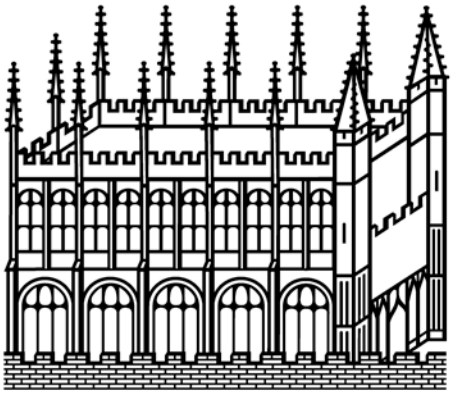
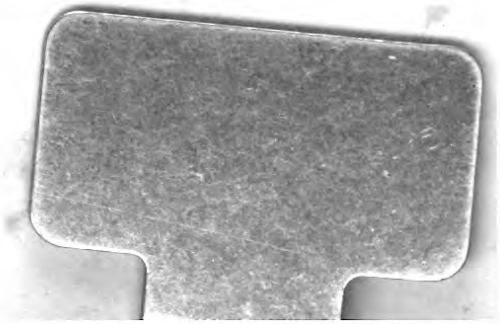


Constitutional English History

MACLEOD



Stewart's Educational Series.

TEXT-BOOK

OF THE

CONSTITUTIONAL HISTORY

OF

ENGLAND.

With numerous Examination Papers set at the Examinations for London University Matriculation and 1st LL.B., the Diplomatic Service, etc.

By JOHN MACLEOD, M.A., F.G.S.E.,
AUTHOR OF 'BATTLES OF THE PENINSULA'
(INSTRUCTOR OF ARMY AND CIVIL SERVICE CANDIDATES).

μόνον γὰρ μόνιμον τὸ κατ' ἀξίαν ἰσὸν καὶ τὸ ἔχειν τὰ αὐτῶν.
—ARISTOTLE.

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PREFACE.

THE following elementary work, on the historical development of the English Constitution, is intended for the use of those students who are frequently deterred from the study of the subject by the ponderous and learned manner in which it is usually presented to them in larger books. My special aim has been to give a connected historical outline of our Constitution in as simple and clear a style as possible. For advanced students the works of Kemble, Palgrave, Hallam, Freeman, and Stubbs are as much as they can well master; but for the beginner a short elementary treatise, in which the more prominent features of the English Constitution are clearly defined and historically traced, is much more attractive, and at first more useful. A simple and clearly arranged outline of any complex subject is the first step to begin with: the filling in of details is a work of patient application which may extend over years of study, and that without exhausting the materials at hand. Clearness and brevity are infallible aids to memory; and no one can supply such aids so effectually as an experienced teacher.

It has frequently occurred to me that a good deal of the time spent by boys in committing to memory the painfully dry facts of history, such as the dates of battles and sieges, the accession and death of kings, and the principal events in each reign, might be much more profitably employed in studying the growth and development of the Parliamentary system under which they live. It would enable them to understand better, and to reverence more, the nature and character of the venerable institutions of their country; and in after years it would enable them, when called upon, to take an intelligent part in the government of the realm.

JOHN MACLEOD.

LONDON, 1882.

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CONSTITUTIONAL HISTORY OF ENGLAND.

CHAPTER I.

INTRODUCTION.

Definition.—Constitutional History, in its widest sense, might be defined as the science of those laws which regulate the progress of society and the development of social states. To interpret the laws which cause one state of society to follow another in the ascending scale of progress is the aim of the scientific historian.

Science of History not possible.—I do not mean that the history of the human mind can ever be brought within the domain of positive science; the complex nature of the phenomena involved in the subject seems to preclude the possibility of a scientific method. In the hierarchy of the sciences there are some which are more simple, because more abstract, than others; and these are more early developed in the course of time as they are more easily mastered in the progress of thought. This is true of every science founded on purely mathematical principles, such, for example, as astronomy; but when the phenomena of a science can be modified by the *will* of man, as they can be in chemistry, then it becomes more complex in its character, and more difficult to be reduced to a regular system.

Now the phenomena of history are the modified results of the freedom of the will; but we may take it as an axiom, that the freedom of the will is subject to the *necessary course of the whole.* This course, however, we can no more predict with certainty than

we can forecast the weather. Nevertheless, we can account for the events that have already taken place, and from past experience we can in some measure anticipate the future.

Nothing in this world exists without a cause; and if we would explain the course of history according to the principle of cause and effect, we must adopt the method of *filiation.* In other words, we must seek for the cause of any given social state—say the feudalism of the Middle Ages—in some other social state that preceded it in the past. And inasmuch as social states follow each other in something like a progressive order of development, we are driven to the conclusion that human affairs are governed by general laws which carry mankind as a whole from lower to higher states of civilisation—that, in short, 'there is a divinity that shapes our ends, rough-hew them as we will!'

This is what historians mean by filiation; it is the birth of the successive social states, and each from a humbler parent than itself. It is therefore clear that Constitutional History, embracing as it does so wide a range of diverse subjects, is one of the noblest studies that can occupy the mind of man.

Politics.—The word Politics conveys to our minds much more than it did to the minds of the ancient Greeks. The great Aristotle and his followers believed in social *order* as derived from their common life in the *city;* but they were altogether silent with regard to social *development.* By *politics* they understood *police.* They were conservatives in the most absolute sense of the term, and the idea of reform or development never occurred to them.

Eastern Nations.—Now let us for a moment look back on the course of history, and trace it up to the misty heights of antiquity, whence the spring of Aryan life began to flow. Whether we take an individual nation, or regard a long series of empires related to each other by a regular transmission of civilisations, we cannot fail to be impressed with the existence of a law which slowly, but surely, works in the unfolding and developing of the nobler qualities of mankind. All the races of Europe came originally from India, and about 3000 years ago all the great

civilisations had their home in the East. The Egyptians on the banks of the Nile; the Assyrians on the banks of the Tigris; the Chaldeans on the banks of the Euphrates; the Persians, whose empire extended from the Indus to the Mediterranean Sea; the kingdoms of Damascus and Idumea, of Jerusalem and Samaria; the warlike states of the Philistines, and the commercial republics of Phœnicia,—all these had grown up, flourished, and faded in succession before Europe had risen from the night of barbarism. Next in order come the civilisations of Greece and Rome, derived from the East, but more elevated than those of Oriental nations; and finally, we have the civilisation of Modern Europe, which we trace to the Græco-Roman, but which in vitality and ulterior aim surpasses all that has gone before it.

Past and Present.—The village system of India, the mark system of the Saxons, and the modern system of the Swiss cantons, are connecting links which bind the present with the past of our history; and many of the most popular aspects of our surviving institutions derive their origin from the feudalism of the Middle Ages. Feudalism itself was the offspring of those dark and uncertain times, when the Roman empire was falling to pieces under the disintegrating influences of barbarian invasion and ecclesiastical sovereignty. Ancient Rome had inherited her civilisation from Greece, while Greece owed hers to Phœnicia and Syria. Phœnicia and Syria in their turn had been taught by Egypt. Generally speaking, therefore, we have three main groups of civilisations: the Oriental, the Græco-Roman, and the Modern European.

It might be asked, what has the Oriental group bequeathed to us? It has bequeathed to us not only the spirit of commercial enterprise, which was characteristic of the Phœnician, but nearly all our sublimest thoughts on religion and morality. One of the most powerful elements in the organization of human society is religion. In the East, every thought and act of man's life used to be moulded by religious laws; and the thought of modern Europe is coloured by the two great religions of Shemitic origin, Judaism and Christianity.

History and Geology.—The history of human progress might be compared to the geological history of our planet. At each ascending stage in the scale of organized life, we find that less perfect forms are superseded by more highly developed ones, and yet all of them moulded after the original types. Man's early efforts, like those of nature, are simple and rude; but as he advances from one effort to another his original idea is amplified, and more fully developed. Nor are we to suppose that this continuous progress has reached its final limit. There is no known limit to the progress of mankind; and in the ages yet to come some legislator may say of us what the Egyptian priest said to Solon, 'Ye are but children, ye Greeks!'

