present session, when the duke was protector, he thought it well-timed to prefer his claim to remuneration.

There is a remarkable precedent in the ninth of Henry IV., and perhaps the earliest authority for two eminent maxims of parliamentary law, that the commons possess an exclusive right of originating money-bills, and that the king ought not to take notice of matters pending in parliament. A quarrel broke out between the two houses upon this ground; and as we have not before seen the commons venture to clash openly with their superiors, the circumstance is for this additional reason worthy of attention. As it has been little noticed, I shall translate the whole record.

"Friday, the second day of December, which was the last day of the parliament, the commons came before the king and the lords in parliament, and there by command of the king, a schedule of indemnity touching a certain altercation moved between the lords and commons was read; and on this it was commanded by our said lord the king, that the said schedule should be entered of record in the roll of parliament; of which schedule the tenor is as follows: be it remembered, that on Monday the 21st day of November, the king, our sovereign lord, being in the council-chamber in the abbey of Gloucester, (this parliament sat at Gloucester,) the lords spiritual and temporal for this present parliament assembled, being then in his presence, a debate took place among them about the state of the kingdom, and its defence to resist the malice of the enemies who on every side prepare to molest the said kingdom and its faithful subjects, and how no man can resist this malice, unless, for the safeguard and defence of his said kingdom, our sovereign lord the king has some notable aid and subsidy granted to him in his present parliament. And therefore it was demanded of the said lords, by way of question, what aid would be sufficient and requisite in these circumstances? To which question it was answered by the said lords severally, that considering the necessity of the king on one side, and the poverty of his people on the other, no less aid

could be sufficient, than one-tenth and a half from cities and towns, and one-fifteenth and a half from all other lay persons; and besides, to grant a continuance of the subsidy on wool, woolfells, and leather, and of three shillings on the ton, (of wine,) and twelve pence on the pound, (of other merchandise,) from Michaelmas next ensuing for two years thenceforth. Whereupon, by command of our said lord the king, a message was sent to the commons of this parliament, to cause a certain number of their body to come before our said lord the king and the lords, in order to hear and report to their companions what they should be commanded by our said lord the king. And upon this the said commons sent into the presence of our said lord the king and the said lords twelve of their companions; to whom, by command of our said lord the king, the said question was declared, with the answer by the said lords severally given to it. Which answer it was the pleasure of our said lord the king, that they should report to the rest of their fellows, to the end that they might take the shortest course to comply with the intention of the said lords. Which report being thus made to the said commons, they were greatly disturbed at it, saying and asserting it to be much to the prejudice and derogation of their liberties. And after that our said lord the king had heard this, not willing that anything should be done at present, or in time to come, that might anywise turn against the liberty of the estate, for which they are come to parliament, nor against the liberties of the said lords, wills, and grants, and declares, by the advice and consent of the said lords, as follows. to wit, that it shall be lawful for the lords to debate together in this present parliament, and in every other for time to come, in the king's absence, concerning the condition of the kingdom, and the remedies necessary for it. And in like manner it shall be lawful for the commons, on their part, to debate together concerning the said condition and remedies. Provided always that neither the lords on their part, nor the commons on theirs, do make any report to our said lord the king of any grant granted by the commons, and agreed to by the lords, nor of the communications of the said grant, before that the said lords and commons are of one accord and agreement in this matter, and then in manner and form accustomed, that is to say, by the mouth of the speaker of the said commons for the time being, to the end that the said lords and commons may have what they desire (avoir puissent leur gree) of our said lord the king. Our said lord the king willingly, moreover, by the consent of the said lords, that the communication had in this present parliament as above be not drawn into precedent in time to come, nor be turned to the prejudice or derogation of the liberty of the estate, for which the said commons are now come, neither in this present parliament nor in any other time to come. But wills that himself, and all the other estates, should be as free as they were before. Also, the said last day of parliament, the said speaker prayed our said

lord the king, on the part of the said commons, that he would grant the said commons that they should depart in as great liberty as other commons had done before. To which the king answered, that this pleased him well, and that at all times it had been his desire."

Every attentive reader will discover this remarkable passage to illustrate several points of constitutional law. For hence it may be perceived: first, That the king was used in those times to be present at debates of the lords, personally advising with them upon the public business; which also appears by many other passages on record; and this practice, I conceive, is not abolished by the king's present declaration, save as to grants of money, which ought to be of the freewill of parliament, and without that fear or influence, which the presence of so high a person might create: secondly, That it was already the established law of parliament, that the lords should consent to the commons' grant, and not the commons to the lords; since it is the inversion of this order whereof the commons complain, and it is said expressly that grants are made by the commons, and agreed by the lords; thirdly, That the lower house of parliament is not, in proper language, an estate of the realm, but rather the image and representative of the commons of England; who, being the third estate, with the nobility and clergy, make up and constitute the people of this kingdom and liege subjects of the crown.[1]

At the next meeting of parliament, in allusion probably to this disagreement between the houses, the king told them, that the states of parliament were come together for the common profit of the king and kingdom, and for unanimity's sake and general consent; and therefore he was sure the commons would not attempt nor say anything, but what should be fitting and conducive to unanimity; commanding them to meet together, and communicate for the public service.

It was not only in money bills that the originating power was supposed to reside in the commons. The course of proceedings in parliament, as has been seen, from the commencement at least of Edward III.'s reign, was that the commons presented petitions, which the lords by themselves, or with the assistance of the council, having duly considered, the sanction of the king was notified or withheld. This was so much according to usage, that, on one occasion, when the commons requested the advice of the other house on a matter before them, it was answered, that the ancient custom and form of parliament had ever been for the commons to report their own opinion to the king and

[1] A notion is entertained by many people, and not without the authority of some very respectable names, that the king is one of the three estates of the realm, the lords spiritual and temporal forming together the second, as the commons in parliament do the third. This is contradicted by the general tenor of our ancient records and law books; and indeed the analogy of other governments ought to have the greatest weight, even if more reason for doubt appeared upon the face of our own authorities. But the instances where the three estates are declared or implied to be the nobility, clergy, and commons, or at least their representatives in parliament, are too numerous for insertion.

lords, and not to the contrary; and the king would have the ancient and laudable usages of parliament maintained. It is singular that in the terror of innovation, the lords did not discover how materially this usage of parliament took off from their own legislative influence. The rule, however, was not observed in succeeding times; bills originated indiscriminately in either house; and indeed some acts of Henry V., which do not appear to be grounded on any petition, may be suspected, from the manner of their insertion in the rolls of parliament, to have been proposed on the king's part to the commons. But there is one manifest instance in the eighteenth of Henry VI., where the king requested the commons to give their authority to such regulations as his council might provide for redressing the abuse of purveyance; to which they assented.

If we are to choose constitutional precedents from seasons of tranquillity rather than disturbance, which surely is the only means of preserving justice or consistency, but little intrinsic authority can be given to the following declaration of parliamentary law in the eleventh of Richard II. "In this parliament (the roll says) all the lords, as well spiritual and temporal, there present, claimed as their liberty and privilege, that the great matters moved in this parliament, and to be moved in other parliaments for time to come, touching the peers of the land, should be treated, adjudged, and debated according to the course of parliament, and not by the civil law, nor the common law of the land, used in the other lower courts of the kingdom; which claim, liberty, and privileges, the king graciously allowed and granted them in full parliament." It should be remembered that this assertion of paramount privilege was made in very irregular times, when the king was at the mercy of the duke of Gloucester and his associates, and that it had a view to the immediate object of justifying their violent proceedings against the opposite party, and taking away the restraint of the common law. It stands as a dangerous rock to be avoided, not a light-house to guide us along the channel. The law of parliament, as determined by regular custom, is incorporated into our constitution; but not so as to warrant an indefinite, uncontrollable assumption of power in any case, least of all in judicial procedure, where the form and the essence of justice are inseparable from each other. And, in fact, this claim of the lords, whatever gloss Sir E. Coke may put upon it, was never intended to bear any relation to the privileges of the lower house. I should not, perhaps, have noticed this passage so strongly, if it had not been made the basis of extravagant assertions as to the privileges of parliament, the spirit of which exaggerations might not be ill adapted to the times wherein Sir E. Coke lived, though I think they produced at several later periods no slight mischief, some consequences of which we may still have to experience.

The want of all judicial authority, either to issue process or to examine

witnesses, together with the usual shortness of sessions, deprived the House of Commons of what is now considered one of its most fundamental privileges, the cognisance of disputed elections. Upon a false return by the sheriff, there was no remedy but through the king or his council. Six instances only, I believe, occur during the reigns of the Plantagenet family, wherein the misconduct or mistake of the sheriff is recorded to have called for a specific animadversion, though it was frequently the ground of general complaint, and even of some statutes. The first is in the twelfth of Edward II., when a petition was presented to the council against a false return for the county of Devon, the petitioner having been duly elected. It was referred to the Court of Exchequer to summon the sheriff before them. The next occurs in the thirty-sixth of Edward III., when a writ was directed to the sheriff of Lancashire, after the dissolution of parliament, to inquire at the county-court into the validity of the election; and upon his neglect, a second writ issued to the justices of the peace, to satisfy themselves about this in the best manner they could, and report the truth into chancery. This inquiry after the dissolution was on account of the wages for attendance, to which the knights unduly returned could have no pretence. We find a third case in the seventh of Richard II., when the king took notice that Thomas de Camoys, who was summoned by writ to the House of Peers, had been elected knight for Surrey, and directed the sheriff to return another. In the same year, the town of Shaftesbury petitioned the king, lords, and commons, against a false return of the sheriff of Dorset, and prayed them to order remedy. Nothing further appears respecting this petition. This is the first instance of the commons being noticed in matters of election. But the next case is more material: in the fifth of Henry IV., the commons prayed the king and lords in parliament, that because the writ of summons to parliament was not sufficiently returned by the sheriff of Rutland, this matter might be examined in parliament, and in case of default found therein, an exemplary punishment might be inflicted; whereupon the lords sent for the sheriff and Oneby, the knight returned, as well as for Thorp, who had been duly elected, and having examined into the facts of the case, directed the return to be amended, by the insertion of Thorp's name, and committed the sheriff to the Fleet, till he should pay a fine at the king's pleasure. The last passage that I can produce is from the roll of 18 H. VI., where "it is considered by the king with the advice and assent of the lords spiritual and temporal," that whereas no knights have been returned for Cambridgeshire, the sheriff shall be directed, by another writ, to hold a court, and to proceed to an election, proclaiming that no person shall come armed, nor any tumultuous proceeding take place; something of which sort appears to have obstructed the execution of the first writ. It is to be noticed, that the commons are not so much as named in this entry. But several

provisions were made by statute under the Lancastrian kings, when seats in parliament became much more an object of competition than before, to check the partiality of the sheriffs in making undue returns. One act (11 H. IV., c. 1) gives the justices of assize power to inquire into this matter, and inflicts a penalty of one hundred pounds on the sheriff. Another (6 H. VI., c. 4) mitigates the rigour of the former, so far as to permit the sheriff, or the knights returned by him, to traverse the inquests before the justices; that is, to be heard in their own defence, which, it seems, had not been permitted to them. Another (23 H. VI., c. 14) gives an additional penalty upon false returns to the party aggrieved. These statutes conspire, with many other testimonies, to manifest the rising importance of the House of Commons, and the eagerness with which gentlemen of landed estates (whatever might be the case in petty boroughs) now sought for a share in the national representation.

Whoever may have been the original voters for county representatives, the first statute that regulates their election, so far from limiting the privilege to tenants in capite, appears to place it upon a very large and democratical foundation. For, (as I rather conceive, though not without much hesitation,) not only all freeholders, but all persons whatever present at the county court, were declared, or rendered, capable of voting for the knight of their shire. Such at least seems to be the inference from the expressions of 7 H. IV., c. 15, "all who are there present, as well suitors duly summoned for that cause as others." And this acquires some degree of confirmation from the later statute, 8 H. VI., c. 7, which, reciting that "elections of knights of shires have now of late been made by very great, outrageous, and excessive number of people dwelling within the same counties, of the which most part was people of small substance and of no value," confines the elective franchise to freeholders of lands or tenements to the value of forty shillings.

The representation of towns in parliament was founded upon two principles; of consent to public burthens, and of advice in public measures, especially such as related to trade and shipping. Upon both these accounts it was natural for the kings who first summoned them to parliament, little foreseeing that such half-emancipated burghers would ever clip the loftiest plumes of their prerogative, to make these assemblies numerous, and summon members from every town of consideration in the kingdom. Thus the writ of 23 E. I. directs the sheriffs to cause deputies to be elected to a general council from every city, borough, and trading town. And although the last words are omitted in subsequent writs, yet their spirit was preserved; many towns having constantly returned members to parliament by regular summonses from the sheriffs, which were no chartered boroughs, nor had apparently any other claim than their populousness or commerce. These are now called boroughs by prescription.

Besides these respectable towns, there were some of a less eminent figure, which had writs directed to them, as ancient demesnes of the crown. During times of arbitrary taxation, the crown had set tallages alike upon its chartered boroughs and upon its tenants in demesne. When parliamentary consent became indispensable, the free tenants in ancient demesne, or rather such of them as inhabited some particular vills, were called to parliament among the other representatives of the commons. They are usually specified distinctly from the other classes of representatives in grants of subsidies throughout the parliaments of the two first Edwards, till, about the beginning of the Third's reign, they were confounded with ordinary burgesses. This is the foundation of that particular species of elective franchise incident to what we denominate burgage tenure; which, however, is not confined to the ancient demesne of the crown.

The proper constituents, therefore, of the citizens and burgesses in parliament appear to have been :—1. All chartered boroughs, whether they derived their privileges from the crown, or from a mesne lord, as several in Cornwall did from Richard king of the Romans. 2. All towns which were the ancient or the actual demesne of the crown. 3. All considerable places, though unincorporated, which could afford to defray the expenses of their representatives, and had a notable interest in the public welfare. But no parliament ever perfectly corresponded with this theory. The writ was addressed in general terms to the sheriff, requiring him to cause two knights to be elected out of the body of the county, two citizens from every city, and two burgesses from every borough. It rested altogether upon him to determine, what towns should exercise this franchise ; and it is really incredible, with all the carelessness and ignorance of those times, what frauds the sheriffs ventured to commit in executing this trust. Though parliaments met almost every year, and there could be no mistake in so notorious a fact, it was the continual practice of sheriffs, to omit boroughs that had been in the recent habit of electing members, and to return upon the writ that there were no more within their county. Thus in the twelfth of Edward III. the sheriff of Wiltshire, after returning two citizens for Salisbury, and burgesses for two boroughs, concludes with these words : "There are no other cities, or boroughs within my bailiwick." Yet in fact eight other towns had sent members to preceding parliaments. So in the sixth of Edward II., the sheriff of Bucks declared that he had no borough within his county except Wycomb; though Wendover, Agmondesham, and Marlow had twice made returns since that king's accession. And from this cause alone it has happened, that many towns called boroughs, and having a charter and constitution as such, have never returned members to parliament ; some of which are now among the most considerable in England, as Leeds, Birmingham, and Macclesfield. (Willis, Notitia Parliamentaria).

It has been suggested indeed by Brady, that these returns may not appear so false and collusive, if we suppose the sheriff to mean only that there were no resident burgesses within these boroughs fit to be returned, or that the expense of their wages would be too heavy for the place to support. And, no doubt, the latter plea, whether implied or not in the return, was very frequently an inducement to the sheriffs to spare the smaller boroughs. The wages of knights were four shillings a day, levied on all freeholders, or at least on all holding by knight-service within the county. Those of burgesses were half that sum; but even this pittance was raised with reluctance and difficulty from miserable burghers, little solicitous about political franchises. Poverty, indeed, seems to have been accepted as a legal excuse. In the sixth of E. II., the sheriff of Northumberland returns to the writ of summons, that all his knights are not sufficient to protect the county; and in the first of E. III., that they were too much ravaged by their enemies to send any members to parliament. The sheriffs of Lancashire, after several returns that they had no boroughs within their county, though Wigan, Liverpool, and Preston were such, alleged at length, that none ought to be called upon, on account of their poverty. This return was constantly made, from 36 E. III. to the reign of Henry VI.

The elective franchise was deemed by the boroughs no privilege or blessing, but rather, during the chief part of this period, an intolerable grievance. Where they could not persuade the sheriff to omit sending his writ to them, they set it at defiance by making no return. And this seldom failed to succeed, so that after one or two refusals to comply, which brought no punishment upon them, they were left in quiet enjoyment of their insignificance. The town of Torrington in Devonshire, went further, and obtained a charter of exemption from sending burgesses, grounded upon what the charter asserts to appear on the rolls of chancery, that it had never been represented before the twenty-first of E. III. This is absolutely false, and is a proof how little we can rely upon the veracity of records, Torrington having made not less than twenty-two returns before that time. It is curious, that in spite of this charter, the town sent members to the two ensuing parliaments, and then ceased for ever. Richard II. gave the inhabitants of Colchester a dispensation from returning burgesses for five years, in consideration of the expenses they had incurred in fortifying the town. But this immunity, from whatever reason, was not regarded, Colchester having continued to make returns as before.

The partiality of sheriffs in leaving out boroughs, which were accustomed in old time to come to the parliament, was repressed, as far as law could repress it, by a statute of Richard II., which imposed a fine on them for such neglect, and upon any member of parliament who should absent himself from his duty.—5 R. II., stat. ii. c. 4. But it is, I think, highly probable, that a great part of those who were elected

from the boroughs did not trouble themselves with attendance in parliament. The sheriff even found it necessary to take sureties for their execution of so burdensome a duty, whose names it was usual, down to the end of the fifteenth century, to indorse upon the writ along with those of the elected. This expedient is not likely to have been very successful; and the small number, comparatively speaking, of writs for expenses of members for boroughs, which have been published by Prynne, while those for the knights of shires are almost complete, leads to a strong presumption that their attendance was very defective. This statute of Richard II. produced no sensible effect.