Landmarks in English History.—If, again, we survey the English constitution from its rude beginnings to its modern growth, through the Saxon, Norman, Plantagenet, Tudor, and Stuart periods, we shall find that underneath the many struggles of conflicting interests there has been a silent, steady, and irresistible current of progressive development. (1.) But before we start, we must distinctly and clearly bear in mind that we had no commerce until the thirteenth century, that all property was in land, and that the noblest profession was that of the soldier. Landed property and military service are the characteristic features of the Saxon and Norman periods. (2.) Next comes the domination of the Church, and the great struggle between it and the royal prerogatives in the reign of Henry II. This struggle ended in the defeat of the Church and the establishment of civil authority by the Constitutions of Clarendon. (3.) In the thirteenth century, the struggle between the prerogative of the crown and the rights of the people was ended by Magna Charta, which for the first time established the freedom of the subject by statute law. (4.) In the legislative reign of Edward I., England set forth on a new career of constitutional progress, and the arbitrary system of the Normans was then replaced by a representative government. (5.) In the reign of Edward III., the domination of the Pope was once more successfully resisted; and the legislative authority of the House of Commons was

finally established in the deposition of Richard II. and the election of Henry IV. (6.) During the Wars of the Roses, the authority of Parliament was altogether destroyed, for the internecine struggle between the houses of York and Lancaster crushed the liberties of the people and arrested all constitutional progress. (7.) When Henry VII. began to reign, England was exhausted by the fury of civil war; and hence both he and his successor, Henry VIII., were silently permitted to govern the country as if they were autocratic rulers. (8.) The Star Chamber was their only parliament; but during the reign of Elizabeth the Commons again asserted their authority, and, notwithstanding the insane opposition made to it by the Stuart dynasty, Parliamentary power never ceased to struggle for existence until it was at last confirmed by the Bill of Rights.

(9.) **Modern Parliamentary History.**—Our modern Parliamentary history begins with the Revolution of 1688, and the Bill of Rights. The people by that instrument were restored to their ancient political rights, which they inherited from their Saxon forefathers; and the great measures which passed through Parliament since the Revolution, such as the Catholic emancipation, the Reform Bill of 1832, and the extension of the franchise in 1867, were meant to establish, not a new state of things, but to restore liberties and privileges which are as old as Anglo-Saxon history, but much more glorious now than they were in their Saxon infancy.

CHAPTER II.

THE SAXONS.

Stages of Civilisation.—The Saxon township is the substratum of Saxon civilisation. Its social organization resembled that of the Swiss cantons, of the Indian village home, and, indeed, of all primitive pastoral societies, including the Hebrew patriarchal life. If we might venture on a wide generalization, we should imagine that the earliest stage of civilisation is the patriarchal or pastoral, a state of society made familiar to us in the Book of Genesis; the second stage would appear to be the military or feudal, as exemplified in the Book of Judges; the third is the commercial and scientific, as illustrated in the history of Phœnicia. Many nations have passed through all these stages successively; others stood still at the second; and the progress of a few was arrested in the first stage. Some races of mankind, and among them the Celts, have quite an inaptitude for commercial enterprise, if not a peculiar antipathy to it. The property they mostly value is land, and the profession they chiefly honour is the military. This arises from a peculiar temperament, which is at once indolent, impatient, irritable, and boisterous under any excitement.

Property.—The original nature and condition of property is the first lesson in Constitutional History. Landed property is the earliest of all; and among the village communities of India, as well as in the cantons of Switzerland, we have to this day presented to us a form of ownership in land which is organized on the patriarchal system of copartnership. The Russian village also is made up of a kindred community, holding their domain in common: and even the townships of the Northern Highlands

of Scotland were examples of the same primitive state of civilisation until the late 'clearances' denuded the country of its Celtic population.[1] The principle of joint-proprietorship in land, to which modern legislation appears to be returning, was based on family and tribal relations, and was common to all the Indo-European races.

Saxon and Norman.—In the following pages I will give a short, but I hope a clear account of the jurisprudence of the two great races which made England what she is. The Saxon and Norman sprang originally from the same Teutonic stock. When the Normans, or Northmen,[2] left their home in the north of Europe, and took possession of a French province which still bears their name, they had already advanced to that stage of civilisation which I have referred to as the military and feudal. Their Saxon brethren in England were fast approaching a similar stage, but still they retained the primitive simplicity of their ancient village or mark system. To this system, rude as it was, we owe the origin of our most cherished institutions. The English constitution of our own time is to the Anglo-Saxon system of a thousand years ago what the full-grown man is to the child, or the oak to the sapling.

Order of Discussion.—In tracing out the growth and development of English jurisprudence from Saxon times to our own, perhaps the most convenient method would be to divide our subject into epochs corresponding with the reigning dynasties. We should thus have to treat:—

1. Of England under the Saxons.
2. Of England under the Normans.
3. Of England under the Plantagenets.
4. Of England under the rival houses of York and Lancaster.

[1] It may be observed that the Highlanders of the North of Scotland are mostly of Scandinavian and Teutonic origin. *Leod*, *e.g.*, is a purely Teutonic word.

[2] In the Northern Highlands to this day we occasionally meet with a specimen of Norman blood—tall, dark, and strikingly noble in bearing and expression.

5. Of England under the Tudors.
6. Of England under the Stuarts.
7. Of England under the House of Hanover; when we appear once more to be returning to the Saxon simplicity of legislation, strengthened and ennobled by the experience of centuries of struggle for freedom, for common justice, and individual rights.

In point of fact, however, any division of the subject into chronological epochs is more or less arbitrary. We know that, according to the principles enunciated in our introductory chapter, every generation bequeaths something to its immediate successor. The life of a nation such as England might be compared to that of an individual man who is continually learning in his progress from childhood to manhood; and as it is the prerogative of the individual to advance daily in knowledge, so it is the law of the successive generations of men that they should grow in wisdom as the world grows old. There are periods in the life of a nation, as there are seasons in the life of man, when progress appears to be retarded or even altogether arrested, either by external circumstances or internal disorganization; but when there is sufficient stamina and vitality in the character it can always recover itself, so that checks and disasters shall not materially affect its growth and healthy vigour.

English Civilisation.—The civilisation of England is older, and its growth has been more regular and uninterrupted, than that of any European state. From the time of the consolidation of the Heptarchy to the year of the Revolution, we can recognise a steady progress in the intellectual and moral growth of the nation. Old systems in England have never been superseded by new ones; the old have always been absorbed and drawn up into the new, so that new and old remained ever fresh and young, and grew with each other like the concentric rings of a great tree. We owe this continuity and regularity of growth not more to our love of freedom than to our insular position and naval supremacy. Notwithstanding the successive invasion of our island by Roman, Saxon, and Norman, our habits, our common law, and our speech are very much the same to-day that they

were in the days of Alfred the Great. However complex the machinery of our modern Parliamentary government may appear, it is in reality the natural outcome of the primitive polity of our Saxon forefathers. It becomes therefore our first duty to inquire into the nature of that form of government under which the Saxons[1] lived both before and after they settled in this country. We will therefore review the old Saxon polity very briefly under the following heads :—

1. The Old Mark System.
2. The Different Classes in the Village Community.
3. The Principle of 'Commendation' to a Lord.
4. The Courts or Popular Assemblies of the People.

SAXON POLITY.

I. The Mark System.—The basis of this system, as indeed of all organized systems of Teutonic origin, was the possession of landed property, and the different degrees of social rank. The Saxons had no cities, and no commercial intercourse with other nations. For all the necessaries of life they depended on their flocks and herds, and the produce of the soil they cultivated. A family or a tribe settled on a division of land *marked out* for them, part of which they cleared and cultivated, and part of which remained under grass as the common pasturage of their herds and flocks.

In the ancient forests of Europe a clearing was effected by a family, or a number of kindred families, in the centre of which they built their cottages, their farmyards, and their cattle-sheds. This was the village; but the *township* included not only the buildings but also all the land which belonged to the community. The houses were not joined together as in streets; the homestead of each head of a family stood apart from that of his neighbour, and each had his own share, or *hide*, as it was generally called, of the clearing. No one, however, held his lot or hide as absolute owner, but simply as a member of the community settled on

[1] I use the word *Saxon* as a generic term, to include all the Teutonic tribes who settled from time to time in our island.

the mark. The shares of the more important marksmen were known as their Odal, or Edhel, a term which was subsequently employed to designate nobility of rank. This is one instance of how we can learn a good deal of the history of a people from their vocabulary; for whereas the Saxons used words of agricultural origin, like *Adhaling* and *Etheling*, to distinguish rank, the Normans employed military terms for a similar purpose.

Outside the boundaries of the cultivated land there lay the pastures and forests, which were not divided into shares, but always remained as the common property of the community, and into which the herds of the whole village were turned out to graze. Now, since a great many of these marks were scattered over the forest plains, it is evident that in course of time their boundaries would encroach upon each other.

Origin of Military System.—It would then be necessary for neighbouring marks, either to enter into a federal union for their common safety and political freedom, or to defend their respective *marshes* by an organized military system in the form of outlying fortified castles and garrisons. The confederation of a number of marks thus united for their common interests formed something like a small kingdom, but the early Saxon name for it was *scir*, or shire. It was on the principle of the shire that England was afterwards divided into little kingdoms by the Saxons. The political organization of these shires was very simple. The mark lost its political independence as soon as it was incorporated with the shire, and the shire became an independent little kingdom, the chief magistrate of which was known as the Ealdorman.

The Kingdom.—The real Saxon kingdom, however, was a group of shires, the chief ruler of which was called the King, or Cynning, a term denoting the head of the kin or tribe. It has been doubted whether the Saxons were ever ruled by kings before they left their German homes; but there can be no doubt at all that, in some parts of Germany, kings were known long before the Saxon invasion of England. So true is this, that the Saxon kings claimed a divine pedigree from Woden and Thor. Hence their

persons were considered sacred, and their government inferior only to that of the gods. This theological creed is also characteristic of all times when men were ruled by patriarchs, or chiefs of tribes, each of whom united in his own person the character of the priest and of the lawgiver.

The three main elements of our Parliamentary government are clearly discernible in the early Saxon polity. We have the democratic element represented in the assembly of the whole people; the aristocratic element represented in the assembly of the elders or nobles of the land; and the monarchic element represented in the still smaller assembly of chiefs presided over by the king. These are the germs of our English Constitution.

II. **Different Degrees of Rank.**—It may be laid down as a general rule, that the Saxon had no political rights unless he was the owner of land. There was indeed a humble class of freemen among them, who had enfranchised themselves by paying a money price for their freedom; but even these had no political importance unless they became owners of land. As the Saxons had neither cities nor commerce, such a thing as citizenship was unknown to them. All their social institutions were regulated by the inheritance of landed property; but all the owners of land were not of equal rank, nor were the unfree all on the same level. Amongst the former class there were two ranks, that of the earl, and that of the ceorl or churl. The earl was the noble by birth, or the atheling, who was therefore eligible to the highest offices of state; whereas the ceorl, or simple freeman, had no claim to any high preferment. The third or lowest rank was that of the slave, or thrall, who was either a captive taken in war, or a man who had forfeited his freedom by committing a crime, or, as sometimes happened, the head of a poor family who had sold himself and his children to a lord in order to obtain bread. Any slave, however, had the right to purchase his freedom by the payment of money, although it is not clear how his position could enable him to obtain sufficient means for that purpose; but unless he did so, all his children inherited the father's status in society.

III. **Commendation.**—It cannot be too well remembered that in ancient Saxon polity the duty of every man was to the State, that is, to the society of which he formed a part, and that his individual right was wholly merged in the rights of the people to whom he belonged. This followed as a corollary from the rule that no individual could have absolute ownership in land.

The Host.—Even in times of war, the army, or *host*, was simply the *whole* people in arms, divided into hundreds of warriors according to the principle of kindred; but as soon as the war was over the army returned again to civil life. Therefore in war as in peace every man discharged his duty to the *nation*, and not to any part of it, or to any individual belonging to it. But before the Saxons came over to England, this rule of duty towards the State was departed from by the custom of commendation to a lord.

As soon as war became more frequent, and, indeed, more the rule than the exception, successful military leaders easily gathered round themselves bands of military followers. These became a new order of nobility—the nobility of military office, which in course of time overshadowed the nobility of birth. The practice of commendation prevailed so much, both before and after the Saxon invasion of Britain, that every man who hoped to rise in the social scale and enjoy the privileges of gentle birth, *commended* himself to a lord, who henceforth became his Hlaford, or loaf-giver. It is obvious how this principle of personal devotion to a military chief would encroach upon, and ultimately destroy, the principle of devotion to public duty. The successful leader very often became the king, and the folkland, or common land of the people, became royal demesnes, parcelled out by him into private estates for his followers.

In this practice of commendation we behold the germs of feudalism. The Mark system no doubt is far more beautiful and poetical to the imagination; but feudalism, which is simply the possession of land on the condition of performing military service, is a step in advance in the progress of civilisation and its refinements. Philosophers and pastoral poets may deprecate

war as they please; but in ancient times, at least, it frequently developed a nobility of character which an agricultural life could never do. Had there been no feudalism, we should all be marksmen still, without any of the graces of chivalry, and probably without intellectual progress or political development.

IV. **The Popular Assemblies of the Saxons.**—1. **Mark Mot.**—The Parliament of the Marksmen was simply an assembly of the whole people, and was known as the Mearc Mot.[1] Here the chief marksman presided as the father of his people, and as the representative of the great family union. In the earlier times, and before any marksman was acknowledged to have any hereditary rights, the president of the assembly was elected by the general vote of the people; but latterly the office became hereditary, and although the community had always the power to remove an unworthy ruler, they rarely exercised their authority. This ancient prerogative of the people to depose their rulers, even when they happened to be kings, is a recognised right of the English nation to this day. In Anglo-Saxon times this right was occasionally exercised; but since the Norman Conquest we have only four instances in which the people availed themselves of it, namely, in the deposition of Edward II., Richard II., Charles I., and James II.

Jurisdiction of the Mot.—The assembly of the Mark was generally convened for the purpose of settling all matters of dispute between man and man, and for regulating all the internal organization of the community. The land, as we have seen, belonged to the whole people, and no part of it to any individual absolutely and in fee-simple. It was therefore always necessary to obtain the general consent of the Mot before a member could settle on a new piece of land, or build a new house. The bye-laws and rules for the internal regulation of the community were not set down in writing at those gatherings, but simply handed down by tradition from one generation to another for purposes of administration. Ethelbert of England was the first Saxon

[1] This term, which is spelt indifferently *Mot*, *Mote*, or *Moot*, survives in our word *meet*.

king who reduced the traditional customs of his forefathers to writing.

2. **Shire Mot.**—The Shire Mot, or Scirgemot, was of course a much larger assembly than the Mark Mot. Its president was the ealdorman, or chief ruler of the shire. In times of war this functionary assumed the character of military chief, under the title of Heretoga; but in times of peace he was always known as the ealdorman, a dignitary who still lives among us under the name of alderman.

As the shire was originally the federal union of a number of marks, and sometimes identical with the Saxon kingdom, it is clear that it must have been governed by more important officers than the mark. **Shire Officers.**—These officers[1] would have to regulate the political administration of justice, and to judge in legal matters between mark and mark. They were always chiefs of tribes, or eorls, who consulted together in an assembly of their own and laid down laws, while the simple freemen or ceorls had only the privilege of either giving or withholding their assent. As soon as the legislators of the people became thus limited to their chiefs, nobility of birth was established, and large private estates or ethels were created and owned by ethelings. Thus we see how the assembly of the nobles became separated from that of the people, in which separation we can discover the germs of our two Houses of Parliament.

[1] Our sheriffs and sheriff-officers had a noble ancestry; but alas, how fallen the modern representatives of earls!

CHAPTER III.

THE ANGLO-SAXONS, 450–1066.

We shall now speak of the Saxons in England, and this we may do under two heads of discussion. I. What was the system according to which the Saxons divided the greater part of England between them? II. What was their social and political system? In this chapter we will endeavour to answer the first of these questions.

I. The Division of English Land.

As the Saxon invaders did not come over to this country in a body, but in several small bands with their respective military leaders or heretogas, it is evident that what we now call the Anglo-Saxon system could not have reached its maturity until the consolidation of the Heptarchy. How the Saxon colonization of our island was effected, and to what extent their Germanic institutions were transferred to British soil, are matters which remain somewhat obscure; but we may take it as a general rule that the polity of the Saxons in England was entirely *based* on their polity in Germany.

New Order of Things.—In the Mark system we have the germ of that other system according to which England was divided into Tithings, Hundreds, and Shires. It is important to bear in mind, however, that henceforth we must regard Saxon polity under new circumstances, and in relation to two other institutions which were growing up with its growth and materially shaping its end. These institutions were feudalism and the Christian Church. The former naturally sprang from the military system of land tenure, which was everywhere developing itself; the latter in its discipline and organization was framed according to the principles of Roman jurisprudence.