By what person the election of burgesses was usually made is a question of great obscurity, which is still occasionally debated before committees of parliament. It appears to have been the common practice for a very few of the principal members of the corporation to make the election in the county-court, and their names, as actual electors, are generally returned upon the writ by the sheriff. But we cannot surely be warranted by this to infer, that they acted in any other capacity than as deputies of the whole body, and indeed it is frequently expressed that they chose such and such persons by the assent of the community; by which word, in an ancient corporate borough, it seems natural to understand the freemen participating in its general franchises, rather than the ruling body, which, in many instances at present, and always, perhaps, in the earliest age of corporations, derived its authority by delegation from the rest. The consent, however, of the inferior freemen we may easily believe to have been merely nominal; and from being nominal, it would in many places come by degrees not to be required at all; the corporation, specially so denominated, or municipal government, acquiring by length of usage an exclusive privilege in election of members of parliament, as they did in local administration. This, at least, appears to me a more probable hypothesis, than that of Dr. Brady, who limits the original right of election in all corporate boroughs to the alderman or other capital burgesses.

The members of the House of Commons, from this occasional disuse of ancient boroughs, as well as from the creation of new ones, underwent some fluctuation during the period subject to our review. Two hundred citizens and burgesses sat in the parliament held by Edward I. in his twenty-third year, the earliest epoch of acknowledged representation. But in the reigns of Edward III. and his three successors, about ninety places, on an average, returned members, so that we may reckon this part of the commons at one hundred and eighty. These, if regular in their duties, might appear an over-balance for the seventy-four knights who sat with them. But the dignity of ancient lineage, territorial wealth, and military character in times when the feudal spirit was hardly extinct, and that of chivalry at its height, made these burghers vail their heads to the landed aristocracy. It is pretty mani-

fest that the knights, though doubtless with some support from the representatives of towns, sustained the chief brunt of battle against the crown. The rule and intention of our old constitution was, that each county, city, or borough, should elect deputies out of its own body, resident among themselves, and consequently acquainted with their necessities and grievances.[1] It would be very interesting to discover at what time, and by what degrees, the practice of election swerved from this strictness. But I have not been able to trace many steps of the transition. The number of practising lawyers who sat in parliament, of which there are several complaints, seems to afford an inference that it had begun in the reign of Edward III. Besides several petitions of the commons, that none but knights or reputable squires should be returned for shires, an ordinance was made in the forty-sixth of his reign that no lawyer practising in the king's court, nor sheriff during his shrievalty, be returned knight for a county; because these lawyers put forward many petitions in the name of the commons, which only concerned their clients. This probably was truly alleged, as we may guess from the vast number of proposals for changing the course of legal process, which fill the rolls during this reign. It is not to be doubted, however, that many practising lawyers were men of landed estate in their respective counties.

An act in the first year of Henry V. directs that none be chosen knights, citizens, or burgesses, who are not resident within the place for which they are returned on the day of the writ. This statute apparently indicates a point of time, when the deviation from the line of law was frequent enough to attract notice, and yet not so established as to pass unavoidable irregularity. It proceeded, however, from great and general causes, which new laws, in this instance very fortunately, are utterly incompetent to withstand. There cannot be a more apposite proof of the inefficacy of human institutions to struggle against the steady course of human events, than this unlucky statute of Henry V., which is almost a solitary instance in the law of England, wherein the principle of desuetude has been avowedly set up against an unrepealed enactment. I am not aware, at least, of any other, which not only the House of Commons, but the Court of King's Bench has deemed itself at liberty to declare unfit to be observed. Even at the time when it was enacted, this law had probably as such very little effect. But still the plurality of elections were made, according to ancient usage as well as statute, out of the constituent body. The contrary instances were exceptions to the rule; but exceptions increasing continually, till they subverted the rule itself. Prynne has remarked, that we chiefly find Cornish surnames among the representatives of Cornwall, and those of

[1] In 19 E. II. there were twenty-eight members returned from shires who were not knights, and but twenty-seven who were such. The former had at this time only two shillings or three shillings a day for their wages, while the real knights had four shillings. But in the next reign their wages were put on a level.

northern families among the returns from the north. Nor do the members for shires and towns seem to have been much interchanged; the names of the former belonging to the most ancient families, while those of the latter have a more plebeian cast. In the reign of Edward IV., and not before, a very few of the burgesses bear the addition of esquire in the returns; which became universal in the middle of the succeeding century.

Even county elections seem in general, at least in the fourteenth century, to have been ill attended, and left to the influence of a few powerful and active persons. A petitioner against an undue return in the twelfth of Edward II. complains that, whereas he had been chosen knight for Devon, by Sir William Martin, bishop of Exeter, with the consent of the county, yet the sheriff had returned another. In several indentures of a much later date, a few persons only seem to have been concerned in the election, though the assent of the community be expressed. These irregularities, which it would be exceedingly erroneous to convert, with Hume, into lawful customs, resulted from the abuses of the sheriff's power, which, when parliament sat only for a few weeks with its hands full of business, were almost sure to escape with impunity. They were sometimes also countenanced, or rather instigated, by the crown, which, having recovered in Edward II.'s reign the prerogative of naming the sheriffs, surrendered by an act of his father, filled that office with its creatures, and constantly disregarded the statute forbidding their continuance beyond a year. Without searching for every passage that might illustrate the interference of the crown in elections, I will mention two or three leading instances. When Richard II. was meditating to overturn the famous commission of reform, he sent for some of the sheriffs, and required them to permit no knight or burgess to be elected to the next parliament, without the approbation of the king and his council. The sheriffs replied, that the commons would maintain their ancient privilege of electing their own representatives. The parliament of 1397, which attainted his enemies, and left the constitution at his mercy, was chosen, as we are told, by dint of intimidation and influence. Thus also that of Henry VI., held at Coventry in 1460, wherein the duke of York and his party were attainted, is said to have been unduly returned by the like means. This is rendered probable by a petition presented to it by the sheriffs, praying indemnity for all which they had done in relation thereto contrary to law. An act passed according to their prayer, and in confirmation of elections. A few years before, in 1455, a singular letter under the king's signet is addressed to the sheriffs, reciting that "we be enfourmed there is busy labour made in sondry wises by certaine persons for the chesyng of the said knights, ... of which labour we marvaille greatly, insomuche as it is nothing to the honour of the laborers, but ayenst their worship; it is also ayenst the lawes of the lande," with more to that

effect; and enjoining the sheriffs to let elections be free and the peace kept. There was certainly no reason to wonder that a parliament, which was to shift the virtual sovereignty of the kingdom into the hands of one whose claims were known to extend much farther, should be the object of tolerably warm contests. Thus in the Paston letters, we find several proofs of the importance attached to parliamentary elections by the highest nobility.

The House of Lords, as we left it in the reign of Henry III., was entirely composed of such persons holding lands by barony as were summoned by particular writ of parliament. Tenure and summons were both essential at this time in order to render any one a lord of parliament; the first by the ancient constitution of our feudal monarchy from the Conquest; the second by some regulation or usage of doubtful origin, which was thoroughly established before the conclusion of Henry III.'s reign. This produced of course a very marked difference between the greater, and the lesser or unparliamentary barons. The tenure of the latter, however, still subsisted, and though too inconsiderable to be members of the legislature, they paid relief as barons, they might be challenged on juries, and, as I presume, by parity of reasoning, were entitled to trial by their peerage. These lower barons, or, more commonly, tenants by parcels of baronies, may be dimly traced to the latter years of Edward III. But many of them were successively summoned to parliament, and thus recovered the former lustre of their rank; while the rest fell gradually into the station of commoners, as tenants by simple knight-service.

As tenure without summons did not entitle any one to the privileges of a lord of parliament, so no spiritual person at least ought to have been summoned without baronial tenure. The prior of St. James at Northampton, having been summoned in the twelfth of Edward II., was discharged upon his petition, because he held nothing of the king by barony, but only in frankalmoign. The prior of Bridlington, after frequent summonses, was finally left out, with an entry made in the roll, that he held nothing of the king. The abbot of Leicester had been called to fifty parliaments: yet, in the twenty-fifth of Edward III., he obtained a charter of perpetual exemption, reciting that he held no lands or tenements of the crown by barony, or any such service as bound him to attend parliaments or councils. But great irregularities prevailed in the rolls of chancery, from which the writs to spiritual and temporal peers were taken: arising in part, perhaps, from negligence, in part from wilful perversion: so that many abbots and priors, who like these had no baronial tenure, were summoned at times and subsequently omitted, of whose actual exemption we have no record. Out of one hundred and twenty-two abbots, and forty-one priors, who at some time or other sat in parliament, but twenty-five of the former, and two of the latter were constantly summoned: the

names of forty occur only once, and those of thirty-six others not more than five times. Their want of baronial tenure, in all probability, prevented the repetition of writs, which accident or occasion had caused to issue.[1]

The ancient temporal peers are supposed to have been intermingled with persons who held nothing of the crown by barony, but attended in parliament solely by virtue of the king's prerogative exercised in the writ of summons. These have been called barons by writ; and it seems to be denied by no one, that, at least under the three first Edwards, there were some of this description in parliament. But after all the labours of Dugdale and others in tracing the genealogies of our ancient aristocracy, it is a problem of much difficulty to distinguish these from the territorial barons. As the latter honours descended to female heirs, they passed into new families and new names, so that we can hardly decide of one summoned for the first time to parliament, that he did not inherit the possession of a feudal barony. Husbands of baronial heiresses were almost invariably summoned in their wives' right, though frequently by their own names. They even sat after the death of their wives, as tenants by the courtesy. Again, as lands, though not the subject of frequent transfer, were especially before the statute de donis, not inalienable, we cannot positively assume, that all the right heirs of original barons had preserved those estates upon which their barony had depended. If we judge, however, by the lists of those summoned, according to the best means in our power, it will appear that the regular barons by tenure were all along very far more numerous than those called by writ: and that from the end of Edward III.'s reign, no spiritual persons, and few if any laymen, except peers created by patent, were summoned to parliament, who did not hold territorial baronies.

With respect to those who were indebted for their seats among the lords to the king's writ, there are two material questions: whether they acquired an hereditary nobility by virtue of the writ; and if this be determined against them, whether they had a decisive, or merely a deliberative voice in the house. Now, for the first question, it seems that, if the writ of summons conferred an estate of inheritance, it must have done so either by virtue of its terms, or by established construction and precedent. But the writ contains no words by which such an estate can in law be limited; it summons the person addressed to attend in parliament in order to give his advice on the public business, but by no means implies that his advice will be required of his heirs,

[1] It is worthy of observation that the spiritual peers summoned to parliament were in general considerably more numerous than the temporal. This appears, among other causes, to have saved the church from that sweeping reformation of its wealth, and perhaps of its doctrines, which the commons were thoroughly inclined to make under Richard II. and Henry IV. Thus the reduction of the spiritual lords by the dissolution of monasteries was indispensably required to bring the ecclesiastical order into due subjection to the state.

or even of himself on any other occasion. The strongest expression is "vobiscum et *cæteris* prælatis, magnatibus et proceribus," which appears to place the party on a sort of level with the peers. But the word magnates and proceres are used very largely in ancient language, and, down to the time of Edward III., comprehend the king's ordinary council, as well as his barons. Nor can these, at any rate, be construed to pass an inheritance, which, in the grant of a private person, much more of the king, would require express words of limitation. In a single instance, the writ of summons to Sir Henry de Bromflete, (27 H. VI.) we find these remarkable words: Volumus enim vos et hæredes vestros masculos de corpore vestro legitimè exeuntes barones de Vescy existere. But this Sir Henry de Bromflete was the lineal heir of the ancient barony de Vesci. And if it were true that the writ of summons conveyed a barony of itself, there seems no occasion to have introduced these extraordinary words of creation or revival. Indeed, there is less necessity to urge these arguments from the nature of the writ, because the modern doctrine, which is entirely opposite to what has here been suggested, asserts that no one is ennobled by the mere summons, unless he has rendered it operative by taking his seat in parliament; distinguishing it in this from a patent of peerage, which requires no act of the party for its completion. But this distinction could be supported by nothing except long usage. If, however, we recur to the practice of former times, we shall find that no less than ninety-eight laymen were summoned once only to parliament, none of their names occurring afterwards; and fifty others, two, three, or four times. Some were constantly summoned during their lives, none of whose posterity ever attained that honour. The course of proceeding, therefore, previous to the accession of Henry VII., by no means warrants the doctrine which was held in the latter end of Elizabeth's reign, and has since been too fully established by repeated precedents to be shaken by any reasoning. The foregoing observations relate to the more ancient history of our constitution, and to the plain matter of fact as to those times, without considering what political cause there might be to prevent the crown from introducing occasional counsellors into the House of Lords.

It is manifest by many passages in these records that bannerets were frequently summoned to the upper house of parliament, constituting a distinct class inferior to barons, though generally named together, and ultimately confounded with them. Barons are distinguished by the appellation of Sire, bannerets have only that of Monsieur, as le Sire de Berkeley, le Sire de Fitzwalter, Monsieur Richard Scrope, Monsieur Richard Stafford. In the seventh of Richard II., Thomas Camoys having been elected knight of the shire for Surrey, the king addresses a writ to the sheriff, directing him to proceed to a new election, cum hujusmodi banneretti ante hæc tempora in milites comi-

tatus ratione alicujus parliamenti eligi minime consueverunt. Camoys was summoned by writ to the same parliament. It has been inferred from hence by Selden, that he was a baron, and that the word banneret is merely synonymous. But this is contradicted by too many passages. Bannerets had so far been considered as commoners some years before, that they could not be challenged on juries. But they seem to have been more highly esteemed at the date of this writ.

The distinction, however, between barons and bannerets died away by degrees. In the second of Henry VI., Scrope of Bolton is called le Sire de Scrope ; a proof that he was then reckoned among the barons. The bannerets do not often appear afterwards by that appellation as members of the upper house. Bannerets, or, as they are called, banrents, are enumerated among the orders of Scottish nobility in the year 1428, when the statute directing the common lairds or tenants in capite to send representatives was enacted ; and a modern historian justly calls them an intermediate order between the peers and lairds. Perhaps a consideration of these facts, which have frequently been overlooked, may tend in some measure to explain the occasional discontinuance, or sometimes the entire cessation, of writs of summons to an individual or his descendants ; since we may conceive that bannerets, being of a dignity much inferior to that of barons, had no such inheritable nobility in their blood as rendered their parliamentary privileges a matter of right. But whether all those who without any baronial tenure received their writs of summons to parliament belonged to the order of bannerets, I cannot pretend to affirm : though some passages in the rolls might rather lead to such a proposition.

The second question relates to the right of suffrage possessed by these temporary members of the upper house. It might seem plausible certainly to conceive, that the real and ancient aristocracy would not permit their powers to be impaired by numbering the votes of such as the king might please to send among them, however they might allow them to assist in their debates. But I am much more inclined to suppose that they were in all respects on an equality with other peers during their actual attendance in parliament. For, 1. They are summoned by the same writ as the rest, and their names are confused among them in the lists ; whereas the judges and ordinary counsellors are called by a separate writ, vobiscum et cæteris de consilio nostro, and their names are entered after those of the peers. 2. Some, who do not appear to have held land-baronies, were constantly summoned from father to son, and thus became hereditary lords of parliament, through a sort of prescriptive right, which probably was the foundation of extending the same privilege afterwards to the descendants of all who had once been summoned. There is no evidence that the family of Scrope, for example, which was eminent under Edward III. and subsequent kings, and gave rise to two branches, the lords of Bolton and

Masham, inherited any territorial honour. 3. It is very difficult to obtain any direct proof as to the right of voting, because the rolls of parliament do not take notice of any debates; but there happens to exist one remarkable passage, in which the suffrages of the lords are individually specified. In the first parliament of Henry IV., they were requested by the earl of Northumberland to declare what should be done with the late king Richard. The lords then present agreed that he should be detained in safe custody; and on account of the importance of this matter, it seems to have been thought necessary to enter their names upon the roll in these words: The names of the lords concurring in their answer to the said question here follow; to wit, the archbishop of Canterbury, and fourteen other bishops; seven abbots; the prince of Wales, the duke of York, and six earls; nineteen barons, styled thus; le Sire de Roos, or le Sire de Grey de Ruthyn. Thus far the entry has nothing singular; but then follow these nine names: Monsieur Henry Percy, Monsieur Richard Scrope, le Sire Fitz-hugh, le Sire de Bergeveny, le Sire de Lomley, le Baron de Greystock, le Baron de Hilton, Monsieur Thomas Erpyngham, Chamberlayn, Monsieur Mayhewe Gournay. Of these nine, five were undoubtedly barons, from whatever cause misplaced in order. Scrope was summoned by writ; but his title of Monsieur, by which he is invariably denominated, would of itself create a strong suspicion that he was no baron, and in another place, we find him reckoned among the bannerets. The other three do not appear to have been summoned, their writs probably being lost. One of them, Sir Thomas Erpyngham, a statesman well known in the history of those times, is said to have been a banneret, certainly he was not a baron. It is not unlikely that the two others, Henry Percy (Hotspur) and Gournay, an officer of the household, were also bannerets; they cannot at least be supposed to be barons, neither were they ever summoned to any subsequent parliament. Yet in the only record we possess of votes actually given in the House of Lords they appear to have been reckoned among the rest.