Early English Laws.—The early English laws, such as we know them, were unquestionably drawn up for a people who, after their migration to a foreign land, still retained all their ancient Teutonic habits, customs, and traditions. As in Germany, so also in England, the possession of land was the only visible sign of social standing, the only badge of political rights. There was no other basis for a man's status in society. According to the primitive system of the Mark, land was held in common, and therefore the *family* was at the root of all internal organization. The earliest Anglo-Saxon kings, even, had no land which they could absolutely call their own; for they were kings, not of the land, but of the people. There were no kings of England then, but merely kings of the English nation. Royalty was an office, which represented or symbolized the sovereignty of the people; and the land, which was held by the people, was the visible pledge and earnest of that sovereignty.

Change of Polity.—But change of circumstances soon produced a change in customs and a modification of Saxon polity. The introduction of Christianity in the reign of Ethelbert, and the subsequent birth of feudalism from the union of Roman and Saxon laws, transformed the Mark of the Saxon into the Parish of the priest and the Manor[1] of the lord. The *free* possessors of the soil became *tenants*, who held their lots of a superior in virtue of taxes and military service. 'Every throne which standeth aright,' says an ancient Saxon treatise, 'standeth on three pillars—the priest, the warrior, and the labourer;' and just in accordance with this maxim, we find the rapid progress of a new order of things, and the simultaneous growth of palaces, castles, and cathedrals.

The intermixture of Saxon and Roman polity makes it difficult to form an accurate idea of the principle, if any, according to which this country was divided among its invaders; but it is probable, as Mr. Stubbs says, 'that the colonists of Britain had arranged themselves into hundreds of warriors, and that under

[1] The *term* 'manor' is Norman; but the *thing* denoted by it is common to Saxon and Norman alike.

the name of geographical hundreds we have the variously sized townships or districts in which the hundred warriors settled; the boundaries of these being determined by other causes, as the sources of rivers, the ranges of hills, the distribution of estates to the chieftains, and the remnants of British independence.' It is certain, also, that from a very early period the inhabitants of the Mark were divided into classes or corporations of tens and of hundreds, a circumstance which gave rise to the geographical designation of Tithings and Hundreds.

1. **The Tithing.**—The Tithing is the smallest territorial unit of which any notice need be taken here; and the community or tribe which lived upon it was the smallest political unit. In some parts of England, as in Somerset and Wilts, tithing is still understood in the sense of township, and regarded as a unit of local administration.

Tithing-man.—The chief of the ten men who lived on the tithing was called the Tithing-man. He stood at the head of the other nine, and was in some measure responsible for their conduct. He was their 'capital pledge' for purposes of police administration; but, in point of fact, every member of the tithing was a guarantee for every other member, and by this system of mutual guarantee the tithing-man was bound to discover and to bring to justice the criminal, or failing that, to pay a money fine varying in amount and in proportion to the nature of the crime committed.

Frankpledge.—This police regulation went by the name of Frankpledge, and was analogous to that other rule which required that every landless man must have a lord, responsible for his appearance at a court of justice if he should transgress the law. We thus see that tithing had a judicial as well as a territorial meaning, in both of which it resembles the ancient mark or township.

2. **The Hundred.**—The Hundred originally contained ten tithings, and was bound to send a hundred warriors to the Host; but in later times the term was used conventionally, and without regard to numerical accuracy. It was merely the union of a number of townships, for the purpose of police, fiscal, and

judicial administration. It very frequently corresponded with the old Saxon shire or *scir*, some of which were not larger than our later baronies.

Ecclesiastical Divisions.—It is important to observe that the ecclesiastical division of England was also founded on the principle of the tithing, the hundred, and the shire. The Dean, who was at the head of his deanery, presided over ten clergymen; the Archdeacon was the chief of a hundred clergymen; and at the head of them all was the Archbishop, whose diocese covered the whole of an earl's shire.

The clergy, indeed, exercised a very great influence on the judicial development of the times. The bishops became the hereditary successors of the Roman magistrates in Britain, and their authority afforded a 'model of legal power and regular jurisdiction' to our Saxon forefathers. The manner in which ecclesiastical and civil rights are interwoven in our early history is a clear proof that Rome had a large share in the formation of our constitution. It is the aim or tendency of modern legislation, however, to eliminate everything of feudal and Roman origin from our national jurisprudence; but this ought to be done carefully and by degrees, not rashly or by violence.

3. **Shires.** — That territorial unit we call a Shire is larger than the Hundred. *Scir* or shire signifies a portion cut off from a larger whole; but it is a word that at different times had various applications. During the Saxon period, shire sometimes signified a district, sometimes a parish, and sometimes a kingdom. Perhaps, also, the term was used merely in an official sense as denoting the extent of a magistrate's jurisdiction, such as that of the Sheriff or Shire-reeve; but in whatever sense the Saxons employed it, the districts so called by them were not of equal extent and importance.

Division of Land not Symmetrical.—Some writers have supposed that the division and subdivision of England had an artificial origin, and that the whole country was parcelled out in symmetrical parts; 'that each kingdom was divided into four provinces, each province into three shires, each shire into three

tithings or ridings, each riding into four hundreds, each hundred into twelve tithings, and each tithing into twelve free householders.' In the northern part of England, under Scandinavian and Danish rule, something like this symmetrical division can be clearly traced, but no vestige of it remains in the south. It is very probable that the Saxon shire in ancient times corresponded with the modern barony or parish, and that the modern or historical shires owe their existence to various causes into which we need not inquire. The southern shires of England were kingdoms of the Heptarchic period; but the modern division of the north of England was not completed until the thirteenth century. It is also possible that the geographical division of the country was modelled on the ecclesiastical division, which had previously existed.

CHAPTER IV.

ANGLO-SAXONS (CONTINUED), 450–1066.—THEIR SOCIAL AND POLITICAL SYSTEM.

In this chapter we propose to discuss our second question, namely,

II. The Anglo-Saxon Social and Political System.

The existence of different classes among our forefathers necessarily implied the unequal distribution of land, and of larger and smaller estates. The primitive tenure of land by a community in common was superseded by absolute ownership.

Two Kinds of Land.—Now the right of ownership might either be an inherited right from father to son, or it might be conferred on any man by royal charter. Such lands as were held by charter were known as Alods or bocklands, because they were really 'booked' for the proprietor; but the lands that were still unappropriated were common or folkland. It was out of these folklands that private estates were created by the king, and, with the consent of the Witan or National Council, granted to his favourites. The folkland was therefore the national treasury, out of which benefices were conferred on individuals in return for military or court services. Generally speaking, whenever the king created an earl, he granted him an allotment of land called shire which he was to govern; and in proportion as these large private estates increased in number, the power of the king increased also, until the land of the people became virtually the land of the sovereign. After the Norman Conquest, the Saxon words earl and shire were superseded by count and county.

English Constitutional History begins.—It is generally

acknowledged that English Constitutional History begins with the reign of Ethelbert, partly because he was the first Christian king in this island, but more especially because he was the first who reduced the traditional laws of his ancestors to writing. The 'Doomes,' or judgments of Ethelbert, are therefore the earliest written codes of English jurisprudence; and from his time to the Norman conquest his example was followed by other kings, who committed to writing the statute laws of the nation over which they ruled. *Alfred.*—Alfred the Great, who, like Marcus Aurelius, has been made an ideal character, is believed by some to have invented several of our national institutions, such as trial by jury; but, in point of fact, Alfred claims no higher merit than that of a compiler, who selected what was good and amended what was bad in the jurisprudence of his ancestors. Trial by jury, but not quite in our sense, the division of England into shires and hundreds, the frankpledge, and the *common law* of the realm, were all in existence long before Alfred was born. What peculiar share he had in laying the foundation of the British Constitution is too curious a question to deserve much notice; it is enough for our purpose to obtain a general knowledge of the Anglo-Saxon system after it had become fully developed. This took place subsequent to the subordination of the Heptarchic kingdoms to Wessex, when a single Witenagemot was created for the whole nation. Let us therefore glance at the Saxon jurisprudence in the following manner:—

1. The Popular Courts; 2. The Witenagemot; 3. The King; 4. The Wergeld.

1. **The Popular Courts.**—They were three in number: (*a*) the town or mark mot; (*b*) the hundred mot; (*c*) the shire mot.