The next method of conferring an honour of peerage was by creation in parliament. This was adopted by Edward III. in several instances, though always, I believe, for the higher titles of duke or earl. It is laid down by lawyers, that whatever the king is said, in an ancient record, to have done in full parliament, must be taken to have proceeded from the whole legislature. As a question of fact, indeed, it might be doubted whether, in many proceedings where this expression is used, and especially in the creation of peers, the assent of the commons was specifically and deliberately given. It seems hardly consonant to the circumstances of their order under Edward III. to suppose their sanction necessary in what seemed so little to concern their interest. Yet there is an instance, in the fortieth year of that prince, where the lords individually, and the commons with one voice, are declared to have con-

sented, at the king's request, that the lord de Coucy, who had married his daughter, and was already possessed of estates in England, might be raised to the dignity of an earl, whenever the king should determine what earldom he would confer upon him. Under Richard II. the marquisite of Dublin is granted to Vere by full consent of all the estates. But this instrument, besides the unusual name of dignity, contained an extensive jurisdiction and authority over Ireland. In the same reign Lancaster was made duke of Guienne, and the duke of York's son created earl of Rutland, to hold during his father's life. The consent of the lords and commons is expressed in their patents, and they are entered upon the roll of parliament. Henry V. created his brothers dukes of Bedford and Gloucester, by request of the lords and commons. But the patent of Sir John Cornwall, in the tenth of Henry VI., declares him to be made lord Fanhope "by consent of the lords, in the presence of the three estates of parliament;" as if it were designed to show that the commons had not a legislative voice in the creation of their peers.

The mention I have made of creating peers by act of parliament has partly anticipated the modern form of letters patent, with which the other was nearly allied. The first instance of a barony conferred by patent was in the tenth year of Richard II., when Sir John Holt, a judge of the Common Pleas, was created Lord Beauchamp of Kidderminster. Holt's patent, however, passed while Richard was endeavouring to act in an arbitrary manner; and in fact, he never sat in parliament, having been attainted in that of the next year, by the name of Sir John Holt. In a number of subsequent patents down to the reign of Henry VII., the assent of parliament is expressed, though it frequently happens that no mention of it occurs in the parliamentary roll. And in some instances, the roll speaks to the consent of parliament, where the patent itself is silent.

It is now, perhaps, scarcely known by many persons not unversed in the constitution of their country, that, besides the bishops and baronial abbots, the inferior clergy were regularly summoned at every parliament. In the writ of summons to a bishop, he is still directed to cause the dean of his cathedral church, the archdeacon of his diocese, with one proctor from the chapter of the former, and two from the body of his clergy, to attend with him at the place of meeting. This might by an inobservant reader be confounded with the summons to the convocation, which is composed of the same constituent parts, and, by modern usage, is made to assemble on the same day. But it may easily be distinguished by this difference; that the convocation is provincial, and summoned by the metropolitans of Canterbury and York; whereas the clause commonly denominated præmunientes, (from its first word,) in the writ to each bishop, proceeds from the crown, and enjoins the attendance of the clergy at the national council of parliament.

The first unequivocal instance of representatives appearing for the lower clergy is in the year 1255, when they are expressly named by the author of the Annals of Burton. They preceded, therefore, by a few years, the House of Commons; but the introduction of each was founded upon the same principle. The king required the clergy's money, but dared not take it without their consent. In the double parliament, if so we may call it, summoned in the eleventh of Edward I. to meet at Northampton and York, and divided according to the two ecclesiastical provinces, the proctors of chapters for each province, but not those of the diocesan clergy, were summoned through a royal writ addressed to the archbishops. Upon account of the absence of any deputies from the lower clergy, these assemblies refused to grant a subsidy. The proctors of both descriptions appear to have been summoned by the præmunientes clause in the 22d, 23d, 24th, 28th, and 35th years of the same king; but in some other parliaments of his reign the præmunientes clause is omitted. The same irregularity continued under his successor; and the constant usage of inserting this clause in the bishop's writ is dated from the twenty-eighth of Edward III.

It is highly probable, that Edward I., whose legislative mind was engaged in modelling the constitution on a comprehensive scheme, designed to render the clergy an effective branch of parliament, however their continual resistance may have defeated the accomplishment of this intention. We find an entry upon the roll of his parliament at Carlisle, containing a list of all the proctors deputed to it by the several dioceses of the kingdom. This may be reckoned a clear proof of their parliamentary attendance during his reign under the præmunientes clause; since the province of Canterbury could not have been present in convocation at a city beyond its limits. And, indeed, if we were to found our judgment merely on the language used in these writs, it would be hard to resist a very strange paradox, that the clergy were not only one of the three estates of the realm, but as essential a member of the legislature by their representatives as the commons. They are summoned in the earliest writ extant, (23 E. I.,) ad tractandum, ordinandum et faciendum nobiscum, et cum cæteris prælatis, proceribus, ac aliis incolis regni nostri; in that of the next year, ad ordinandum de quantitate et modo subsidii; in that of the twenty-eighth, ad faciendum et consentiendum his, quæ tunc de communi consilio ordinari contigerit. In later times, it ran sometimes ad faciendum et consentiendum, sometimes only ad consentiendum; which, from the fifth of Richard II., has been the term invariably adopted. Now, as it is usual to infer from the same words when introduced into the writs for election of the commons, that they possessed an enacting power implied in the words ad faciendum, or at least to deduce the necessity of their assent from the words ad consentiendum, it should seem to follow, that the clergy were

invested, as a branch of the parliament, with rights no less extensive. It is to be considered, how we can reconcile these apparent attributes of political power with the unquestionable facts, that almost all laws, even while they continued to attend, were passed without their concurrence, and that after some time, they ceased altogether to comply with the writ.

The solution of this difficulty can only be found in that estrangement from the common law and the temporal courts, which the clergy through Europe were disposed to affect. In this country, their ambition defeated its own ends; and while they endeavoured by privileges and immunities to separate themselves from the people, they did not perceive that the line of demarcation thus strongly traced would cut them off from the sympathy of common interests. Everything which they could call of ecclesiastical cognisance was drawn into their own courts; while the administration of what they contemned as a barbarous system, the temporal law of the land, fell into the hands of lay judges. But these were men not less subtle, not less ambitious, not less attached to their profession than themselves; and wielding, as they did in the courts of Westminster, the delegated sceptre of judicial sovereignty, they soon began to control the spiritual jurisdiction, and to establish the inherent supremacy of the common law. From this time an inveterate animosity subsisted between the two courts, the vestiges of which have only been effaced by the liberal wisdom of modern ages. The general love of the common law, however, with the great weight of its professors in the king's council and in parliament, kept the clergy in surprising subjection. None of our kings after Henry III. were bigots; and the constant tone of the commons serves to show that the English nation was thoroughly averse to ecclesiastical influence, whether of their own church or the see of Rome.

It was natural, therefore, to withstand the interference of the clergy summoned to parliament in legislation, as much as that of the spiritual court in temporal jurisdiction. With the ordinary subjects, indeed, of legislation they had little concern. The oppression of the king's purveyors, or escheators, of officers of the forests, the abuses or defects of the common law, the regulations necessary for trading towns and seaports, were matters that touched them not, and to which their consent was never required. And, as they well knew there was no design in summoning their attendance but to obtain money, it was with great reluctance that they obeyed the royal writ, which was generally obliged to be enforced by an archiepiscopal mandate. Thus, instead of an assembly of deputies from an estate of the realm, they became a synod or convocation. And it seems probable that in most, if not all instances, where the clergy are said in the roll of parliament to have presented their petitions, or are otherwise mentioned as a deliberative body, we should suppose the convocation alone of the province of Canterbury

to be intended. For that of York seems to have been always considered as inferior, and even ancillary to the greater province, voting subsidies, and even assenting to canons, without deliberation, in compliance with the example of Canterbury, the convocation of which province consequently assumed the importance of a national council. But in either point of view, the proceedings of this ecclesiastical assembly, collateral in a certain sense to parliament, yet very intimately connected with it, whether sitting by virtue of the præmunientes clause or otherwise, will deserve some notice in a constitutional history.

In the sixth year of Edward III., the proctors of the clergy are specially mentioned, as present at the speech pronounced by the king's commissioner, and retired, along with the prelates, to consult together upon the business submitted to their deliberation. They proposed, accordingly, a sentence of excommunication against disturbers of the peace, which was assented to by the lords and commons. The clergy are said afterwards to have had leave, as well as the knights, citizens, and burgesses, to return to their homes; the prelates and peers continuing with the king. This appearance of the clergy in full parliament is not perhaps so decisively proved by any later record. But in the eighteenth of the same reign several petitions of the clergy are granted by the king and his council, entered on the roll of parliament, and even the statute roll, and in some respects are still part of our law. To these it seems highly probable that the commons gave no assent; and they may be reckoned among the other infringements of their legislative rights. It is remarkable that in the same parliament the commons, as if apprehensive of what was in preparation, besought the king that no petition of the clergy might be granted, till he and his council should have considered whether it would turn to the prejudice of the lords or commons.

A series of petitions from the clergy, in the twenty-fifth of Edward III., had not probably any real assent of the commons, though it is once mentioned in the enacting words, when they were drawn into a statute. —25 E. III., stat. 3. Indeed, the petitions correspond so little with the general sentiment of hostility towards ecclesiastical privileges manifested by the lower house of parliament, that they would not easily have obtained its acquiescence. The convocation of the province of Canterbury presented several petitions in the fiftieth year of the same king, to which they received an assenting answer; but they are not found in the statute-book. This, however, produced the following remonstrance from the commons at the next parliament: "Also the said commons beseech their lord the king, that no statute or ordinance be made at the petition of the clergy, unless by assent of your commons; and that your commons be not bound by any constitutions which they make for their own profit without the commons' assent. For they will

not be bound by any of your statutes or ordinances made without their assent." The king evaded a direct answer to this petition. But the province of Canterbury did not the less present their own grievances to the king in that parliament, and two among the statutes of the year seem to be founded upon no other authority.—50 Ed. III., c. 4 & 5.

In the first session of Richard II., the prelates and clergy of both provinces are said to have presented their schedule of petitions which appear upon the roll, and three of which are the foundation of statutes unassented to in all probability by the commons. If the clergy of both provinces were actually present, as is here asserted, it must of course have been as a house of parliament, and not of convocation. It rather seems, so far as we can trust to the phraseology of records, that the clergy sat also in a national assembly under the king's writ in the second year of the same king. Upon other occasions during the same reign, where the representatives of the clergy are alluded to as a deliberative body, sitting at the same time with the parliament, it is impossible to ascertain its constitution; and indeed even from those already cited, we cannot draw any positive inference. But whether in convocation or in parliament, they certainly formed a legislative council in ecclesiastical matters, by the advice and consent of which alone, without that of the commons, (I can say nothing as to the lords,) Edward III. and even Richard II. enacted laws to bind the laity. I have mentioned in a different place a still more conspicuous instance of this assumed prerogative; namely, the memorable statute against heresy in the second of Henry IV.; which can hardly be deemed anything else than an infringement of the rights of parliament, more clearly established at that time than at the accession of Richard II. Petitions of the commons relative to spiritual matters, however, frequently proposed, in few or no instances obtained the king's assent so as to pass into statutes, unless approved by the convocation. But, on the other hand, scarcely any temporal laws appear to have passed by the concurrence of the clergy. Two instances only, so far as I know, are on record: the parliament held in the eleventh of Richard II. is annulled by that in the twenty-first of his reign, "with the assent of the lords spiritual and temporal, *and the proctors of the clergy*, and the commons;" and the statute entailing the crown on the children of Henry IV. is said to be enacted on the petition of the prelates, nobles, clergy, and commons. Both these were stronger exertions of legislative authority than ordinary acts of parliament, and very likely to be questioned in succeeding times.

The supreme judicature, which had been exercised by the king's court, was diverted, about the reign of John, into three channels; the tribunals of King's Bench, Common Pleas, and the Exchequer. These became the regular fountains of justice, which soon almost absorbed the provincial jurisdictions of the sheriff and lord of manor. But the original institution, having been designed for ends of state, police and

revenue, full as much as for the determination of private suits, still preserved the most eminent parts of its authority. For the king's ordinary or privy council, which is the usual style from the reign of Edward I., seems to have been no other than the king's court (curia regis) of older times, being composed of the same persons, and having, in a principal degree, the same subjects for deliberation. It consisted of the chief ministers; as the chancellor, treasurer, lord steward, lord admiral, lord marshal, the keeper of the privy seal, the chamberlain, treasurer, and comptroller of the household, the chancellor of the exchequer, the master of the wardrobe; and of the judges, king's sergeant, and attorney-general, the master of the rolls, and justices in eyre, who at that time were not the same as the judges at Westminster. When all these were called together, it was a full council; but when the business was of a more contracted nature, those only who were fittest to advise were summoned; the chancellor and judges, for matters of law; and the officers of state, for what concerned the revenue or the household.

The business of this council, out of parliament, may be reduced to two heads; its deliberative office, as a council of advice, and its decisive power of jurisdiction. With respect to the first, it obviously comprehended all subjects of political deliberation, which were usually referred to it by the king; this being in fact the administration or governing council of state, the distinction of a cabinet being introduced in comparatively modern times. But there were likewise a vast number of petitions continually presented to the council, upon which they proceeded no farther than to sort, as it were, and forward them by indorsement to the proper courts, or advise the suitor what remedy he had to seek. Thus some petitions are answered; "this cannot be done without a new law;" some were turned over to the regular court, as the Chancery or King's Bench; some of greater moment were indorsed to be heard "before the great council;" some, concerning the king's interest were referred to the Chancery, or select persons of the council.

The coercive authority exercised by the standing council of the king was far more important. It may be divided into acts legislative and judicial. As for the first, many ordinances were made in council; sometimes upon request of the commons in parliament, who felt themselves better qualified to state a grievance than a remedy; sometimes without any pretence, unless the usage of government, in the infancy of our constitution, may be thought to afford one. These were always of a temporary or partial nature, and were considered as regulations not sufficiently important to demand a new statute. Thus in the second year of Richard II., the council, after hearing read the statute-roll of an act recently passed conferring a criminal jurisdiction in certain cases upon justices of the peace, declared that the intention of parliament, though not clearly expressed therein, had been to extend

that jurisdiction to certain other cases omitted, which accordingly they caused to be inserted in the commissions made to these justices under the great seal. But they frequently so much exceeded what the growing spirit of public liberty would permit, that it gave rise to complaint in parliament. The commons petition, in 13 R. II., that "neither the chancellor nor the king's council, after the close of parliament, may make any ordinance against the common law, or the ancient customs of the land, or the statutes made heretofore or to be made in this parliament; but that the common law have its course for all the people, and no judgment be rendered without due legal process. The king answers, "Let it be done as has been usual heretofore, saving the prerogative; and if any one is aggrieved, let him show it specially and right shall be done him." This unsatisfactory answer proves the arbitrary spirit in which Richard was determined to govern.

The judicial power of the council was in some instances founded upon particular acts of parliament, giving it power to hear and determine certain causes. Many petitions, likewise, were referred to it from parliament, especially where they were left unanswered by reason of a dissolution. But, independently of this delegated authority, it is certain that the king's council did anciently exercise, as well out of parliament as in it, a very great jurisdiction, both in causes criminal and civil. Some, however, have contended, that whatever they did in this respect was illegal, and an encroachment upon the common law, and Magna Charta. And be the common law what it may, it seems an indisputable violation of the charter, in its most admirable and essential article, to drag men in questions of their freehold or liberty before a tribunal which neither granted them a trial by their peers, nor always respected the law of the land. Against this usurpation the patriots of those times never ceased to lift their voices. A statute of the fifth year of Edward III. provides that no man shall be attached, nor his property seized into the king's hands, against the form of the great charter, and the law of the land. In the twenty-fifth of the same king it was enacted, that "none shall be taken by petition or suggestion to the king or his council, unless it be by indictment or presentment, or by writ original at the common law, nor shall be put out of his franchise or freehold, unless he be duly put to answer, and forejudged of the same by due course of law." This was repeated in a short act of the twenty-eighth of his reign, (28 E. III., c. 3;) but both, in all probability, were treated with neglect; for another was passed some years afterwards, providing, that no man shall be put to answer without presentment before justices, or matter of record, or by due process and writ original according to the old law of the land. The answer to the petition whereon this statute is grounded, in the parliament-roll, expressly declares this to be an article of the great charter. Nothing, however, would prevail on the council to surrender

so eminent a power, and, though usurped, yet of so long a continuance. Cases of arbitrary imprisonment frequently occurred, and were remonstrated against by the commons. The right of every freeman in that cardinal point was as indubitable, legally speaking, as at this day; but the courts of law were afraid to exercise their remedial functions in defiance of so powerful a tribunal. After the accession of the Lancastrian family, these, like other grievances, became rather less frequent; but the commons remonstrate several times, even in the minority of Henry VI., against the council's interference in matters cognisable at common law. In these later times, the civil jurisdiction of the council was principally exercised in conjunction with the Chancery, and accordingly they are generally named together in the complaint. The chancellor having the great seal in his custody, council usually borrowed its process from his court. This was returnable into Chancery even where the business was depending before the council. Nor were the two jurisdictions less intimately allied in their character; each being of an equitable nature; and equity, as then practised, being little else than innovation and encroachment on the course of law. This part, long since the most important, of the chancellor's judicial function, cannot be traced beyond the time of Richard II., when the practice of feoffments to uses having been introduced, without any legal remedy to secure the cestui qui use, or usufructuary, against the feoffees, the Court of Chancery undertook to enforce this species of contract by process of its own.

Such was the nature of the king's ordinary council in itself, as the organ of his executive sovereignty; and such the jurisdiction which it habitually exercised. But it is also to be considered in its relation to the parliament, during whose session, either singly, or in conjunction with the lords' house, it was particularly conspicuous. The great officers of state, whether peers or not, the judges, the king's serjeant, and attorney-general were from the earliest times, as the latter still continue to be, summoned by special writs to the upper house. But while the writ of a peer runs, ad tractandum nobiscum et cum cæteris prælatis magnatibus et proceribus; that directed to one of the judges is only, ad tractandum nobiscum et cum cæteris de concilio nostro; and the seats of the latter are upon the woolsacks at one extremity of the House of Lords.