(*a*) **The Mark Mot.**—One of the most important facts in Saxon history is the mark system, because the court of marksmen, in the infancy of Teutonic legislation, settled all matters in dispute between man and man. It was, as we have already seen, an assembly of the whole community, presided over by an individual who had either an elective or hereditary right to his exalted station. The Mearc Mot was the most primitive legis-

lative assembly of our Saxon forefathers. It was the great family union of all the householders, who differed from each other only in degrees of wealth. That this system was transplanted into England is beyond doubt, but change of circumstances and the march of events made some modifications in its working inevitable. What, then, was the change of circumstances?

Foreign Elements.—Even before the Saxons came over to England, they lost a good deal of the simplicity of pastoral life. They had become warriors, and the military spirit changed at once their character and their polity. Moreover, they came in contact with Roman civilisation in Britain, and this also would modify their customs and laws. It has been said, indeed, that the only institution the Saxons inherited from Rome was the Catholic Church; but at the same time it may be maintained that the ecclesiastical councils and synods, formed after Roman models, afforded the civil authorities a pattern of elective and representative assemblies. The government of a people, however, cannot be created after a given pattern; it must be an organic growth, not an artificial form; but, like all organic growths, it may be wonderfully modified by surrounding circumstances. The most pleasing features of the Saxon system survived in the later Anglo-Saxon system; but the prominent part taken by the Catholic clergy in the ancient courts must have greatly influenced the character of their deliberations, and the general tone of their legal phraseology. Feudalism also, which was the natural offspring of military adventure and territorial rights, was growing up among the Anglo-Saxons as among other Continental nations. The oath of fidelity taken by the vassal kings to the Bretwalda, and the military obligation which that homage implied, are the two main elements of feudalism. When the whole kingdom became subject to one Bretwalda, the popular character of the courts died out, because the creation of one Witenagemot for the whole nation rendered it impossible for people at a distance to attend its sittings, although they had a perfect right to do so. The practice of abstention, however, soon became a legal disqualification, and the people

were henceforth represented at the Witan by the aristocracy alone.

Courts of the People.—But the courts of the people never ceased to exist. Many of these mots had only a local interest, something like our own vestry meetings and other municipal councils. In Anglo-Saxon times, every district, parish, and shire had a certain autonomy of its own; but any aggrieved individual could always appeal for redress from a lower to a higher tribunal until he landed in the Witenagemot, from whose judgment there was no appeal. In all these respects we of the nineteenth century are exactly on a level with our Saxon ancestors.[1]

(*b*) **The Hundred Mot.**—The court of the hundred was generally held once a month, under the presidency of the hundredman, or *centenarius*, but who was more frequently called the alderman. This functionary was assisted by the reeve, by the clergy, accompanied by the freeholders of land within the hundred, and by four representative men from each tithing or township. Mr. Stubbs considers it doubtful whether the alderman of the shire was at any time the recognised president of this court. He is inclined to believe that the presiding judge must have been an officer appointed by the crown, and representing the interests of the king. But these interests were represented by the reeve, or sheriff, under whose writ the court was called together. If, therefore, the alderman or, as he was called, the earl was not the recognised chairman of the hundred mot, then we know of no other than the sheriff who was likely to fill the place of presiding magistrate.

Jury.—As the regular attendance of the whole body of suitors at court was a matter of uncertainty, and as their qualifications were sometimes doubtful, a representative body of twelve men was instituted as a judicial committee of the court. We cannot say whether these twelve were a fixed body chosen for life, or

[1] I have placed the mark mot at the head of this section, not because it was known in England by that *name*, but merely in order to connect the Saxon with the Anglo-Saxon polity. The hall mot, or manorial court of the Normans, and the tithing mot have no special interest.

elected like a modern jury for the occasion; but the number was a characteristic feature of the Anglo-Saxon courts, and there can be no doubt that the share the people took in their proceedings led to trial by jury, and established the liberties of the nation on a firm basis.

Jurisdiction of the Hundred Mot.—The jurisdiction of the hundred mot was both civil and criminal. It took cognizance of everything that was done within the hundred,—of the transference of property, of all unsettled disputes, and of crimes committed; and no suit could be carried to a higher court until it was first heard in this. As the punishments imposed were almost always pecuniary, the profits of the court were very considerable, and were divided between the alderman and the king.

(*c*) **The Shire Mot.**—This was the county court, the organization of which was similar to that of the hundred. The shire was merely a multiple of the hundred, as the hundred was a multiple of the tithing. The chief man of the shire was the earl or alderman, who was at the same time a member of the Witan; but the king's representative was the sheriff, whose duty was to collect the fiscal revenues for his royal master. He was also the executor of the law in each shire.

Constitution of the Court.—The county court was *par excellence* the court of the people. It was to it they always looked for justice, and to it they always appealed when justice was denied them elsewhere. It was only held twice a year, in May and October, and under the presidency of the earl and the bishop, who had equal authority; but in their absence the sheriff took the lead. Every landed proprietor or his steward, the reeve and four men from each township, were obliged to be present at its deliberations. There were also royal commissioners in attendance, whose duty was to make public such laws as were made by the Witan, and to ask for the consent of the people before these laws came into force. When they consented, as they always did, then the oath of allegiance was administered to all freemen, and the new laws were considered to be henceforth binding on all the nation.

Its Proceedings.—After these forms and ceremonies were gone through, the regular proceedings of the court began, and generally in the following order. First of all, the dues and immunities of the clergy were considered; then breaches of the peace and all manner of crimes were inquired into; next followed civil actions; and last of all, fines and levies due to the crown were taken up and disposed of. From the final decisions of this court there was no appeal except to the king and his Witan, which was rather an expensive process.

The People's Court.—There are several reasons why this court should be known as the folk mot or court of the people. During the Heptarchic period the shire was a kingdom, and its court was therefore the Witenagemot of the whole nation. Hence each shire retained something like a national character of its own after England became united under one sovereign, and the county court continued to be emphatically the assembly of the people—their house of lords and commons in one. There are, indeed, many circumstances connected with the political history of the shire and of the office of the sheriff which are as interesting as anything relating to the English constitution; but it is beyond the scope of our plan to examine into minute details.

2. **The Witenagemot.**—The Witenagemot, as its name implies, was the assembly of the wise, the supreme council of the nation, whether the nation were merely one of the Heptarchic kingdoms, or the whole of England united under one king. Both in civil and criminal causes the authority of the Witan was supreme and absolute, and no law was considered valid without its consent. Its members consisted of the prelates as princes of the church, of the nobler thanes as princes of the land, and of the king as head of the whole nation. Men of inferior ranks were permitted to be present at its sittings, but not to take any part in its deliberations. It is therefore clear that the Witan could not be in any sense a representative assembly; for if all the nobles and freeholders of land had a theoretical right to be present at its meetings, the distance of many of them from the scene would render their regular attendance practically impossible in those

days of difficult locomotion. The liberties of the larger body of thanes, as well as the rights of the humblest subjects of the crown, were sufficiently guaranteed by the existence of county courts, in which all civil and criminal cases could be heard and settled. During the early period of Anglo-Saxon history, when the country was divided into petty kingdoms, the county courts were in reality the parliaments in which all the people were represented; but we now speak of a time when there was but one Witan and one kingdom of England.

Its Authority.—The legislative authority of the Witan was supreme in all matters, ecclesiastical and civil. The revenues of the church, the appointment of bishops to vacant sees, and the feasts and festivals of the people, were as much in the control of the Witan, as it was to confirm all grants of land, and to turn the land of the people into private estates. It alone could levy taxes for the public service; it alone could proclaim peace or war, and make new treaties. It had even the right to consider and deliberate upon every public act authorized by the king; nay more, it claimed the authority to depose an unworthy sovereign, and to choose from the royal family any member whom they deemed the most eligible and most worthy successor. At his coronation the king was always spoken of as having been *elected* by the nation; but in later times this highest prerogative of Parliament became virtually an abstract theory; nevertheless, the right of the nation to depose their rulers has never yet been abrogated.

The Anglo-Saxon Witenagemot, composed as it was of bishops, earls, and freemen, with the king at the head of all, was a combination of a House of Lords and a House of Commons in one; it was, in short, the British Constitution in embryo. After the Norman Conquest, however, this great assembly was in substance abolished, and that which survived it was only a small court of nobles, to which historians refer the origin of our modern House of Lords.

3. **The King.**—The growth of royal power in England during the Saxon period was very rapid, as it generally is in all warlike

times. From being the military leader of a petty tribe, the Saxon king rose first to the rank and dignity of a Bretwalda, and finally, to the almost irresponsible power and authority of lord of all England.