In the reigns of Edward I. and II., the council appear to have been the regular advisers of the king in passing laws, to which the houses of parliament had assented. The preambles of most statutes during this period express their concurrence. Thus, the statute Westm. I. is said to be the act of the king, by his council, and by the assent of archbishops, bishops, abbots, priors, earls, barons, and all the commonalty of the realm being thither summoned. The statute of escheators, 29 E. I., is said to be agreed by the council, enumerating their

names, all whom appear to be judges or public officers. Still more striking conclusions are to be drawn from the petitions addressed to the councils by both houses of parliament. In the eighth of Edward II., there are four petitions from the commons to the king and his council, one from the lords alone, and one in which both appear to have joined. Later parliaments of the same reign present us with several more instances of the like nature. Thus in 18 E. II., a petition begins : "To our lord the king, and to his council, the archbishops, bishops, prelates, earls, barons, and others of the commonalty of England, show," &c.

But from the beginning of Edward III.'s reign, it seems tha the council and the lords' house in parliament were often blended together into one assembly. This was denominated the great council, being the lords spiritual and temporal, with the king's ordinary council annexed to them, as a council within a council. And even in much earlier times, the lords, as hereditary councillors, were, either when ever they thought fit to attend, or on special summonses by the king (it is hard to say which,) assistant members of this council, both for advice and for jurisdiction. This double capacity of the peerage, as members of the parliament or legislative assembly, and of the deliberative and judicial council, throws a very great obscurity over the subject. However, we find that private petitions for redress were, even under Edward I., presented to the lords in parliament, as much as to the ordinary council. The parliament was considered a high court of justice, where relief was to be given in cases where the course of law was obstructed, as well as where it was defective. Hence the intermission of parliaments was looked upon as a delay of justice, and their annual meeting is demanded upon that ground. "The king," says Fleta, "has his court in his council, in his parliaments, in the presence of bishops, earls, barons, lords, and other wise men, where the doubtful cases of judgments are resolved, and new remedies are provided against new injuries, and justice is rendered to every man according to his desert." In the third year of Edward II., receivers of petitions began to be appointed at the opening of every parliament who usually transmitted them to the ordinary, but in some instances to the great council. These receivers were commonly three for England, and three for Ireland, Wales, Gascony, and other foreign dominions. There were likewise two corresponding classes, of auditors, or triers of petitions. These consisted partly of bishops or peers, partly of judges and other members of the council, and the seem to have been instituted in order to disburthen the council, by giving answers to some petitions. But about the middle of Ed. III.'s time they ceased to act juridically in this respect, and confined themselves to transmitting petitions to the lords of the council.

The Great Council, according to the definition we have given, consisting of the lords spiritual and temporal, in conjunction with the

ordinary council, or, in other words, of all who were severally summoned to parliament, exercised a considerable jurisdiction, as well civil as criminal. In this jurisdiction, it is the opinion of Sir M. Hale, that the council, though not peers, had right of suffrage; an opinion very probable, when we recollect that the council, by themselves, both in and out of parliament, possessed, in fact, a judicial authority little inferior; and that the king's delegated sovereignty in the adminstration of justice, rather than any intrinsic right of the peerage, is the foundation on which the judicature of the lords must be supported. But in the time of Edward III. or Richard II., the lords, by their ascendency, threw the judges and rest of the council into shade, and took the decisive jurisdiction entirely to themselves, making use of their former colleagues but as assistants and advisers, as they still continue to be held in all the judicial proceedings of that house.

Those statutes which restrain the king's ordinary council, from disturbing men in their freehold rights, or questioning them for misdemeanours, have an equal application to the lords' house in parliament, though we do not frequently meet with complaints of the encroachments made by that assembly. There was, however, one class of cases tacitly excluded from the operation of those acts, in which the coercive jurisdiction of this high tribunal had great convenience; namely, where the ordinary course of justice was so much obstructed by the defending party, through riots, combinations of maintenance, or overawing influence, that no inferior court would find its process obeyed. Those ages, disfigured, in their quietest season, by rapine and oppression, afforded no small number of cases that called for this interposition of a paramount authority. They do not occur so frequently, however, in the rolls of parliament after the reign of Henry IV.; whether this be attributed to the gradual course of civilisation, and to the comparative prosperity which England enjoyed under the line of Lancaster, or rather to the discontinuance of the lords' jurisdiction. Another indubitable branch of this jurisdiction was in writs of error; but it may be observed, that their determination was very frequently left to a select committee of peers and counsellors. These too cease almost entirely with Henry IV.; and were scarcely revived till the accession of James I.

Some instances occur in the reign of Edward III., where records have been brought into parliament and annulled with assent of the commons as well as the rest of the legislature. But these were attainders of treason, which it seemed gracious and solemn to reverse in the most authentic manner. Certainly the commons had neither by the nature of our constitution, nor the practice of parliament, any right of intermeddling in judicature, save where something was required beyond the existing law, or where, as in the statute of treason, an authority of that kind was particularly reserved to both houses. This is

fully acknowledged by themselves in the first year of Henry IV. But their influence upon the balance of government became so commanding in a few years afterwards that they contrived, as has been mentioned already, to have petitions directed to them, rather than to the lords or council, and to transmit them either with a tacit approbation, or in the form of acts, to the upper house. Perhaps this encroachment of the commons may have contributed to the disuse of the lords' jurisdiction, who would rather relinquish their ancient and honourable but laborious function, than share it with such bold usurpers.

Although the restraining hand of parliament was continually growing more effectual, and the notions of legal right acquiring more precision from the time of Magna Charta to the civil wars under Henry VI., we may justly say, that the general tone of administration was not a little arbitrary. The whole fabric of English liberty rose step by step, through much toil, and many sacrifices; each generation adding some new security to the work, and trusting that posterity would perfect the labour as well as enjoy the reward. A time, perhaps, was even then foreseen, in the visions of generous hope, by the brave knights of parliament, and by the sober sages of justice, when the proudest ministers of the crown should recoil from those barriers, which were then daily pushed aside with impunity.

There is a material distinction to be taken between the exercise of the king's undeniable prerogative, however repugnant to our improved principles of freedom, and the abuse or extension of it to oppressive purposes. For we cannot fairly consider, as part of our ancient constitution, what the parliament was perpetually remonstrating against, and the statute-book is full of enactments to repress. Doubtless the continual acquiescence of a nation in arbitrary government may ultimately destroy all privileges of positive institution and leave them to recover, by such means as opportunity shall offer, the natural and imprescriptible rights for which human societies were established. And this may, perhaps, be the case at present with many European kingdoms. But it would be necessary to shut our eyes with deliberate prejudice against the whole tenor of the most unquestionable authorities, against the petitions of the commons, the acts of the legislature, the testimony of historians and lawyers, before we could assert that England acquiesced in those abuses and oppressions, which it must be confessed she was unable fully to prevent.

The word prerogative is of a peculiar import and scarcely understood by those who come from the studies of political philosophy. We cannot define it by any theory of executive functions. All these may be comprehended in it, but also a great deal more. It is best, perhaps, to be understood by its derivation; and has been said to be that law in case of the king, which is law in no case of the subject. Of the higher and more sovereign prerogatives, I shall here say nothing; they result from

the nature of a monarchy, and have nothing very peculiar in their character. But the smaller rights of the crown show better the original lineaments of our constitution. It is said commonly enough, that all prerogatives are given for the subject's good. I must confess that no part of this assertion corresponds with my view of the subject. It neither appears to me that these prerogatives were ever given, nor that they necessarily redound to the subject's good. Prerogative, in its old sense, might be defined an advantage obtained by the crown over the subject, in cases where their interests came into competition, by reason of its greater strength. This sprang from the nature of the Norman government, which rather resembled a scramble of wild beasts, where the strongest takes the best share, than a system founded upon principles of common utility. And, modified as the exercise of most prerogatives has been by the more liberal tone which now pervades our course of government, whoever attends to the common practice of courts of justice, and still more, whoever consults the law-books, will not only be astonished at their extent and multiplicity, but very frequently at their injustice and severity.

The real prerogatives that might formerly be exerted were sometimes of so injurious a nature, that we can hardly separate them from their abuse. A striking instance is that of purveyance, which will at once illustrate the definition above given of a prerogative, the limits within which it was to be exercised, and its tendency to transgress them. This was a right of purchasing whatever was necessary for the king's household, at a fair price, in preference to every competitor, and without the consent of the owner. By the same prerogative, carriages and horses were impressed for the king's journeys, and lodging provided for his attendants. This was defended on a pretext of necessity, or at least of great convenience to the sovereign, and was both of high antiquity and universal practice throughout Europe. But the royal purveyors had the utmost temptation, and, doubtless, no small store of precedents, to stretch this power beyond its legal boundary; and not only to fix their own price too low, but to seize what they wanted without any payment at all, or with tallies which were carried in vain to an empty exchequer. This gave rise to a number of petitions from the commons, upon which statutes were often framed; but the evil was almost incurable in its nature, and never ceased till that prerogative was itself abolished. Purveyance, as I have already said, may serve to distinguish the defects from the abuses of our constitution. It was a reproach to the law, that men should be compelled to send their goods without their consent; it was a reproach to the administration, that they were deprived of them without payment.

The right of purchasing men's goods for the use of the king was extended by a sort of analogy to their labour. Thus Edward III. announces to all sheriffs, that William of Walsingham had a commission

to collect as many painters as might suffice for "our works in St. Stephen's chapel, Westminster, to be at our wages as long as shall be necessary;" and to arrest and keep in prison all who shall refuse or be refractory; and enjoins them to lend their assistance. Windsor Castle owes its massive magnificence to labourers impressed from every part of the kingdom. There is even a commission from Edward IV. to take as many workmen in gold as were wanting, and employ them at the king's cost upon the trappings of himself and his household.

Another class of abuses intimately connected with unquestionable, though oppressive rights of the crown, originated in the feudal tenure which bound all the lands of the kingdom. The king had indisputably a right to the wardship of his tenants in chivalry, and to the escheats or forfeitures of persons dying without heirs or attainted for treason. But his officers, under the pretence of wardship, took possession of lands not held immediately of the crown, claimed escheats where a right heir existed, and seized estates as forfeited, which were protected by the statute of entails. The real owner had no remedy against this dispossession, but to prefer his petition of right in Chancery, or, which was probably more effectual, to procure a remonstrance of the House of Commons in his favour. Even where justice was finally rendered to him, he had no recompense for his damages; and the escheators were not less likely to repeat an iniquity by which they could not personally suffer.

The charter of the forests, granted by Henry III. along with Magna Charta, had been designed to crush the flagitious system of oppression, which prevailed in those favourite haunts of the Norman kings. They had still, however, their peculiar jurisdiction, though, from the time at least of Edward III., subject in some measure to the control of the King's Bench. The foresters, I suppose, might find a compensation for their want of the common law, in that easy and licentious way of life which they affected; but the neighbouring cultivators frequently suffered from the king's officers, who attempted to recover those adjacent lands, or, as they were called, purlieus, which had been disafforested by the charter, and protected by frequent perambulations. Many petitions of the commons relate to this grievance.

The constable and marshal of England possessed a jurisdiction, the proper limits whereof were sufficiently narrow, as it seems to have extended only to appeals of treasons committed beyond sea, which were determined by combat, and to military offences within the realm. Bnt these high officers frequently took upon them to inquire of treasons and felonies cognisable at common law, and even of civil contracts or trespasses. This is no bad illustration of the state in which our constitution stood under the Plantagenets. No colour of right or of supreme prerogative was set up to justify a procedure so manifestly repugnant to the great charter. For all re-

monstrances against these encroachments, the king gave promises in return; and a statute was enacted, in the thirteenth of Richard II., declaring the bounds of the constable and marshal's jurisdiction.—13 R. II., c. 2. It could not be denied, therefore, that all infringements of these acknowledged limits were illegal, even if they had a hundredfold more actual precedents in their favour than can be supposed. But the abuse by no means ceased after the passing of this statute, as several subsequent petitions that it might be better regarded, will evince. One, as it contains a special instance, I shall insert. It is of the fifth year of Henry IV. "On several supplications and petitions made by the commons in parliaments to our lord the king for Bennet Wilman, who is accused by certain of his ill-wishers, and detained in prison, and put to answer before the constable and marshal, against the statutes and the common law of England, our said lord the king, by the advice and assent of the lords in parliament, granted that the said Bennet should be treated according to the statutes and common law of England, notwithstanding any commission to the contrary, or accusation against him made before the constable and marshal." And a writ was sent to the justices of the King's Bench with a copy of this article from the roll of parliament, directing them to proceed as they shall see fit according the laws and customs of England.

It must appear remarkable, that, in a case so manifestly within their competence, the court of King's Bench should not have issued a writ of habeas corpus, without waiting for what may be considered as a particular act of parliament. But it is a natural effect of an arbitrary adminstration of government, to intimidate courts of justice. A negative argument, founded upon the want of legal precedent, is certainly not conclusive, when it relates to a distant period, of which all the precedents have not been noted; yet it must strike us, that in the learned and zealous arguments of Sir Robert Cotton, Mr. Selden, and others, against arbitrary imprisonment, in the great case of the habeas corpus, though the statute law is full of authorities in their favour, we find no instance adduced, earlier than the reign of Henry VII., where the King's Bench has released, or even bailed, persons committed by the council, or the constable, though it is unquestionable that such committals were both frequent and illegal.

If I have faithfully represented thus far the history of our constitution, its essential character will appear to be a monarchy greatly limited by law, though retaining much power that was ill calculated to promote the public good, and swerving continually into an irregular course, which there was no restraint adequate to correct. But of all the notions that have been advanced as to the theory of this constitution, the least consonant to law and history is that which represents the king as merely an hereditary executive magistrate, the first officer

of the state. What advantages might result from such a form of government, this is not the place to discuss. But it certainly was not the ancient constitution of England. There was nothing in this, absolutely nothing, of a republican appearance. All seemed to grow out of the monarchy, and was referred to its advantage and honour. The voice of supplication, even in the stoutest disposition of the commons, was always humble ; the prerogative was always named in large and pompous expressions. Still more naturally may we expect to find in the law-books even an obsequious deference to power ; from judges who scarcely ventured to consider it as their duty to defend the subject's freedom, and who beheld the gigantic image of prerogative, in the full play of its hundred arms, constantly before their eyes. Through this monarchical tone, which certainly pervades all our legal authority, a writer like Hume, accustomed to philosophical liberality as to the principles of government, and to the democratical language which the modern aspect of the constitution and the liberty of printing have produced, fell hastily into the error of believing that all limitations of royal power during the fourteenth and fifteenth centuries were as much unsettled in law and in public opinion, as they were liable to be violated by force. Though a contrary position has been sufficiently demonstrated, I conceive, by the series of parliamentary proceedings which I have already produced, yet there is a passage in Sir John Fortescue's treatise De Laudibus Legum Angliæ, so explicit and weighty, that no writer on the English constitution can be excused from inserting it. This eminent person having been chief justice of the King's Bench under Henry VI., was governor to the young prince of Wales during his retreat in France, and received at his hands the office of chancellor. It must never be forgotten, that in a treatise purposely composed for the instruction of one who hoped to reign over England, the limitations of government are enforced as strenuously by Fortescue, as some succeeding lawyers have inculcated the doctrines of arbitrary prerogative.

"A king of England cannot at his pleasure make any alterations in the laws of the land, for the nature of his government is not only regal, but political. Had it been merely regal, he would have a power to make what innovations and alterations he pleased in the laws of the kingdom, impose tallages and other hardships upon the people whether they would or no, without their consent, which sort of government the civil laws point out, when they declare Quod principi placuit, legis habet vigorem. But it is much otherwise with a king whose government is political, because he can neither make any alteration or change in the laws of the realm without the consent of the subjects, nor burthen them against their wills with strange impositions, so that a people governed by such laws as are made by their own consent and approbation enjoy their properties securely, and without the hazard of being

deprived of them, either by the king or any other. The same things may be effected under an absolute prince, provided he do not degenerate into the tyrant. Of such a prince, Aristotle, in the third of his Politics, says, 'It is better for a city to be governed by a good man, than by good laws.' But because it does not always happen, that the person presiding over a people is so qualified, St. Thomas, in the book which he writ to the king of Cyprus, De Regimine Principum, wishes, that a kingdom could be so instituted, as that the king might not be at liberty to tyrannise over his people; which only comes to pass in the present case; that is, when the sovereign power is restrained by political laws. Rejoice, therefore, my good prince, that such is the law of the kingdom to which you are to inherit, because it will afford, both to yourself and subjects, the greatest security and satisfaction."

The two great divisions of civil rule, the absolute, or regal, as he calls it, and the political, Fortescue proceeds to deduce from the several originals of conquest and compact. Concerning the latter, he declares emphatically, a truth not always palatable to princes, that such governments were instituted by the people, and for the people's good; quoting St. Augustine for a similar definition of political society. "As the head of a body natural cannot change its nerves and sinews, cannot deny to the several parts their proper energy, their due proportion and aliment of blood; neither can a king, who is the head of a body politic, change the laws thereof, nor take from the people what is theirs, by right, against their consent. Thus you have, sir, the formal institution of every political kingdom, from whence you may guess at the power which a king may exercise with respect to the laws and the subject. For he is appointed to protect his subjects in their lives, properties, and laws; for this very end and purpose he has the delegation of power from the people, and he has no just claim to any other power but this. Wherefore, to give a brief answer to that question of yours, concerning the different powers which kings claim over their subjects, I am firmly of opinion that it arises solely from the different natures of their original institution, as you may easily collect from what has been said. So the kingdom of England had its original from Brute and the Trojans, who attended him from Italy and Greece, and became a mixed kind of government, compounded of the regal and political."

It would occupy too much space to quote every other passage of the same nature in this treatise of Fortescue, and in that entitled, Of the Difference between an Absolute and Limited Monarchy, which, so far as these points are concerned, is nearly a translation from the former. But these, corroborated as they are by the statute-book and by the rolls of parliament, are surely conclusive against the notions which pervade Mr. Hume's History. I have already remarked that a

sense of the glaring prejudice by which some Whig writers had been actuated, in representitg the English constitution from the earliest times as nearly arrived at its present perfection, conspired with certain prepossessions of his own to lead this eminent historian into an equally erroneous system on the opposite side. And as he traced the stream backwards, and came last to the times of the Plantagenet dynasty, with opinions already biassed, and even pledged to the world in his volumes of earlier publication, he was prone to seize hold of, and even exaggerate, every circumstance that indicated immature civilisation, and law perverted or infringed. To this his ignorance of English jurisprudence, which certainly in some measure disqualified him from writing our history, did not a little contribute; misrepresentations frequently occurring in his work, which a moderate acquaintance with the law of the land would have prevented.

It is an honourable circumstance to England that the history of no other country presents so few instances of illegal condemnation upon political charges. The judicial torture was hardly known and never recognised by law. The sentence in capital crimes, fixed unalterably by custom, allowed nothing to vindictiveness and indignation. There hardly occurs an example of any one being notoriously put to death without form of trial, except in moments of flagrant civil war. If the right of juries were sometimes evaded by irregular jurisdictions, they were at least held sacred by the courts of law: and through all the vicissitudes of civil liberty, no one ever questioned the primary right of every freeman, handed down from his Saxon forefathers, to his trial by his peers. A just regard for public safety prescribes the necessity of severe penalties against rebellion and conspiracy; but the interpretation of these offences, when intrusted to sovereigns and their counsellors, has been the most tremendous instrument of despotic power. In rude ages, even though a general spirit of political liberty may prevail, the legal character of treason will commonly be undefined; nor is it the disposition of lawyers to give greater accuracy to this part of criminal jurisprudence. The nature of treason appears to have been subject to much uncertainty in England before the statute of Edward III. If that memorable law did not give all possible precision to the offence, which we must certainly allow, it prevented at least those stretches of vindictive tyranny which disgrace the annals of other countries. The praise, however, must be understood as comparative. Some cases of harsh, if not illegal convictions, could hardly fail to occur, in times of violence and during changes of the reigning family. Perhaps the circumstances have now and then been aggravated by historians. Nothing could be more illegal than the conviction of the earl of Cambridge and Lord Scrope in 1415, and if it be true, according to Carte and Hume, that they were not heard in their defence. But, whether this is to be absolutely inferred from the record, is perhaps open to question. There

seems at least to have been no sufficient motive for such an irregularity : their participation in a treasonable conspiracy being manifest from their own confession. The proceedings against Sir John Mortimer in the second of Henry VI., are called by Hume highly irregular and illegal. They were, however, by act of attainder, which cannot well be styled illegal. Nor are they to be considered as severe. Mortimer had broken out of the Tower, where he was confined on a charge of treason. This was a capital felony at common law; and the chief irregularity seems to have consisted in having recourse to parliament, in order to attaint him of treason, when he had already forfeited his life by another crime.

I would not willingly attribute to the prevalence of Tory dispositions, what may be explained otherwise, the progress which Mr. Hume's historical theory as to our constitution has been gradually making since its publication. The tide of opinion, which since the Revolution, and indeed since the reign of James I., had been flowing so strongly in favour of the antiquity of our liberties, now seems, among the higher and more literary classes, to set pretty decidedly the other way. Though we may still sometimes hear a demagogue chattering about the witte-nagemot, it is far more usual to find sensible and liberal men who look on Magna Charta itself as the result of an uninteresting squabble between the king and his barons. Acts of force and injustice, which strike the cursory inquirer, especially if he derives his knowledge from modern compilations, more than the average tenor of events, are selected and displayed as fair samples of the law and of its administration. We are deceived by the comparatively perfect state of our present liberties, and forget that our superior security is far less owing to positive law, than to the control which is exercised over government by public opinion through the general use of printing, and to the diffusion of liberal principles in policy through the same means. Thus, disgusted at a contrast which it was hardly candid to institute, we turn away from the records that attest the real, though imperfect, freedom of our ancestors; and are willing to be persuaded, that the whole scheme of English polity, till the commons took on themselves to assert their natural rights against James I., was at best but a mockery of popular privileges, hardly recognized in theory, and never regarded in effect.

This system, when stripped of those slavish inferences that Brady and Carte attempted to build upon it, admits perhaps of no essential objection but its want of historical truth. God forbid that our rights to just and free government should be tried by a jury of antiquaries! Yet it is a generous pride that intertwines the consciousness of hereditary freedom with the memory of our ancestors; and no trifling argument against those who seem indifferent in its cause, that the character of the bravest and most virtuous among nations has not depended upon the accidents of race or climate, but been gradually wrought by the

plastic influence of civil rights, transmitted as a prescriptive inheritance through a long course of generations.

By what means the English acquired and preserved this political liberty, which, even in the fifteenth century, was the admiration of judicious foreigners, is a very rational and interesting inquiry. Their own serious and steady attachment to the laws must always be reckoned among the principal causes of this blessing. The civil equality of all freemen below the rank of peerage, and the subjection of peers themselves to the impartial arm of justice, and to a just share in contribution to public burthens, advantages unknown to other countries, tended to identify the interests, and to assimilate the feelings of the aristocracy with those of the people; classes whose dissension and jealousy has been in many instances the surest hope of sovereigns aiming at arbitrary power. This freedom from the oppressive superiority of a privileged order was peculiar to England. In many kingdoms the royal prerogative was at least equally limited. The statutes of Aragon are more full of remedial provisions. The right of opposing a tyrannical government by arms was more frequently asserted in Castile. But nowhere else did the people possess by law, and I think upon the whole, in effect, so much security for their personal freedom and property. Accordingly, the middle ranks flourished remarkably, not only in commercial towns, but among the cultivators of the soil. "There is scarce a small village," says Sir J. Fortescue, "in which you may not find a knight, an esquire, or some substantial householder, (paterfamilias,) commonly called a frankleyn,[1] possessed of considerable estate; besides others who are called freeholders, and many yeomen of estates sufficient to make a substantial jury." I would, however, point out more particularly two causes which had a very leading efficacy in the gradual development of our constitution: first, The schemes of continental ambition in which our government was long engaged; secondly, The manner in which feudal principles of insubordination and resistance were modified by the ample prerogatives of the early Norman kings.

1. At the epoch when William the Conqueror ascended the throne, hardly any other power was possessed by the king of France than what he inherited from the great fiefs of the Capetian family. War with such a potentate was not exceedingly to be dreaded, and William, besides his immense revenue, could employ the feudal services of his vassals, which were extended by him to continental expeditions. These circumstances were not essentially changed till after the loss of Nor-

[1] By a frankleyn in this place we are to understand what we call a country squire, like the frankleyn of Chaucer; for the word esquire in Fortescue's time was only used in its limited sense, for the sons of peers and knights, or such as had obtained the title by creation or some other legal means.

The mention of Chaucer leads me to add, that the prologue to his Canterbury Tales is of itself a continual testimony to the plenteous and comfortable situation of the middle ranks in England, as well as that fearless independence and frequent originality of character amongst them, which liberty and competence have conspired to produce.

mandy ; for the acquisitions of Henry II. kept him fully on an equality with the French crown, and the dilapidation which had taken place in the royal demesnes was compensated by several arbitrary resources that filled the exchequer of these monarchs. But in the reigns of John and Henry III., the position of England, or rather of its sovereign with respect to France, underwent a very disadvantageous change. The loss of Normandy severed the connexion between the English nobility and the continent ; they had no longer estates to defend, and took not sufficient interest in the concerns of Guienne, to fight for that province at their own cost. Their feudal service was now commuted for an escuage, which fell very short of the expenses incurred in a protracted campaign. Tallages of royal towns and demesne lands, extortion of money from the Jews, every feudal abuse and oppression were tried in vain to replenish the treasury, which the defence of Eleanor's inheritance against the increased energy of France was constantly exhausting. Even in the most arbitrary reigns, a general tax upon landholders, in any cases but those prescribed by the feudal law, had not been ventured ; and the standing bulwark of Magna Charta, as well as the feebleness and unpopularity of Henry III., made it more dangerous to violate an established principle. Subsidies were therefore constantly required ; but for these it was necessary for the king to meet parliament, to hear their complaints, and, if he could not elude, to acquiesce in their petitions. These necessities came still more urgently upon Edward I., whose ambitious spirit could not patiently endure the encroachments of Philip the Fair, a rival not less ambitious, but certainly less distinguished by personal prowess than himself. What advantage the friends of liberty reaped from this ardour for continental warfare is strongly seen in the circumstances attending the Confirmation of the Charters.

But after this statute had rendered all tallages without consent of parliament illegal, though it did not for some time prevent their being occasionally imposed, it was still more difficult to carry on a war with France or Scotland, to keep on foot naval armaments, or even to preserve the courtly magnificence which that age of chivalry affected, without perpetual recurrence to the House of Commons. Edward III. very little consulted the interests of his prerogative when he stretched forth his hand to seize the phantom of a crown in France. It compelled him to assemble parliament almost annually, and often to hold more than one session within the year. Here the representatives of England learned the habit of remonstrance and conditional supply ; and though, in the meridian of England's age and vigour, they often failed of immediate redress, yet they gradually swelled the statute-roll with provisions to secure their country's freedom ; and acquiring self-confidence by mutual intercourse, and sense of the public opinion, they became able, before the end of Edward's reign, and still more in that of

his grandson, to control, prevent, and punish the abuses of administration. Of all these proud and sovereign privileges, the right of refusing supply was the key-stone. But for the long wars in which our kings were involved, at first by their possession of Guienne, and afterwards by their pretensions upon the crown of France, it would have been easy to suppress remonstrances by avoiding to assemble parliament. For it must be confessed, that an authority was given to the king's proclamation, and to ordinances of the council, which differed but little from legislative power, and would very soon have been interrupted by complaisant courts of justice to give them the full extent of statutes.

It is common indeed to assert, that the liberties of England were bought with the blood of our forefathers. This is a very magnanimous boast; and in some degree is consonant enough to the truth. But it is far more generally accurate to say that they were purchased by money. A great proportion of our best laws, including Magna Charta itself, as it now stands confirmed by Henry III., were, in the most literal sense, obtained by a pecuniary bargain with the crown. In many parliaments of Edward III. and Richard II. this sale of redress is chaffered for as distinctly, and with as little apparent sense of disgrace, as the most legitimate business between two merchants would be transacted. So little was there of voluntary benevolence in what the loyal courtesy of our constitution styles concessions from the throne; and so little title have these sovereigns, though we cannot refuse our admiration to the generous virtues of Edward III. and Henry V., to claim the gratitude of posterity as the benefactors of their people!

2. The relation established between a lord and his vassal by the feudal tenure, far from containing principles of any servile and implicit obedience, permitted the compact to be dissolved in case of its violation by either party. This extended as much to the sovereign as to inferior lords; the authority of the former in France, where the system most flourished, being for several ages rather feudal than political. If a vassal was aggrieved, and if justice was denied him, he sent a defiance, that is, a renunciation of fealty to the king, and was entitled to enforce redress at the point of his sword. It then became a contest of strength as between two independent potentates, and was terminated by treaty, advantageous or otherwise, according to the fortune of war. This privilege, suited enough to the situation of France, the great peers of which did not originally intend to admit more than a nominal supremacy in the house of Capet, was evidently less compatible with the regular monarchy of England. The stern natures of William the Conqueror and his successors kept in control the mutinous spirit of their nobles, and reaped the profit of feudal tenures, without submitting to their reciprocal obligations. They counteracted, if I may so say, the centrifugal force of that system by the application of a stronger power; by preserving order, administering justice, checking the growth of

baronial influence and riches, with habitual activity, vigilance, and severity. Still, however, there remained the original principle, that allegiance depended conditionally upon good treatment, and that an appeal might be lawfully made to arms against an oppressive government. Nor was this, we may be sure, left for extreme necessity, or thought to require a long enduring forbearance. In modern times, a king compelled by his subjects' swords to abandon any pretension would be supposed to have ceased to reign; and the express recognition of such a right as that of insurrection has been justly deemed inconsistent with the majesty of law. But ruder ages had ruder sentiments. Force was necessary to repel force; and men accustomed to see the king's authority defied by private riot were not much shocked when it was resisted in defence of public freedom.

The Great Charter of John was secured by the election of twenty-five barons, as conservators of the compact. If the king or the justiciary in his absence, should transgress any article, any four might demand reparation, and on denial carry their complaint to the rest of their body. "And those barons, with all the commons of the land, shall distrain and annoy us by every means in their power; that is, by seizing our castles, lands, and possessions, and every other mode, till the wrong shall be repaired to their satisfaction; saving our person, and our queen, and children. And when it shall be repaired, they shall obey us as before." It is amusing to see the common law of distress introduced upon this gigantic scale; and the capture of the king's castles treated as analogous to impounding a neighbour's horse for breaking fences.

A very curious illustration of this feudal principle is found in the conduct of William, earl of Pembroke, one of the greatest names in our ancient history, towards Henry III. The king had defied him, which was tantamount to a declaration of war; alleging that he had made an inroad upon the royal domains. Pembroke maintained that he was not the aggressor, that the king had denied him justice, and been the first to invade his territory; on which account he had thought himself absolved from his homage, and at liberty to use force against the malignity of the royal advisers. "Nor would it be for the king's honour," the earl adds, "that I should submit to his will against reason, whereby I should rather do wrong to him and to that justice which he is bound to administer towards his people: and I should give an ill example to all men, in deserting justice and right, in compliance with his mistaken will. For this would show that I loved my worldly wealth better than justice." These words, with whatever dignity expressed, it may be objected, prove only the disposition of an angry and revolted earl. But even Henry fully admitted the right of taking arms against himself, if he had meditated his vassal's destruction, and disputed only the application of this maxim to the earl of Pembroke.

These feudal notions, which placed the moral obligation of allegiance

very low, acting under a weighty pressure from the real strength of the crown, were favourable to constitutional liberty. The great vassals of France and Germany aimed at living independently on their fiefs, with no further concern for the rest, than as useful allies, having a common interest against the crown. But in England, as there was no prospect of throwing off subjection, the barons endeavoured only to lighten its burthen, fixing limits to prerogative by law, and securing their observation by parliamentary remonstrances, or by dint of arms. Hence, as all rebellions in England were directed only to coerce the government, or, at the utmost, to change the succession of the crown, without the smallest tendency to separation, they did not impair the national strength, nor destroy the character of the constitution. In all these contentions, it is remarkable that the people and clergy sided with the nobles against the throne. No individuals are so popular with the monkish annalists, who speak the language of the populace, as Simon, earl of Leicester, Thomas, earl of Lancaster, and Thomas, duke of Gloucester, all turbulent opposers of the royal authority, and probably little deserving of their panegyrics. Very few English historians of the middle ages are advocates of prerogative. This may be ascribed both to the equality of our laws and to the interest which the aristocracy found in courting popular favour, when committed against so formidable an adversary as the king. And even now, when the stream, that once was hurried along gullies, and dashed down precipices, hardly betrays, upon its broad and tranquil bosom, the motion that actuates it, it must still be accounted a singular happiness of our constitution, that, all ranks graduated harmoniously into one another, the interests of peers and commoners are radically interwoven ; each in a certain sense distinguishable, but not balanced like opposite weights, not separated like discordant fluids, not to be secured by insolence or jealousy, but by mutual adherence and reciprocal influences.

From the time of Edward I. the feudal system and all the feelings connected with it declined very rapidly. But what the nobility lost in the number of their military tenants was in some degree compensated by the state of manners. The higher class of them, who took the chief share in public affairs, were exceedingly opulent ; and their mode of life gave wealth an incredibly greater efficacy than it possesses at present. Gentlemen of large estates and good families, who had attached themselves to these great peers, who bore offices, which we should call menial, in their households, and sent their children thither for education, were of course ready to follow their banner in a rising, without much inquiry into the cause. Still less would the vast body of tenants and their retainers, who were fed at the castle in time of peace, refuse to carry their pikes and staves into the field of battle. Many devices were used to preserve this aristocratic influence, which riches and ancestry of themselves rendered so formidable. Such was the main-

tenance of suits, or confederacies for the purpose of supporting each other's claims in litigation, which was the subject of frequent complaints in parliament, and gave rise to several prohibitory statutes. By help of such confederacies, parties were enabled to make violent entries upon the lands they claimed, which the law itself could hardly be said to discourage. Even proceedings in courts of justice were often liable to intimidation and influence. A practice much allied to confederacies of maintenance, though ostensibly more harmless, was that of giving liveries to all retainers of a noble family; but it had an obvious tendency to preserve that spirit of factious attachments and animosities, which it is the general policy of a wise government to dissipate. From the first year of Richard II. we find continual mention of this custom, with many legal provisions against it, but it was never abolished till the reign of Henry VII.