Divine Right.—To the mind of the Saxon the kingly office was much more sacred than to ours, for the sovereign in those days was not only head of the nation and father of his people, he was likewise a descendant of the gods, so that his office was at once national and divine. He was judge and high priest in the land; and although he was elective, yet no one could be elected to his office unless he was a member of the 'divine' family. This is a very primitive idea of royalty, and yet the 'divine right' of kings is not a creed altogether obsolete in modern Europe. Christianity has greatly modified the absurd doctrine, yet it has by no means demolished it.

Growth of Royal Power.—The Saxon kings, as we have said, were at one time the heads of small tribes, and their judicial functions corresponded exactly with those of the ealdorman, or earl. They were magistrates and rulers of small districts, and their authority pervaded all the subordinate tribunals of the people whom they governed. In proportion as a king's territory extended, so also did his jurisdiction, and his authority increased in the same ratio as his vassal thanes multiplied. But his authority was at first merely personal, not territorial, for the royal functions were merely judicial and military until the development of feudalism in the ninth century. Indeed the king, like his thanes, cultivated his own estate, and lived on the fruits of his industry. He received no taxes except voluntary gifts, and his share of the fines imposed upon evil-doers. But as the royal domains increased, partly by the confiscation of lands forfeited by offenders, and partly by the subjugation of neighbouring territories, then the modern idea of the Germanic kingdom developed itself, and the king was no longer king of the *nation*, but lord paramount of England, who in his own person represented the whole State—the nobles, the freemen, and the public law. He became a Bretwalda, a king of kings, chief ruler of

Britain, and, in short, a successor of the Roman emperors.[1] He no longer sat in the Witan among his former peers, and among earls as noble as himself; he became sovereign lord of many kings, who stood in the relation of vassals to him, and who received authority to rule over their petty kingdoms directly from himself. He assumed extravagant titles, and decorated himself with feathers plucked from the imperial eagle; he even arrogated to himself the character of God's vicegerent on earth, and decreed that obedience to him was no less a religious duty than a political obligation.

In proportion, therefore, to the extension of the king's dominion, his personal dignity and political influence were felt and acknowledged. He created for himself a new order of nobility,—the nobility of office,—maintained a standing army of favourites like our 'household troops,' and adjudged himself the fountain of all justice and honour. Everything became subject to him, everything belonged to him; the land of the people was his land, the army was his, the officers of justice were his, and even the peace was the king's peace, not the nation's.

Decline of Royal Power.—This centralization of power in the person of the king began at an early period in Anglo-Saxon history, but it went on more rapidly after the reign of Alfred. It contained in itself, however, an element of instability and weakness which, from the reign of Edgar, in whose person autocratic power reached its height, to the reign of Edward the Confessor, was silently sapping the very foundations of royal authority, so that what the sovereign gained in extension of dominion he lost in allegiance to his throne. Just as the theoretical dignity of his person increased, the practical authority of his government decreased; and the great earldoms he once created for the glory of his majesty soon became independent kingdoms rivalling his own.

Great Earldoms.—In the reign of Canute, England was divided into four great earldoms,—West Saxon, East Anglia,

[1] It is very amusing to read the high-sounding titles some of the Bretwaldas assumed.

Mercia, and Northumbria,—exactly similar to the great duchies of France, as well in the political autonomy they respectively claimed as in the sanguinary civil wars which followed. In the reign of Edward, therefore, the great earls Godwin, Siward, Leofric, and others were no longer vassal nobles, but rivals of the king; and except for the Norman Conquest, it is possible that Saxon civilisation in England would have run the same course as it did on the Continent.

Royal Prerogatives.—The prerogatives of the crown were very great in those days, and the more arbitrary because they were not clearly defined. An oath of allegiance to the king was taken by every male above twelve years of age, after which he was bound to preserve the king's peace or to fight the king's battles, as the case might be. The king could therefore levy troops, appoint earls and sheriffs to shires, commend suits to the notice of courts of justice by writ, impose taxes, pardon criminals, and claïm the services of horses and a body-guard on his annual circuits.[1] He had the power to summon the Witan, and even to nominate its members; and although his revenues were chiefly derived from fines, tolls, and confiscations, he could increase his treasury by direct taxation—a mode of levying money which originated in the Danegeld. He had also a monopoly of the forests and of the game; but the ultimate tendency of all this power was to undermine the very foundations on which it stood.

4. **Wergeld.**—Saxon punishment consisted in imposing fines, the amount of which varied in proportion to the heinousness of the crime. Even human life was worth so much money, and no more; and the value of life depended on the rank a man held in society, or on the number of hides of land he possessed. Property in land was the measure of his respectability, as well as the index of the value of his life in money, if it was cut off by an enemy. In the same manner the credibility of one's oath was directly in the ratio of his property. The oath of an earl would outweigh that of all the thralls in England.

[1] Purveyance.

The Wergeld, then, was the money index of the social scale, from the common thrall up to the king. Neither the king's life nor that of the earl was rated higher than a thousand shillings, while the life of the churl was worth no more than two hundred. Such a law as this appears at first sight to be at once heartless and barbarous, but there is a principle of justice and even of mercy running through it. Say, for instance, that a man is murdered by another; the love of revenge would prompt the friends of the dead to lynch the murderer without mercy; but the State interposes, and, instead of gratifying the feeling of private revenge, it inflicts a fine that will at once punish the guilty and compensate the living for the loss of the dead.

We have a good illustration of the Wergeld in the modern practice of making railway companies pay the value of life lost on their lines. A duke's life, or even a bishop's life, if lost in a railway collision, would be estimated at many thousand times the value of a commoner destroyed under similar circumstances; but our jurisprudence is more enlightened than the Saxon, for we distinguish between the criminal and accidental destruction of a human life. In the former case, our punishment is always the same; but in the latter, the penalty may vary according to the degree of negligence or responsibility.

Frankpledge.—Although I have already explained the general character of the frankpledge under *tithing*, the history of its development may be briefly summarized here on the authority of Hallam. Frankpledge, as we have seen, was the mutual responsibility of all the members of the tithing for each other's conduct, and the stages of its development are as follows:—

1. The guilty one was bound to find bail for standing trial. 2. His relations were called upon to become sureties for payment of his fines, or be imprisoned. 3. A suspected person was to give security for his future behaviour. 4. In the reign of Edgar we have the first general law which places every man in the tithing in the position of the guilty until the criminal is brought

to justice. 5. Finally, in the reign of Canute every man was bound, for the more effectual administration of this law, to belong to a tithing or to a hundred. This was meant to prevent vagrancy, and to give a greater facility for the detection of crime.

CHAPTER V.

THE NORMANS, 1066–1154.

Saxon and Norman compared.—It is popularly understood that the Anglo-Saxons were absolutely and hopelessly crushed by the Norman Conquest. This was by no means the case, for the Saxon nobles, at all events, were in a position to defend their rights; and the free institutions of their ancestors, instead of being destroyed by the Normans, were on the contrary rendered more active and useful. In point of fact, there was but little difference between Saxon and Norman civilisation in the eleventh century. The two races were descended from the same Germanic stock, their political institutions were derived from the same sources, and the hierarchy of Rome was their common faith. In the refinements of civilisation the Saxon excelled the Norman, for the literature of the Anglo-Saxons proves that they were at the very least as enlightened as any of the nations of Europe. Nor were they less skilled in the fine arts and the arts of industry, in all of which they excelled their conquerors. When the Normans arrived in England, therefore, they had not to deal with a barbarous race, but with a Christian people who had already created a literature and an art of their own, and who lived in the enjoyment of free institutions. It is not, then, likely that such a nation could be either crushed or effaced; and the survival of their language, and of all that was great and good in their political system, is a sufficient proof that they were the stronger race of the two. The Normans never had a literature of their own, and even their language was not their own, but a Romanic jargon picked up in Normandy during their sojourn in that province. In point of civilisation, and in the whole

domain of national jurisprudence, the Saxon was superior to the Norman.

In what the Norman excelled.—But it must be admitted that the Norman had a peculiar excellency of his own which the Saxon had not. His hot northern blood was warlike and full of energy, the electric fire of which roused the Saxon from his characteristic indolence and lethargy. But the Norman was not only a soldier by nature; he was a diplomatist, a courtier, and a man of the world, quite free from those insular prejudices which characterise the thorough-bred Saxon to this day. The conquerors, therefore, not only infused a great deal of their energy and aspiring spirit into the Saxon mind, but placed it in diplomatic relations with the civil and ecclesiastical powers of Europe. This may not be any great recommendation to those among us who believe exclusively in home politics, but it caused England to become a member of the family of nations, by delivering her from the isolation of self-brooding and internal distraction.