These associations under powerful chiefs were only incidentally beneficial as they tended to withstand the abuses of prerogative. In their more usual course, they were designed to thwart the legitimate exercise of the king's government in the administration of the laws. All Europe was a scene of intestine anarchy during the middle ages; and though England was far less exposed to the scourge of private war than most nations on the continent, we should find, could we recover the local annals of every country, such an accumulation of petty rapine and tumult, as would almost alienate us from the liberty which served to engender it. This was the common tenor of manners, sometimes so much aggravated as to find a place in general history, more often attested by records, during the three centuries that the house of Plantagenet sat on the throne. Disseisin, or forcible dispossession of freeholds, makes one of the most considerable articles in our law books. Highway robbery was from the earliest times a sort of national crime. Capital punishments, though very frequent, made little impression on a bold and licentious crew, who had at least the sympathy of those who had nothing to lose on their side, and flattering prospects of impunity. We know how long the outlaws of Sherwood lived in tradition; men who, like some of their betters, have been permitted to redeem by a few acts of generosity the just ignominy of extensive crimes. These indeed were the heroes of vulgar applause; but when such a judge as Sir John Fortescue could exult that more Englishmen were hanged for robbery in one year, than French in seven, and that "if an Englishman be poor, and see another having riches, which may be taken from him by might, he will not spare to do so," it may be perceived how thoroughly these sentiments had pervaded the public mind.

Such robbers, I have said, had flattering prospects of impunity. Besides the general want of communication, which made one who had fled from his own neighbourhood tolerably secure, they had the

advantage of extensive forests to facilitate the depredations and prevent detection. When outlawed, or brought to trial, the worst offenders could frequently purchase charters of pardon, which defeated justice in the moment of her blow. Nor were the nobility ashamed to patronise men guilty of every crime. Several proofs of this occur in the rolls. Thus, for example, in the twenty-second of Edward III., the commons pray, that "whereas it is notorious how robbers and malefactors infest the country, the king would charge the great men of the land, that none such be maintained by them, privily or openly, but that they lend assistance to arrest and take such ill-doers."

It is perhaps the most meritorious part of Edward I.'s government, that he bent all his power to restrain these breaches of tranquillity. One of his salutary provisions is still in constant use, the statute of coroners. Another more extensive, and though partly obsolete, the foundation of modern laws, is the statute of Winton, which, reciting, that "from day to day robberies, murders, burnings, and theft be more often used than they have been heretofore, and felons cannot be attainted by the oath of jurors which had rather suffer robberies on strangers to pass without punishment, than indite the offenders, of whom great part be people of the same country, or at the least, if the offenders be of another country, the receivers be of places near," enacts that hue and cry shall be made upon the commission of a robbery, and that the hundred shall remain answerable for the damage, unless the felons be brought to justice. It may be inferred from this provision, that the ancient law of frank-pledge, though retained longer in form, had lost its efficiency. By the same act, no stranger or suspicious person was to lodge even in the suburbs of towns; the gates were to be kept locked from sunset to sunrising; every host to be answerable for his guest; the highways to be cleared of trees and underwood for two hundred feet on each side; and every man to keep arms, according to his substance, in readiness to follow the sheriff on hue and cry raised after felons. The last provision indicates that the robbers plundered the country in formidable bands. One of these, in a subsequent part of Edward's reign, burned the town of Boston during a fair, and obtained a vast booty, though their leader had the ill-fortune not to escape the gallows.

The preservation of order throughout the country was originally intrusted, not only to the sheriff, coroner, and constables, but to certain magistrates, called conservators of the peace. These, in conformity to the democratic character of our Saxon government, were elected by the freeholders in their county-court. But Edward I. issued commissions to carry into effect the statute of Winton; and from the beginning of Edward III.'s reign, the appointment of conservators was vested in the crown, their authority gradually enlarged by a series of statutes, and their title changed to that of justices. They were empowered to im-

prison and punish all rioters and other offenders, and such as they should find by indictment, or suspicion, to be reputed thieves or vagabonds; and to take sureties for good behaviour from persons of evil fame. Such a jurisdiction was hardly more arbitrary than, in a free and civilised age, it has been thought fit to vest in magistrates; but it was ill endured by a people who placed their notions of liberty in personal exemption from restraint, rather than any political theory. An act having been passed (2 R. II., stat. 2, c. 6) in consequence of unusual riots and outrages, enabling magistrates to commit the ringleaders of tumultuary assemblies without waiting for legal process till the next arrival of justices of gaol delivery, the commons petitioned next year against this "horrible grievous ordinance," by which "every freeman in the kingdom would be in bondage to these justices," contrary to the great charter, and to many statutes, which forbid any man to be taken without due course of law. So sensitive was their jealousy of arbitrary imprisonment, that they preferred enduring riot and robbery to chastising them by any means that might afford a precedent to oppression or weaken men's reverence for Magna Charta.

There are two subjects remaining, to which this retrospect of the state of manners naturally leads us, and which I would not pass unnoticed, though not perhaps absolutely essential to a constitutional history; because they tend in a very material degree to illustrate the progress of society, with which civil liberty and regular government are closely connected. These are first, The servitude or villenage of the peasantry, and their gradual emancipation from that condition; and secondly, The continual increase of commercial intercourse with foreign countries. But as the latter topic will fall more conveniently into the next part of this work, I postpone its consideration for the present.

In a former passage I have remarked of the Anglo-Saxon ceorls, that neither their situation nor that of their descendants for the earlier reigns after the Conquest appears to have been mere servitude. But from the time of Henry II., as we learn from Glanvil, the villein so called was absolutely dependent upon his lord's will, compelled to unlimited services, and destitute of property, not only in the land he held for his maintenance, but in his own acquisitions. If a villein purchased or inherited land, the lord might seize it; if he accumulated stock, its possession was equally precarious. Against his lord he had no right of action; because his indemnity in damages, if he could have recovered any, might have been immediately taken away. If he fled from his lord's service, or from the land which he held, a writ issued de nativitate probandâ, and the master recovered his fugitive by law. His children were born to the same state of servitude; and contrary to the rule of the civil law, where one parent was free, and the other in villenage, the offspring followed their father's condition.

This was certainly a severe lot; yet there are circumstances which

materially distinguish it from slavery. The condition of villenage, at least in later times, was perfectly relative; it formed no distinct order in the political economy. No man was a villein in the eye of law, unless his master claimed him: to all others he was a freeman, and might acquire, dispose of, or sue for property without impediment. Hence Sir E. Coke argues, that villeins are included in the 29th article of Magna Charta: "No freeman shall be disseised nor imprisoned." For murder, rape, or mutilation of his villein, the lord was indictable at the king's suit; though not for assault or imprisonment, which were within the sphere of his seignorial authority.

This class was distinguished into villeins regardant, who had been attached from time immemorial to a certain manor, and villeins in gross, where such territorial prescription had never existed, or had been broken. In the condition of these, whatever has been said by some writers, I can find no manner of difference; the distinction was merely technical and affected only the mode of pleading. The term in gross is appropriated in our legal language to property held absolutely, and without reference to any other. Thus it is applied to rights of advowson or of common, when possessed simply, and not as incident to any particular lands. And there can be no doubt, that it was used in the same sense for the possession of a villein. But there was a class of persons, sometimes inaccurately confounded with villeins, whom it is more important to separate. Villenage had a double sense, as it related to persons, or to lands. As all men were free or villeins, so all lands were held by a free or villein tenure. This great division of tenures was probably derived from the bocland and folkland of Saxon times. As a villein might be enfeoffed of freeholds, though they lay at the mercy of his lord, so a freeman might hold tenements in villenage. In this case his personal liberty subsisted along with the burthens of territorial servitude. He was bound to arbitrary service at the will of the lord, and he might by the same will be at any moment dispossessed; for such was the condition of his tenure. But his chattels were secure from seizure, his person from injury, and he might leave the land whenever he pleased.

From so disadvantageous a condition as this of villenage, it may cause some surprise that the peasantry of England should have ever emerged. The law incapacitating a villein from acquiring property, placed, one would imagine, an insurmountable barrier in the way of his enfranchisement. It followed from thence, and is positively said by Glanvil, that a villein could not buy his freedom, because the price he tendered would already belong to his lord. And even in the case of free tenants in villenage, it is not easy to comprehend how their uncertain and unbounded services could ever pass into slight pecuniary commutations; much less how they could come to maintain themselves in their lands, and mock the lord with a nominal tenure according to the custom of the manor.

This, like many others relating to the progress of society, is a very obscure inquiry. We can trace the pedigree of princes, fill up the catalogue of towns besieged and provinces desolated, describe even the whole pageantry of coronations and festivals, but we cannot recover the genuine history of mankind. It has passed away with slight and partial notice by contemporary writers; and our most patient industry can hardly at present put together enough of the fragments to suggest a tolerably clear representation of ancient manners and social life. I cannot profess to undertake what would require a command of books as well as leisure beyond my reach; but the following observations may tend a little to illustrate our immediate subject, the gradual extinction of villenage.

If we take what may be considered as the simplest case, that of a manor divided into demesne lands of the lord's occupation, and those in the tenure of his villeins, performing all the services of agriculture for him, it is obvious that his interest was to maintain just so many of these as his estate required for its cultivation. Land, the cheapest of articles, was the price of their labour; and though the law did not compel him to pay this or any other price, yet necessity, repairing in some degree the law's injustice, made those pretty secure of food and dwellings, who were to give the strength of their arms for his advantage. But in course of time, as alienations of small parcels of manors to free tenants came to prevail, the proprietors of land were placed in a new situation relatively to its cultivators. The tenements in villenage, whether by law or usage, were never separated from the lordship, while its domain was reduced to a smaller extent, through sub-infeudations, sales, or demises for valuable rent. The purchasers under these alienations had occasion for labourers; and these would be free servants in respect of such employers, though in villenage to their original lord. As he demanded less of their labour, through the diminution of his domain, they had more to spare for other masters; and retaining the character of villeins and the land they held by that tenure, became hired labourers in husbandry for the greater part of the year. It is true, that all their earnings were at the lord's disposal, and that he might have made a profit of their labour when he ceased to require it for his own land. But this, which the rapacity of more commercial times would have instantly suggested, might escape a feudal superior, who, wealthy beyond his wants, and guarded by the haughtiness of ancestry against the love of such pitiful gains, was better pleased to win the affection of his dependents, than to improve his fortune at their expense.

The services of villenage were gradually rendered less onerous and uncertain. Those of husbandry indeed are naturally uniform, and might be anticipated with no small exactness. Lords of generous tempers granted indulgences, which were either intended to be, or readily

became perpetual. And thus, in the time of Edward I., we find the tenants in some manors bound only to stated services, as recorded in the lord's book. Some of these, perhaps, might be villeins by blood; but free tenants in villenage were still more likely to obtain this precision in their services; and from claiming a customary right to be entered in the court-roll upon the same terms as their predecessors, prevailed at length to get copies of it for their security. Proofs of this remarkable transformation from tenants in villenage to copyholders are found in the reign of Henry III. I do not know, however, that they were protected, at so early an epoch, in the possession of their estates. But it is said in the year-book of the forty-second of Edward III., to be "admitted for clear law, that if the customary tenant or copyholder does not perform his services, the lord may seize his land as forfeited." It seems implied herein, that so long as the copyholder did continue to perform the regular stipulations of his tenure, the lord was not at liberty to divest him of his estate; and this is said to be confirmed by a passage in Britton, which has escaped my search; though Littleton intimates that copyholders could have no remedy against their lord. However, in the reign of Edward IV., this was put out of doubt by the judges, who permitted the copyholder to bring his action of trespass against the lord for dispossession.

While some of the more fortunate villeins crept up into property as well as freedom under the name of copyholders, the greater part enfranchised themselves in a different manner. The law, which treated them so harshly, did not take away the means of escape, nor was this a matter of difficulty in such a country as England. To this indeed the unequal progression of agriculture and population in different counties would have naturally contributed. Men emigrated, as they always must, in search of cheapness or employment, according to the tide of human necessities. But the villein, who had no additional motive to urge his steps away from his native place, might well hope to be forgotten or undiscovered, when he breathed a freer air, and engaged his voluntary labour to a distant master. The lord had indeed an action against him; but there was so little communication between remote parts of the country, that it might be deemed his fault or singular ill-fortune, if he were compelled to defend himself. Even, in that case, the law inclined to favour him; and so many obstacles were thrown in the way of these suits to reclaim fugitive villeins, that they could not have operated materially to retard their general enfranchisement. In one case, indeed, that of unmolested residence for a year and a day within a walled city or borough, the villein became free, and the lord was absolutely barred of his remedy. This provision is contained even in the laws of William the Conqueror, as contained in Hoveden, and if it be not an interpolation, may be supposed to have had a view to strengthen the population of those places, which were designed for

garrisons. This law, whether of William or not, is unequivocally mentioned by Glanvil, l. v. c. 5. Nor was it a mere letter. According to a record in the sixth of Edward II., Sir John Clavering sued eighteen villeins of his manor of Cossey, for withdrawing themselves therefrom with their chattels ; whereupon a writ was directed to them ; but six of the number claimed to be freemen, alleging the Conqueror's charter, and offering to prove that they had lived in Norwich, paying scot and lot, about thirty years ; which claim was admitted.

By such means, a large proportion of the peasantry, before the middle of the fourteenth century, had become hired labourers instead of villeins. We first hear of them, on a grand scale, in an ordinance made by Edward III., in the twenty-third year of his reign. This was just after the dreadful pestilence of 1348; and it recites that the number of workmen and servants having been greatly reduced by that calamity, the remainder demanded excessive wages from their employers. Such an enhancement in the price of labour, though founded exactly on the same principles as regulate the value of any other commodity, is too frequently treated as a sort of crime by lawgivers, who seem to grudge the poor that transient melioration of their lot, which the progress of population, or other analogous circumstances, will, without any interference, very rapidly take away. This ordinance therefore enacts, that every man in England, of whatever condition, bond or free, of able body, and within sixty years of age, not living of his own, nor by any trade, shall be obliged, when required, to serve any master who is willing to hire him at such wages as were usually paid three years since, or for some time preceding: provided, that the lords of villeins or tenants in villenage shall have the preference of their labour, so that they retain no more than shall be necessary for them. More than these old wages is strictly forbidden to be offered, as well as demanded. No one is permitted, under colour of charity, to give alms to a beggar. And, to make some compensation to the inferior classes for these severities, a clause is inserted, as wise, just, and practicable as the rest, for the sale of provisions at reasonable prices.—Stat. 23 E. III.

This ordinance met with so little regard that a statute was made in parliament two years after, fixing the wages of all artificers and husbandmen, with regard to the nature and season of their labour. From this time it became a frequent complaint of the commons, that the statute of labourers was not kept. The king had in this case, probably, no other reason for leaving their grievance unredressed, than his inability to change the order of Providence. A silent alteration had been wrought in the condition and character of the lower classes during the reign of Edward III. This was the effect of increased knowledge and refinement, which had been making a considerable progress for full half a century, though they did not readily permeate the cold region of poverty and ignorance. It was natural that the country people, or out-

landish folk, as they were called, should repine at the exclusion from that enjoyment of competence, and security for the fruits of their labour, which the inhabitants of towns so fully possessed. The fourteenth century was, in many parts of Europe, the age when a sense of political servitude was most keenly felt. Thus the insurrection of the Jacquerie in France about the year 1358 had the same character, and resulted in a great measure from the same causes as that of the English peasant in 1382. And we may account in a similar manner for the democratical tone of the French and Flemish cities, and for the prevalence of a spirit of liberty in Germany and Switzerland.

I do not know whether we should attribute part of this revolutionary concussion to the preaching of Wicliffe's disciples, or look upon both one and the other as phenomena belonging to that particular epoch in the progress of society. New principles, both as to civil rule and religion, broke suddenly upon the uneducated mind, to render it bold, presumptuous, and turbulent. But at least I make little doubt that the dislike of ecclesiastical power, which spread so rapidly among the people at this season, connected itself with a spirit of insubordination and an intolerance of political subjection. Both were nourished by the same teachers, the lower secular clergy; and however distinct we may think a religious reformation from a civil anarchy, there was a good deal common in the language, by which the populace were inflamed to either one or the other. Even the scriptural moralities which were then exhibited, and which became the foundation of our theatre, afforded fuel to the spirit of sedition. The common original, and common destination of mankind, with every other lesson of equality which religion supplies to humble or to console, were displayed with coarse and glaring features in these representations. The familiarity of such ideas has deadened their effect upon our minds; but when a rude peasant, surprisingly destitute of religious instruction during that corrupt age of the church, was led at once to these impressive truths, we cannot be astonished at the intoxication of mind they produced.

Though I believe that, compared at least with the aristocracy of other countries, the English lords were guilty of very little cruelty or injustice, yet there were circumstances belonging to that period which might tempt them to deal more hardly than before with their peasantry. The fourteenth century was an age of greater magnificence than those which had preceded, in dress, in ceremonies, in buildings; foreign luxuries were known enough to excite an eager demand among the higher ranks, and yet so scarce as to yield inordinate prices; while the land-holders were on the other hand impoverished by heavy and unceasing taxation. Hence it is probable that avarice, as commonly happens, had given birth to oppression; and if the gentry, as I am inclined to believe, had become more attentive to agricultural improvements, it is reasonable to conjecture, that those whose tenure obliged

them to unlimited services of husbandry were more harassed, than under their wealthy and indolent masters in preceding times.

The storm that almost swept away all bulwarks of civilised and regular society seems to have been long in collecting itself. Perhaps a more sagacious legislature might have contrived to disperse it; but the commons only presented complaints of the refractoriness with which villeins and tenants in villenage received their due services, and the exigencies of government led to the fatal poll-tax of a groat, which was the proximate cause of the insurrection. By the demands of these rioters, we perceive that territorial servitude was far from extinct; but it should not be hastily concluded that they were all personal villeins, for a large proportion were Kentish-men, to whom that condition could not have applied; it being a good bar to a writ de nativitate probandâ, that the party's father was born in the county of Kent.