I. **Feudalism.**—As feudalism is generally supposed to have been a Norman institution, we shall here explain its nature and character. It is indeed probable that feudalism might have reached its final limit in England if the Norman Conquest had never taken place, but the Frankish aspect of it in the eleventh century was somewhat different from its Saxon features in this country. The oath of fidelity and the obligation of military service were as well known to the Saxon as to the Norman, and this is feudalism with regard to *persons;* but the question of land tenure, which was at the root of the Norman system, was not so fully developed in Saxon polity. The practice of commendation to a lord was a Teutonic custom; but the amalgamation of *all* rights which constitute power with territorial property must be traced through the Frankish empire to a Roman origin. Feudalism in this sense is the legitimate offspring of the Teutonic custom of commendation and of the Roman law of property. The most prominent features of the system transplanted from Normandy to England are two,—the personal, which is

known as *commendation*, and the territorial, which is known as *fief*. This latter term, *fief*, appears for the first time in a charter of Charles le Gros in 884, and from that year the history of feudalism is held to date. The entire system is founded on property in land, and not until we can apprehend the nature of territorial property can we clearly understand the character of feudalism as a political system. The system still survives to perplex us as the basis of the law of landed property, and even in our own time this law cannot be explained without reference to the feudal terms 'lord' and 'vassal.'

During the feudal period in England, from the eleventh to the fourteenth century, everything appears to have taken the feudal form. Not only were the landowners, even the very smallest of them, obliged to conform to this system, but the king himself, the church, and the municipalities were brought within the sphere of its discipline. It was not *lands* alone that were given *in fief*, but certain *rights* also, such as the right of fishing, shooting, and of clearing forests. The possessors of *fiefs* formed a general society of their own, in which, from the king downwards, 'all were bound together by obligations of service and defence,' and the right of jurisdiction naturally followed this obligation: 'the lord judges as well as defends his vassal; the vassal does suit as well as service to his lord.' It is therefore clear that the judicial, legislative, and military institutions of the Normans were framed on feudal principles, and ought to be studied in that light. With such a system there could be no real central authority in the country, no central government of the whole nation, for every branch of public administration was regulated in accordance with the principle of lordship and vassalage, of defence and service. It naturally followed from this fact that feudalism had two enemies, — the king, who felt the reins of government slip from his own hands into those of the earls; and the commons, who groaned under the oppressive yoke of the nobles. This characteristic weakness of feudalism as an administrative system gave rise to some of the bloodiest wars in the Middle Ages.

Policy of William.—But the policy of the Conqueror arrested this disruptive tendency of the feudal system. His great aim was to consolidate his government, and as far as possible to retain the old Saxon forms. The Norman barons were permitted to assume the hereditary jurisdiction already existing on the Saxon estates on which they entered, 'but the administrative functions of Saxon earls were transferred entirely to the king's sheriffs.' William clearly perceived that the tendency of the feudal system was disruptive, inasmuch as it favoured the creation and permanent existence of a number of petty sovereignties within his dominion. He therefore formed a strong central government, and received at Salisbury, in 1085, not only the homage of the great barons who held their estates directly from himself, but likewise the homage of the sub-feudatories who held their estates from the barons. By this means he struck a blow at the dependence of a vassal on his lord, and secured for himself the homage and fealty of every tenant in his kingdom. By this stroke of policy he arrested the progress of the disruption and dismemberment of his kingdom which necessarily existed in a society in which political rights depended altogether on territorial rights, and among whom public duties are over-ruled by private interests. The oath of allegiance exacted from all his tenant-subjects at Salisbury made William the universal lord and feudal proprietor of all England. Public authority, which in modern times is based upon the supremacy of law, was altogether unknown to feudalism; but this system was an important transition stage between the wild, irresponsible freedom of individualism, and the organized liberty of modern society under a constitutional government.

It may be observed that the Conqueror interfered but very little with the jurisprudence of the Anglo-Saxon kings; he neither added to nor took away anything from the statutes of his predecessors. In the *Magnum Concilium*, which was but the shadow of the Witenagemot, no legislative proceedings of any importance took place until the reign of the first Plantagenet;

the re-enactment and confirmation of Saxon laws was the sole legislative work of the Norman period.

Changes effected by the Conquest.—The substitution of *feudal* for *allodial* tenure was the principal change effected by the Conquest. In Saxon times all the nation was bound to military service, and to fidelity to the king as a religious duty. The grant of land by the sovereign did not imply fealty and homage, or any new obligation; but the personal freedom and political right of the Saxon were made by the Norman altogether subservient to the feudal relations created by the possession of land. Everything, as we have seen, belonged to the lord of the soil,—the land, the town, the law, the peace. There existed, no doubt, before the Conquest a relationship of protection and dependence, but there also existed the shire mot or county court, at which all the inhabitants of the shire could assemble to deliberate with equal right on affairs of public interest. But this liberty was restrained, if not annulled, by the very nature of feudal relations.

Whig and Tory Creed.—The old Tory party in England affected to believe that all that is great and noble in our constitution is of Norman origin; whereas the more liberal party believed that we inherit all our free institutions from the Saxons, and nothing but feudalism from the Normans. The truth is, however, that our constitution is the natural growth of formative elements derived from Saxon and Norman alike. In the reign of Canute, when Anglo feudalism was at its zenith, there was a tendency to the disintegration of the kingdom; but the Norman Conquest counteracted this tendency by uniting Saxon and Norman together under one central government. The strong arm of William kept all England in subjection to himself alone, by crippling the power of the great barons, each of whom affected to reign as a petty sovereign within his own dominion, living within his own fortified castle, and lording it over the villeins who lived in the townships.

II. Norman Judicature and Administration.

1. **The Norman King.**—The Norman king, and we may take William the Conqueror as a prototype, was theoretically the lord and feudal proprietor of all England. Homage was done and the oath of fealty given to him by all his subjects, whether they were tenants in chief or the vassal tenants of knights and barons. The smallest landowner was of course the tenant of a larger one, and so on in ever widening circles of increasing splendour up to the crown, which owned all the lands, and to which all estates reverted on the failure of legitimate heirs. Every one therefore held his land immediately or mediately of the king, and was bound by this feudal relation to do homage to him, to do suit in his court, and to follow him in war.

The king thus combined in himself every idea of national sovereignty. The land was his, and the tenants of the land were his, by the feudal ties of homage and fealty. He could likewise tax the people, and claim their military services without consulting their feudal lords.

Concilium Ordinarium.—It was from him, conjointly with the court of barons, that all lawful authority and privileges emanated, and to him all final appeals were made. The members of his court were his own nominees and his own immediate vassals, and all of them were Norman favourites. His power was absolute, for there was no constitutional restraint put upon his actions. In the inferior courts of the people the presidents and chief officers were Normans, and appointed by himself. According to Anglo-Saxon law, fines were on a fixed scale; but the Norman king imposed fines at pleasure, and every offence placed the offender and all his substance at the mercy of the crown.

Notwithstanding his autocratic sovereignty, William introduced but few innovations. He retained the Saxon administrative system in all but the name. Saxon titles and designations were changed to corresponding Norman terms; and such words as earl, thane, ceorl, theowe, became count, knight, squire, tenant, villein. The national council was composed of the

same class of men as in the later Saxon period, and the county court and the hundred court retained much of their ancient character as fountains of administrative justice.

Amalgamation of Saxon and Norman Systems.—The manner in which the Saxon and Norman systems became amalgamated is thus stated by Mr. Stubbs: 'The English system was strong in the cohesion of its lower organization, the associations of individuals in the township, in the hundred, and in the shire; the Norman system was strong in its higher ranges, in the close relation to the crown of the tenants-in-chief, whom the king had enriched. On the other hand, the English system was weak in the higher organization, and the Normans in England had hardly any subordinate organization at all. The strongest elements of both were brought together.' And again: 'The constitution of this system,' namely, the Norman administrative system, 'distinguishes it from that of former and later times. In the earlier history, constitutional life seems to show itself at first in the lower ranges of society, and to rise by slow degrees and unequal impulses to the higher; in the later history, the equilibrium of the governmental system is maintained by regulating the balance between popular liberty and administrative pressure. The foundation of the administrative period marks the period that intervenes; and this foundation was the work of the first four Normans.' Let us therefore glance at the higher ranges of the Norman system, as we have already seen the nature of the lower Saxon organization in the form of popular courts.