After this tremendous rebellion, it might be expected that the legislature would use little indulgence towards the lower commons. Such unhappy tumults are doubly mischievous, not more from the immediate calamities that attend them, than from the fear and hatred of the people which they generate in the elevated classes. The general charter of manumission extorted from the king by the rioters at Blackheath was annulled by proclamation to the sheriffs; and this revocation approved by the lords and commons in parliament; who added, as was very true, that such enfranchisement could not be made without their consent; "which they would never give to save themselves from perishing altogether in one day." Riots were turned into treason by a law of the same parliament. By a very harsh statute in the twelfth of Richard II., no servant or labourer could depart, even at the expiration of his service, from the hundred in which he lived without permission under the king's seal; nor might any who had been bred to husbandry till twelve years old exercise any other calling. A few years afterwards, the commons petitioned that villeins might not put their children to school, in order to advance them by the church; "and this for the honour of all the freemen of the kingdom." In the same parliament they complained, that villeins fly to cities and boroughs, whence their masters cannot recover them; and, if they attempt it, are hindered by the people: and prayed that the lords might seize their villeins in such places, without regard to the franchises thereof. But on both these petitions the king put in a negative.[1]

From henceforward we find little notice taken of villenage in parliamentary records, and there seems to have been rapid tendency to its entire abolition. But the fifteenth century is barren of materials; and we can only infer that as the same causes, which in Edward III.'s time

[1] The statute 7 H. IV., c. 17, enacts that no one shall put his son or daughter apprentice to any trade in a borough, unless he have land or rent to the value of twenty shillings a year, but that any one may put his children to school.

had converted a large portion of the peasantry into free labourers, still continued to operate, they must silently have extinguished the whole system of personal and territorial servitude. The latter indeed was essentially changed by the establishment of the law of copyhold.

I cannot presume to conjecture in what degree voluntary manumission is to be reckoned among the means that contributed to the abolition of villenage. Charters of enfranchisement were very common upon the continent. They may perhaps have been less so in England. Indeed the statute de donis must have operated very injuriously to prevent the enfranchisement of villeins regardant, who were entailed along with the land. Instances, however, occur from time to time; and we cannot expect to discover many. One appears as early as the fifteenth year of Henry III., who grants to all persons born or to be born within his village of Contishall, that they shall be free from all villenage in body and blood, paying an aid of twenty shillings to knight the king's eldest son, and six shillings a year as a quit rent. So, in the twelfth of Edward III., certain of the king's villeins are enfranchised on payment of a fine. In strictness of law, a fine from the villein for the sake of enfranchisement was nugatory, since all he could possess was already at his lord's disposal. But custom and equity might easily introduce different maxims; and it was plainly for the lord's interest to encourage his tenants in the acquisition of money to redeem themselves rather than to quench the exertions of their industry by availing himself of an extreme right. Deeds of enfranchisement occur in the reigns of Mary and Elizabeth; and perhaps a commission of the latter princess in 1574, directing the enfranchisement of her bondmen and bondwomen on certain manors upon payment of a fine, is the last unequivocal testimony to the existence of villenage, though it is highly probable that it existed in remote parts of the country some time longer.

From this general view of the English constitution, as it stood about the time of Henry VI., we must turn our eyes to the political revolutions which clouded the latter years of his reign. The minority of this prince, notwithstanding the vices and dissensions of his court, and the inglorious discomfiture of our arms in France, was not, perhaps, a calamitous period. The country grew more wealthy; the law was, on the whole, better observed; the power of parliament more complete and effectual than in preceding times. But Henry's weakness of understanding, becoming evident as he reached manhood, rendered his reign a perpetual minority. His marriage with a princess of strong mind, but ambitious and vindictive, rather tended to weaken the government, and to accelerate his downfall; a certain reverence that had been paid to the gentleness of the king's disposition being overcome by her unpopularity. By degrees, Henry's natural feebleness degenerated almost into fatuity; and this unhappy condition seems to have overtaken him, nearly about the time when it became an arduous

task to withstand the assault in preparation against his government. This may properly introduce a great constitutional subject, to which some peculiar circumstances of our own age have imperiously directed the consideration of parliament. Though the proceedings of 1788 and 1810 are undoubtedly precedents of far more authority than any that can be derived from our ancient history, yet as the seal of the legislature has not yet been set upon this controversy, it is not, perhaps, altogether beyond the possibility of future discussion; and, at least, it cannot be uninteresting to look back on those parallel or analogous cases, by which the deliberations of parliament upon the question of regency were guided.

While the kings of England retained their continental dominions, and were engaged in the wars to which those gave birth, they were, of course, frequently absent from this country. Upon such occasions, the administration seems at first to have devolved officially on the justiciary, as chief servant of the crown. But Henry III. began the practice of appointing lieutenants, or guardians of the realm, (custodes regni,) as they were more usually termed, by way of temporary substitutes. They were usually nominated by the king without the consent of parliament; and their office carried with it the right of exercising all the prerogatives of the crown. It was, of course, determined by the king's return; and a distinct statute was necessary in the reign of Henry V., to provide that a parliament called by the guardian of the realm, during the king's absence, should not be dissolved by that event.—8 H. V., c. 1. The most remarkable circumstance attending those lieutenancies was that they were sometimes conferred on the heir-apparent during his infancy. The Black Prince, then duke of Cornwall, was left guardian of the realm in 1339, when he was but ten years old; and Richard, his son, when still younger, in 1372, during Edward III.'s last expedition into France.

These do not, however, bear a very close analogy to regencies in the stricter sense, or substitutions during the natural incapacity of the sovereign. Of such there had been several instances, before it became necessary to supply the deficiency arising from Henry's derangement. 1. At the death of John, William earl of Pembroke assumed the title of rector regis et regni, with the consent of the loyal barons who had just proclaimed the young king, and probably conducted the government in a great measure by their advice. But the circumstances were too critical, and the time is too remote, to give this precedent any material weight. 2. Edward I. being in Sicily at his father's death, the nobility met at the Temple church, as we are informed by a contemporary writer, and after making a new great seal, appointed the archbishop of York, Edward earl of Cornwall, and the earl of Gloucester, to be ministers and guardians of the realm; who accordingly conducted the administration in the

king's name until his return. It is here observable, that the earl of Cornwall, though nearest prince of the blood, was not supposed to enjoy any superior title to the regency, wherein he was associated with two other nobles. But while the crown itself was hardly acknowledged to be unquestionably hereditary, it would be strange if any notion of such a right to the regency had been entertained. 3. At the accession of Edward III., then fourteen years old, the parliament, which was immediately summoned, nominated four bishops, four earls, and six barons as a standing council, at the head of which the earl of Lancaster seems to have been placed, to advise the king in all business of government. It was an article in the charge of treason, or, as it was then styled, of accroaching royal power, against Mortimer, that he intermeddled in the king's household without the assent of this council. They may be deemed therefore a sort of parliamentary regency, though the duration of their functions does not seem to be defined. 4. The proceedings at the commencement of the next reign are more worthy of attention. Edward III. dying June 21, 1377, the keepers of the great seal next day, in absence of the chancellor beyond sea, gave it into the young king's hand before his council. He immediately delivered it to the duke of Lancaster, and the duke to Sir Nicholas Bonde for safe custody. Four days afterwards, the king in council delivered the seal to the bishop of St. Davids, who affixed it the same day to divers letters patent. Richard was at this time ten years and six months old; an age certainly very unfit for the personal execution of sovereign authority. Yet he was supposed capable of reigning without the aid of a regency. This might be in virtue of a sort of magic ascribed by lawyers to the greal seal, the possession of which bars all further inquiry, and renders any government legal. The practice of modern times, requiring the constant exercise of the sign-manual, has made a public confession of incapacity necessary in many cases, where it might have been concealed or overlooked in earlier periods of the constitution. But, though no one was invested with the office of regent, a council of twelve was named by the prelates and peers at the king's coronation, July 16, 1377, without whose concurrence no public measure was to be carried into effect. I have mentioned in another place the modifications introduced from time to time by parliament, which might itself be deemed a great council of regency during the first year of Richard. 5. The next instance is at the accession of Henry VI. This prince was but nine months old at his father's death; and whether from a more evident incapacity for the conduct of government in his case than in that of Richard II., or from the progress of constitutional principles in the forty years elapsed since the latter's accession, far more regularity and deliberation were shown in supplying the defect in the executive authority. Upon the

news arriving that Henry V. was dead, several lords, spiritual and temporal, assembled, on account of the imminent necessity, in order to preserve peace, and provide for the exercise of offices appertaining to the king. These peers accordingly issued commissions to judges, sheriffs, escheators, and others for various purposes, and writs for a new parliament. This was opened by commission under the great seal directed to the duke of Gloucester, in the usual form, and with the king's teste. Some ordinances were made in this parliament by the duke of Gloucester as commissioner, and some in the king's name. The acts of the peers who had taken on themselves the administration, and summoned parliament, were confirmed. On the twenty-seventh day of its session, it is entered upon the roll, that the king, "considering his tender age, and inability to direct in person the concern of his realm, by assent of lords and commons, appoints the duke of Bedford, or, in his absence beyond sea, the duke of Gloucester, to be protector and defender of the kingdom and English church, and the king's chief counsellor." Letters patent were made out to this effect; the appointment being, however, expressly during the king's pleasure. Sixteen counsellors were named in parliament to assist the protector in his administration; and their concurrence was made necessary to the removal and appointment of officers, except some inferior patronage specifically reserved to the protector. In all important business that should pass by order of council, the whole, or major part, were to be present; "but if it were such matter that the king hath been accustomed to be counselled of, that then the said lords proceed not therein without the advice of my lords of Bedford or Gloucester." A few more counsellors were added by the next parliament, and regulations established for their observance.

This arrangement was in contravention of the late king's testament which had conferred the regency on the duke of Gloucester, in exclusion of his elder brother. But the nature and spirit of these proceedings will be better understood by a remarkable passage in a roll of a later parliament; where the House of Lords, in answer to a request of Gloucester, that he might know what authority he possessed as protector, remind him that in the first parliament of the king, "ye desired to have had ye governaunce of yis land; affermyng yat hit belonged unto you of rygzt, as well by ye mene of your birth, as by ye laste wylle of ye kyng yat was your broyer, whome God assoile; alleggyng for you such groundes and motyves as it was yought to your discretion made for your intent; whereupon, the lords spiritual and temporal assembled there in parliament, among which were there my lordes your uncles, the bishop of Winchester that now liveth, and the duke of Exeter, and your cousin the earl of March that be gone to God, and of Warwick, and other in great number that now live, had great and long deliberation and advice, searched precedents of

the governail of the land, in the time and case semblable, when kings of this land have been tender of age, took also information of the laws of the land, of such persons as be notably learned therein, and finally found your said desire not cause nor grounded in precedent, nor in the law of the land; the which the king that dead is, in his life nor might by his last will nor otherwise altre, change, nor abroge, without the assent of the three estates, nor commit or grant to any person governance or rule of this land longer than he lived; but on that other behalf, the said lords found your said desire not according with the laws of this land, and against the right and fredome of the estates of the same land. Howe were it, that it be not thought, that any such thing wittingly proceeded of your intent; and nevertheless to keep peace and tranquillity, and to the intent to ease and appease you, it was advised and appointed by authority of the king, assenting the three estates of this land, that ye in absence of my lord, your brother of Bedford, should be chief of the king's council, and devised unto you a name different from other counsellors, not the name of tutor, lieutenant, governor, nor of regent, nor no name that should import authority of governance of the land, but the name of protector and defensor, which importeth a personal duty of attendance to the actual defence of the land, as well against enemies outward, if case required, as against rebels inward, if any were, that God forbid; granting you therewith certain power, the which is specified and contained in an act of the said parliament, to endure as long as it liked the king. In the which if the intent of the said estate had been, that ye more power and authority should have had more should have been expressed therein; to the which appointment, ordinance, and act, ye then agreed you as for your person, making nevertheless protestation, that it was not your intent in any wise to deroge, or do prejudice unto my lord your brother of Bedford by your said agreement, as toward any right that he would pretend or claim in the governance of this land, and as toward any pre-eminence that you might have or belong unto you as chief of council, it is plainly declared in the said act and articles, subscribed by my said lord of Bedford, by yourself and the other lords of the council. But as in parliament, to which ye be called upon your faith and ligeance as duke of Gloucester, as other lords be, and not otherwise, we know no power nor authority that ye have, other than ye as duke of Gloucester should have, the king being in parliament, at years of mest discretion: We marvailing with all our hearts, that considering the open declaration of the authority and power belonging to my lord of Bedford, and to you in his absence, and also to the king's council, subscribed purely and simply by my said lord of Bedford, and by you that you should in any wise be stirred or moved not to content you therewith, or to pretend you any other: Namely

considering that the king, blessed be our lord, is sith the time of said power granted unto you, far gone and grown in person, in wit and understanding, and like with the grace of God to occupy his own royal power within few years: And forasmuch considering the things and causes abovesaid, and other many that long were to write, We lords aforesaid pray, exhort, and require you, to content you with the power abovesaid and declared, of the which my lord your brother of Bedford, the king's eldest uncle, contended him; and that ye no larger power desire, will, nor use; giving you this that is aboven writen for our answer to your foresaid demand, the which we will dwell and abide with, withouten variance or changing. Over this beseeching and praying you in our most humble and lowly wise, and also requiring you in the king's name, that ye, according to the king's commandment, contained in his writ sent unto you in that behalf, come to this his present parliament, and intend to the good effect and speed of matters to be demesned and treted in the same, like as of right ye owe to do."

It is evident that this plain, or rather rude address to the duke of Gloucester, was dictated by the prevalence of Cardinal Beaufort's party in council and parliament. But the transactions in the former parliament are not unfairly represented; and comparing them with the passage extracted above, we may perhaps be entitled to infer: 1. That the king does not possess any constitutional prerogative of appointing a regent during the minority of his successor; and 2. That neither the heir presumptive, nor any other person, is entitled to exercise the royal prerogative during the king's infancy, (or, by parity of reasoning, his infirmity,) nor to any title that conveys them; the sole right of determining the persons by whom, and fixing the limitations under which, the executive government shall be conducted in the king's name and behalf, devolving upon the great council of parliament.

The expression used in the lords' address to the duke of Gloucester, relative to the young king, that he was far gone and grown in person, wit, and understanding, was not thrown out in mere flattery. In two years the party hostile to Gloucester's influence had gained ground enough to abrogate his office of protector, leaving only the honorary title of chief counsellor.—8 H. VI. For this the king's coronation, at eight years of age, was thought a fair pretence; and undoubtedly the loss of that exceedingly limited authority, which had been delegated to the protector, could not have impaired the strength of government. This was conducted as before by a selfish and disunited council; but the king's name was sufficient to legalise their measures, nor does any objection appear to have been made in parliament to such a mockery of the name of monarchy.

In the year 1454, the thirty-second of Henry's reign, his unhappy malady, transmitted perhaps from his maternal grandfather, assumed

so decided a character of derangement or imbecility, that parliament could no longer conceal from itself the necessity of a more efficient ruler. This assembly, which had been continued by successive prorogations for nearly a year, met at Westminster on the 14th of February, when the session was opened by the duke of York, as king's commissioner. Kemp, archbishop of Canterbury and chancellor of England, dying soon afterwards, it was judged proper to acquaint the king at Windsor by a deputation of twelve lords with this and other subjects concerning his government. In fact, perhaps, this was a pretext chosen in order to ascertain his real condition. These peers reported to the lords' house, two days afterwards, that they had opened to his majesty the several articles of their message, but "could get no answer ne sign for no prayer ne desire," though they repeated their endeavours at three different interviews. This report, with the instruction on which it was founded, was, at their prayer, entered of record in parliament. Upon so authentic a testimony of their sovereign's infirmity, the peers, adjourning two days for solemnity or deliberation, "elected and nominated Richard, duke of York, to be protector and defender of the realm of England during the king's pleasure." The duke, protesting his insufficiency, requested "that in this present parliament, and by authority thereof, it be enacted, that of yourself and of your ful and mere disposition, ye desire, name, and call me to the said name and charge, and that of any presumption of myself, I take them not upon me, but only of the due and humble obeisance that I owe me to do unto the king, our most dread and sovereign lord, and to you the peerage of this land, in whom, by the occasion of the infirmity of our said sovereign lord, resteth the exercise of his authority, whose noble commandments I am as ready to perform and obey as any his liegeman alive, and that at such time as it shall please our blessed Creator to restore his most noble person to healthful disposition, it shall like you so to declare and notify to his good grace." To this protestation the lords answered, that for his and their discharge, an act of parliament should be made, conformably to that enacted in the king's infancy, since they were compelled by an equal necessity again to choose and name a protector and defender. And to the duke of York's request to be informed how far the power and authority of his charge shall extend, they replied, that he should be chief of the king's council, and "devised therefore to the said duke a name different from other counsellors, not the name of tutor, lieutenant, governor, nor of regent, nor no name that shall import authority of governance of the land, but the said name of protector and defensor;" and so forth, according to the language of their former address to the duke of Gloucester. An act was passed, accordingly, constituting the duke of York protector of the church and kingdom, and chief counsellor of the king during the latter's pleasure; or until the prince of Wales should attain years of discretion, on whom the said

dignity was immediately to devolve. The patronage of certain spiritual benefices was reserved to the protector, according to the precedent of the king's minority, which parliament was resolved 'to follow in every particular.

It may be conjectured, by the provision made in favour of the prince of Wales, then only two years old, that the king's condition was supposed to be beyond hope of restoration. But in about nine months, he recovered sufficient speech and recollection to supersede the duke of York's protectorate. The succeeding transactions are matter of familiar, though not, perhaps, very perspicuous history. The king was a prisoner in his enemies' hands after the affair at St. Albans, when parliament met in July, 1455. In this session little was done, except renewing the strongest oaths of allegiance to Henry and his family. But the two houses meeting again after a prorogation to November 12, during which time the duke of York had strengthened his party, and was appointed by commission the king's lieutenant to open the parliament, a proposition was made by the commons, that "whereas the king had deputed the duke of York as his commissioner to proceed in this parliament, it was thought by the commons, that if the king hereafter could not attend to the protection of the country, an able person should be appointed protector, to whom they might have recourse for redress of injuries; especially as great disturbances had lately arisen in the west through the feuds of the earl of Devonshire and lord Bonvile. The archbishop of Canterbury answered for the lords, that they would take into consideration what the commons had suggested. Two days afterwards, the latter appeared again with a request conveyed nearly in the same terms. Upon their leaving the chamber, the archbishop, who was also chancellor, moved the peers to answer what should be done in respect of the request of the commons; adding that "it is understood, that they will not further proceed in matters of parliament, to the time that they have answer to their desire and request." This naturally ended in the re-appointment of the duke of York to his charge of protector. The commons indeed were determined to bear no delay. As if ignorant of what had been resolved in consequence of their second request, they urged it a third time, on the next day of meeting; and received for answer that "the king, our said sovereign lord, by the advice and assent of his lords spiritual and temporal being in this present parliament, had named and desired the duke of York to be protector and defensor of this land." It is worthy of notice that in these words, and indeed in effect, as appears by the whole transaction, the House of Peers assumed an exclusive right of choosing the protector, though in the act passed to ratify their election, the commons' assent, as a matter of course, is introduced. The last year's precedent was followed in the present instance, excepting a remarkable deviation; instead of the words "during the king's pleasure," the duke was to hold his office "until he should be discharged of it by the lords in parliament."

This extraordinary clause, and the slight allegations on which it was thought fit to substitute a vicegerent for the reigning monarch, are sufficient to prove, even if the common historians were silent, that whatever passed as to this second protectorate of the duke of York was altogether of a revolutionary complexion. In the actual circumstances of civil blood already spilled and the king in captivity, we may justly wonder that so much regard was shown to the regular forms and precedents of the constitution. But the duke's natural moderation will account for part of this, and the temper of the lords for much more. That assembly appears for the most part to have been faithfully attached to the house of Lancaster. The partisans of Richard were found in the commons, and among the populace. Several months elapsed after the victory of St. Albans, before an attempt was thus made to set aside a sovereign, not labouring, so far as we know, under any more notorious infirmity than before. It then originated in the commons, and seems to have received but an unwilling consent from the upper house. Even in constituting the duke of York protector over the head of Henry, whom all men despaired of ever seeing in a state to face the dangers of such a season, the lords did not forget the rights of his son. By this latter instrument as well as by that of the preceding year, the duke's office was to cease upon the prince of Wales arriving at the age of discretion.

But what had been propagated in secret, soon became familiar to the public ear; that the duke of York laid claim to the throne. He was unquestionably heir general of the royal line, through his mother, Anne, daughter of Roger Mortimer, earl of March, son of Philippa, daughter of Lionel, duke of Clarence; third son of Edward III. Roger Mortimer's eldest son, Edmund, had been declared heir presumptive by Richard II.; but his infancy during the revolution that placed Henry IV. on the throne had caused his pretensions to be passed over in silence. The new king, however, was induced by a jealousy natural to his situation to detain the earl of March in custody. Henry V. restored his liberty; and, though he had certainly connived for a while at the conspiracy planned by his brother-in-law, the earl of Cambridge, and lord Scrope of Masham, to place the crown on his head, that magnanimous prince gave him a free pardon, and never testified any displeasure. The present duke of York was honoured by Henry VI. with the highest trusts in France and Ireland; such as Beaufort and Gloucester could never have dreamed of conferring on him, if his title to the crown had not been reckoned obsolete. It has been very pertinently remarked, that the crime perpetrated by Magaret and her counsellors in the death of the duke of Gloucester was the destruction of the house of Lancaster. From this time the duke of York, next heir in presumption while the

king was childless, might innocently contemplate the prospect of royalty; and when 'such ideas had long been passing through his mind, we may judge how reluctantly the birth of prince Edward, nine years after Henry's marriage, would be admitted to disturb them. The queen's administration unpopular, careless of national interest, and partial to his inveterate enemy, the duke of Somerset; the king incapable of exciting fear or respect; himself conscious of powerful alliances and universal favour; all these circumstances combined could hardly fail to nourish these opinions of hereditary right, which he must have imbited from his infancy.

The duke of York preserved through the critical season of rebellion such moderation and humanity, that we may pardon him that bias in favour of his own pretensions, to which he became himself a victim. Margaret, perhaps, by her sanguinary violence in the Coventry parliament of 1460, where the duke and all his adherents were attainted, left him not the choice of remaining a subject with impunity. But with us, who are to weigh these ancient factions in the balance of wisdom and justice, there should be no hesitation in deciding that the house of Lancaster were lawful sovereigns of England. I am indeed astonished, that not only such historians as Carte, who wrote undisguisedly upon a Jacobite system, but even men of juster principles, have been inadvertent enough to mention the right of the house of York. If the original consent of the nation, if three descents of the crown, if repeated acts of parliament, if oaths of allegiance from the whole kingdom, and more particularly from those who now advanced a contrary pretension, if undisturbed, unquestioned possession during sixty years, could not secure the reigning family against a mere defect in their genealogy, when were the people to expect tranquillity? Sceptres were committed, and governments were instituted, for public protection and public happiness, not certainly for the benefit of rulers, or for the security of particular dynasties. No prejudice has less in its favour, and none has been more fatal to the peace of mankind, than that which regards a nation of subjects as a family's private inheritance. For, as this opinion induces reigning princes and their courtiers to look on the people as made only to obey them, so when the tide of events has swept them from their thrones, it begets a fond hope of restoration, a sense of injury and of imprescriptible rights, which give the show of justice to fresh disturbances of public order, and rebellions against established authority. Even in cases of unjust conquest, which are far stronger than any domestic revolution, time heals the injury of wounded independence, the forced submission to a victorious enemy is changed into spontaneous allegiance to a sovereign, and the laws of God and nature enjoin the obedience that is challenged by reciprocal benefits. But far more does every national government, however violent in its origin, become

legitimate, when universally obeyed and justly exercised, the possession drawing after it the right; not certainly that success can alter the moral character of actions, or privilege usurpation before the tribunal of human opinion, or in the pages of history, but that the recognition of a government by the people is the binding pledge of their allegiance so long as its corresponding duties are fulfilled. And thus the law of England has been held to annex the subject's fidelity to the reigning monarch, by whatever title he may have ascended the throne, and whoever else may be its claimant. But the statute of 11th. of Henry VII., c. 1, has furnished an unequivocal commentary upon this principle; when, alluding to the condemnations and forfeitures by which those alternate successes of the white and red roses had almost exhausted the noble blood of England, it enacts that "no man for doing true and faithful service to the king for the time being, be convict or attaint of high treason, nor of other offences, by act of parliament or otherwise."

Though all classes of men and all parts of England were divided into factions by this unhappy contest, yet the strength of the Yorkists lay in London and the neighbouring counties, and generally among the middling and lower people. And this is what might naturally be expected. For notions of hereditary right take easy hold of the populace, who feel an honest sympathy for those whom they consider as injured; while men of noble birth and high station have a keener sense of personal duty to their sovereign, and of the baseness of deserting their allegiance. Notwithstanding the wide-spreading influence of the Nevils, most of the nobility were well affected to the reigning dynasty. We have seen how reluctantly they acquiesced in the second protectorate of the duke of York, after the battle of St. Albans. Thirty-two temporal peers took an oath of fealty to Henry and his issue in the Coventry parliament of 1460, which attainted the duke of York and the earls of Warwick and Salisbury. And, in the memorable circumstances of the duke's claim, personally made in parliament, it seems manifest, that the lords complied not only with hesitation, but unwillingness; and, in fact, testified their respect and duty for Henry by confirming the crown to him during his life. The rose of Lancaster blushed upon the banners of the Staffords, the Percies, the Veres, the Hollands, and the Courtneys. All these illustrious families lay crushed for a time under the ruins of their party. But the course of fortune, which has too great a mastery over crowns and sceptres to be controlled by men's affection, invested Edward IV. with a possession, which the general consent of the nation both sanctioned and secured. This was effected in no slight degree by the furious spirit of Margaret, who began a system of extermination by acts of attainder, and execution of prisoners, that created abhorrence, though it did not prevent imitation. And the

barbarities of her northern army, whom she led towards London after the battle of Wakefield, lost the Lancastrian cause its former friends, and might justly convince reflecting men, that it were better to risk the chances of a new dynasty, than trust the kingdom to an exasperated faction.

A period of obscurity and confusion ensues, during which we have as little insight into constitutional as general history. There are no contemporary chroniclers of any value, and the rolls of parliament, by whose light we have hitherto steered, become mere registers of private bills, or of petitions relating to commerce. The reign of Edward IV. is the first during which no statute was passed for the redress of grievances, or maintenance of the subject's liberty. Nor is there, if I am correct, a single petition of this nature upon the roll. Whether it were that the commons had lost too much of their ancient courage to present any remonstrances, or that a wilful omission has vitiated the record, is hard to determine; but we certainly must not imagine, that a government cemented with blood poured on the scaffold as well as in the field, under a passionate and unprincipled sovereign, would afford no scope for the just animadversion of parliament. The reign of Edward IV. was a reign of terror. One-half of the noble families had been thinned by prescription; and though generally restored in blood by the reversal of their attainders, a measure certainly deserving of much approbation, were still under the eyes of vigilant and inveterate enemies. The opposite faction would be cautious how they resisted a king of their own creation, while the hopes of their adversaries were only dormant. And indeed, without relying on this supposition, it is commonly seen, that when temporary circumstances have given a king the means of acting in disregard of his subjects' privileges, it is a very difficult undertaking for them to recover a liberty, which has no security so effectual as habitual possession.

Besides the severe proceedings against the Lancastrian party, which might be extenuated by the common pretences, retaliation of similar proscriptions, security for the actual government, or just punishment of rebellion against a legitimate heir, there are several reputed instances of violence and barbarity in the reign of Edward IV., which have not such plausible excuses. Every one knows the common stories of the citizen who was attainted of treason for an idle speech that he would make his son heir to the crown, the house where he dwelt: and of Thomas Burdett, who wished the horns of his stag in the belly of him who had advised the king to shoot it. Of the former I can assert nothing, though I do not believe it to be accurately reported. But certainly the accusation against Burdett, however iniquitous, was not confined to these frivolous words; which indeed do not appear in his

indictment, or in a passage relative to his conviction in the roll of parliament. Burdett was a servant and friend of the duke of Clarence, and sacrificed as a preliminary victim. It was an article of charge against Clarence that he had attempted to persuade the people that "Thomas Burdett his servant, which was lawfully and truly attainted of treason, was wrongfully put to death." There could indeed be no more oppressive usage inflicted upon meaner persons, than this attainder of the duke of Clarence, an act for which a brother could not be pardoned, had he been guilty; and which deepens the shadow of a tyrannical age, if, as it seems, his offence toward Edward was but levity and rashness.

But whatever acts of injustice we may attribute, from authority or conjecture, to Edward's government, it was very far from being unpopular. His love of pleasure, his affability, his courage, and beauty, gave him a credit with his subjects, which he had no real virtues to challenge. This restored him to the throne, even against the prodigious influence of Warwick, and compelled Henry VII. to treat his memory with respect, and acknowledge him as a lawful king.[1] The latter years of his reign were passed in repose at home after scenes of unparalleled convulsions, and in peace abroad, after more than a century of expensive warfare. His demands of subsidy were therefore moderate, and easily defrayed by a nation who were making rapid advances towards opulence. According to Sir John Fortescue, nealy one-fifth of the whole kingdom had come to the king's hand by forfeiture, at some time or other since the commencement of his reign. Many indeed of these lands had been restored, and others lavished away in grants, but the surplus revenue must still have been considerable.

[1] The rolls of Henry VII.'s first parliament are full of an absurd confusion in thought and language, which is rendered odious by the purposes to which it is applied. Both Henry VI. and Edward IV. are considered as lawful kings; except in one instance, where Alan Cotterell, petitioning for the reversal of his attainder, speaks of Edward "late called Edward IV." (vol. vi. p. 290). But this is only the language of a private Lancastrian. And Henry VI. passes for having been king during his short restoration in 1470, when Edward had been nine years upon the throne. For the earl of Oxford is said to have been attainted "for the true allegiance and service he owed and did to Henry VI., at Barnet field and otherwise," (p. 281). This might be reasonable enough on the true principle, that allegiance is due to a king *de facto;* if indeed we could determine who was the king de facto on the morning of the battle of Barnet. But this principle was not fairly recognised. Richard III. is always called, "in deed and not in right king of England." Nor was this merely founded on his usurpation as against his nephew. For that unfortunate boy is little better treated, and in the act of resumption, 1 Henry VII., while Edward IV. is styled "late king," appears only with the denomination of "Edward his son, late called Edward V.," (p. 336). Who then was king after the death of Edward IV.? And was his son really illegitimate, as an usurping uncle pretended? Or did the crime of Richard, though punished in him, inure to the benefit of Henry? These were points which, like the fate of the young princes in the Tower, he chose to wrap in discreet silence. But the first question he seems to have answered in his own favour. For Richard himself, Howard, duke of Norfolk, lord Lovel, and some others, are attainted (p. 276) for "traitorously intending, compassing, and imagining" the death of Henry; of course before or at the battle of Bosworth; and while his right, unsupported by possession, could have rested only on an hereditary title, which it was an insult to the nation to prefer. These monstrous proceedings explain the necessity of that conservative statute to which I have already alluded, which passed in the eleventh year of his reign, and afforded as much security for men following the plain line of rallying round the standard of their country as mere law can offer.

Edward IV. was the first who practised a new method of taking his subjects' money without consent of parliament, under the plausible name of benevolences. These came in place of the still more plausible loans of former monarchs, and were principally levied on the wealthy traders. Though no complaint appears in the parliamentary records of his reign, which, as has been observed, complain of nothing, the illegality was undoubtedly felt and resented. In the remarkable address to Richard by that tumultuary meeting which invited him to assume the crown, we find, among general assertions of the state's decay through misgovernment, the following strong passage: "For certainly we be determined rather to aventure and committe as to the peril of owre lyfs and jopardie of deth, than to lyve in such thraldome and bondage as we have lyved long tyme heretofore oppressed and injured by extortions and newe impositions, ayenst the lawes of God and man, and the libertie, old policie, and lawes of this realme, whereyn every Englishman is inherited." Accordingly, in Richard III.'s only parliament, an act was passed, which, after reciting in the strongest terms the grievances lately endured, abrogates and annuls for ever all exactions, under the name of benevolence. The liberties of this country were at least not directly impaired by the usurpation of Richard. But from an act so deeply tainted with moral guilt, as well as so violent in all its circumstances, no substantial benefit was likely to spring. Whatever difficulty there may be, and I confess it is not easy to be surmounted, in deciding upon the fate of Richard's nephews after they were immured in the Tower, the more public parts of the transaction bear unequivocal testimony to his ambitious usurpation. It would therefore be foreign to the purpose of this work to dwell upon his assumption of the regency, or upon the sort of election, however curious and remarkable, which gave a pretended authority to the usurpation of the throne. Neither of these has ever been alleged by any party in the way of constitutional precedent.

At this epoch I terminate these inquiries into the English constitution; a sketch very imperfect, I fear, and unsatisfactory, but which may at least answer the purpose of fixing the reader's attention on the principal objects, and of guiding him to the purest fountains of constitutional knowledge. From the accession of the house of Tudor a new period is to be dated in our history; far more prosperous in the diffusion of opulence and the preservation of general order than the preceding, but less distinguished by the spirit of freedom and jealousy of tyrannical power. We have seen, through the twilight of our Anglo-Saxon records, a form of civil polity established by our ancestors, marked, like the kindred governments of the continent, with aboriginal Teutonic features; barbarous indeed, and insufficient for the great ends of society, but capable and worthy of the improvement it has received, because actuated by a sound and vital spirit, the love of freedom and of justice. From these principles arose that venerable institution, which none but a free and

simple people could have conceived, trial by peers; an institution common in some degree to other nations, but which, more widely extended, more strictly retained, and better modified among ourselves, has become perhaps the first, certainly among the first, of our securities against arbitrary government. We have seen a foreign conqueror and his descendants trample almost alike upon the prostrate nation, and upon those who had been companions of their victory, introduce the servitudes of feudal law with more than their usual rigour, and establish a large revenue by continual precedents upon a system of universal and prescriptive extortion. But the Norman and English races, each unfit to endure oppression, forgetting their animosities in a common interest, enforce by arms the concession of a great charter of liberties. Privileges, wrested from one faithless monarch, are preserved with continual vigilance against the machinations of another; the rights of the people become more precise, and their spirit more magnanimous during the long reign of Henry III. With greater ambition and greater abilities than his father, Edward I. attempts in vain to govern in an arbitrary manner, and has the mortification of seeing his prerogative fettered by still more important limitations. The great council of the nation is opened to the representatives of the commons. They proceed by slow and cautious steps to remonstrate against public grievances, to check the abuses of administration, and sometimes to chastise public delinquency in the officers of the crown. A number of remedial provisions are added to the statutes; every Englishman learns to remember that he is the citizen of a free state, and to claim the common law as his birthright, even though the violence of power should interrupt its enjoyment. It were a strange misrepresentation of history to assert, that the constitution had attained anything like a perfect state in the fifteenth century; but I know not whether there are any essential privileges of our countrymen, any fundamental securities against arbitrary power, so far as they depend upon positive institution, which may not be traced to the time when the house of Plantagenet filled the English throne.

THE END.

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