2. **The National Council of the Normans.**—This was the *Magnum Concilium*, or supreme court of the realm. It was known under several other names, but it is not quite clear whether they meant one and the same thing, or each had a separate function of its own. The former hypothesis is the more probable; and we may take it for granted that what we now call the Parliament was not clearly distinguished from the high courts of judicature until the reign of Henry I. The great council of the Normans corresponded with the Witenagemot, or, as it was sometimes called, the *Micel-gemot*, of the Saxons;

theoretically an assembly of the whole people, but practically a council of barons and chief landowners. This court met once a year at Westminster, Gloucester, and Winchester respectively, and on each occasion the king presided in person in all his regal dignity. It was not a legislative assembly, far less a representative one; it was quite a select party of nobles met for the sole purpose of matters of finance. There were no divided interests, no difference of opinion, and therefore no subjects of *debate* among such servants of the Crown. There was but one voice—one yea and amen to everything the monarch ruled. It was an imposing spectacle, no doubt, but no more.

Purveyance.—Indeed, one of the great grievances of the period was that this baronial court should meet at all; for the royal cortege moved from place to place at the expense of the people through whose towns or villages it happened to pass. Every magnate of this brilliant circle had his own train of attendants, all of whom were freely quartered on the tenants of the district where they halted for the night, so that their advance was regarded as that of an invading army, instead of being hailed as the approach of a law-making and law-abiding assembly. The insolence of the Norman nobles, and the brutal violence of their attendants, made the people with whom they lodged detest the very name of *Magnum Concilium.* Their exactions, known as *purveyance*, were enormous, and frequently impoverished their hapless entertainers. It is to the credit of Henry I. that, among other things, he redressed the grievance of *purveyance.*

Assembly of Salisbury, 1085.—On some occasions the Great Council was much more numerously attended than on others, and one of these is historical. The great gathering at Salisbury in 1085 might indeed be called the most representative assembly that ever met in this country, so far as numbers and degrees of social rank are concerned, but the deliberations of this immense body were altogether confined to the select nobles,—the barons, bishops, and knights. It was summoned by the shrewd and politic Conqueror in order to impress upon the whole nation, Norman and Saxon alike, that he was sovereign lord of them all,

and that to him, as their feudal chief, homage and fealty were due from every man in the realm.

Doomsday-Book.—As soon as this point was established by the oath of allegiance exacted of lord and peasant alike, he ordered a general survey of all England to be made, which resulted in that wonderful record of valuation and rating known to all time as Doomsday-Book. By the compilation of this book he still further tightened his hold upon the country, and made its resources available to the utmost by a permanent system of taxation. This political measure proves the administrative genius of William; but it proves also that he was the Conqueror of England. Permanent good sometimes results from temporary evil, and the Doomsday survey, although it was the means of extortion at the time, was the first step in a continuous process by which the nation arrived at last 'at the power of taxing itself, and thus controlling the whole framework of the constitution, and the whole policy of government.'

3. **Curia Regis, or Concilium Ordinarium.**—This, as its name implies, was the King's Court; but it received no definite form as a separate court until the reign of Henry I. The *Curia Regis* was in reality a permanent committee of the *Magnum Concilium*, or a judicial privy council, composed of the chief officers and personal advisers of the Crown. The president of this council was the Justiciary, who was an ecclesiastic, and, by virtue of his office, the highest subject in the kingdom. Its other chief members were the Chancellor, who was chief secretary and keeper of the royal seal; the Treasurer, who was keeper of the royal treasury; and the Chamberlain, who was a private financial officer. Besides these there were other notable individuals attached to the *Curia*, such as the Constable, Marshal, and Steward, each of whom was at once a servant of the king and an administrator of his law; but the primary function of this assembly of magnates was the collection and management of the royal revenues.

Exchequer and King's Courts.—In the reign of Henry I. the financial department of the *Curia* was transferred to a separate

court, henceforth known as the Court of Exchequer, and the original King's Court was exclusively devoted to the administration of justice and the despatch of public business. It thus became the supreme tribunal of justice, the court of final appeal in all matters of unsettled litigation; but in those days justice was *sold* to the highest bidder, and no man could get a hearing at the King's Court unless he first paid a heavy fine. The sale of judicial redress was notorious during the Norman period, but the practice was more flagrant in the reign of Rufus, when Randolph Lambard the Justiciary presided as the genius of the law.

The King's Court, which is now called the Court of King's Bench, had its beneficial effect in consolidating a uniform system of government for all England, and in strengthening the authority of the Crown by centralizing the administration of justice. It was the parent of all the high courts of judicature; the Court of Common Pleas in the reign of John was an offshoot from it, and so were others of a later date. The Court of Exchequer, which was its earliest articulate branch, was at first composed of the same great functionaries as its parent,—the Justiciary, Chancellor, and Treasurer,—who managed the royal revenues, and decided on all cases in which the king had or was supposed to have some personal interest. It may be added that the Justiciary was the viceroy of England in the event of the king's absence on the Continent, and the administrator of the law in the king's name.

4. **The Royal Revenues.**—There was no regular *system* of taxation in those days; indeed, our modern system had its origin in the decay of feudalism. There was no standing army then to be supported by the nation generally, for the lands were held as *fiefs* of the Crown on the condition of military service, and each tenant was therefore obliged to serve the State at his own expense. The rents of the Crown estates, which were always increasing by forfeitures and escheats, were quite sufficient to support the king and the court; but in addition to these the monarch had other sources of income.

Hidage, etc.—The Danegeld had never been really abolished, so that the king received six shillings on every *hide* of arable land in England. He also received duties on imported and exported goods, tolls on bridges and markets, and a certain sum due to him by every heir of his tenants-in-chief, on entering into possession of his estate. This tax, known as *relief*, as well as *aid*, *primer seisin*, *wardship*, *marriage*, etc., were incidental to feudal relations, and were exacted by every lord of the soil, from the king downwards.

Scutage[1] was a military tax due to the king by every holder of a knight's fee, if he should fail to join the army in time of war. It was not a new tax except in name, for when the Saxon warrior failed to join the host he was obliged to pay *fyrdivite*, which was a money commutation for his service. It may be said generally that the whole system was most pernicious, and at all times calculated to disturb the peace of the kingdom. **Tallage**,[2] which was a later tax, and first introduced with the creation of standing armies, was imposed in a very arbitrary manner on the inhabitants of towns. It was exacted for the first time by Charles VII. of France, when money payments were substituted in Europe generally for military service, and standing armies broke the power of the feudal aristocracy.

Summary.—The Norman kings always sat in the great council of the realm, and took a leading part in the judicial business of the kingdom. The inferior courts remained open to the people, but their proceedings were entirely controlled by the sheriffs, who were the representatives of the king. Although the Conqueror introduced very little innovation into Saxon polity, yet the whole machinery of his administration, from the *Curia* down to the court of the hundred, was adapted entirely to fiscal purposes, which was the beginning and end of Norman government. The lower courts of the people began to lose their popularity, for they were now little better than instruments in the hands of the king for the extortion of fines and the imposition of taxes. Their ancient judicial character under the Saxon earls and bishops

[1] See p. 66. [2] Ibid.

deserted them, for all real power was centralized in the courts which surrounded the throne. This centralization of administrative authority was certainly necessary for national *unity*, which was completed in the reign of the first Plantagenet, when itinerant justices were created and a regular uniformity in the administration of the law established.[1] Perhaps the only free institution was the old county court, but even there justice was too often sold.

Separation of Civil and Ecclesiastical Courts.—It was under these circumstances that the bishops withdrew from the lower courts, for they could not help interfering on behalf of the people's rights, and this the Conqueror would not permit. The separation that took place between the secular and spiritual, or, as we say, between the civil and ecclesiastical tribunals, at this period, gave rise to those bitter rivalries between Church and State which culminated in the assassination of A Becket.

[1] See p. 64.

CHAPTER VI.

THE NORMAN SYSTEM (CONTINUED), 1066-1154.

Tendency of Political Power.—From what has been said in the last chapter concerning the throne and the circles surrounding it, it is clear that under the Normans the tendency of all power was 'to concentrate in the higher' courts, and, *à fortiori*, to withdraw itself from the lower organization of society. There is no longer any conflict between king and people, for power has departed from the latter, and the only danger to the Crown surrounds the throne itself. It is, in short, threatened with political *apoplexy*. Strife can only exist where there are conflicting forces, and now we find the disturbing elements playing round the throne itself—king, priest, and baron quarrelling with each other. The machinery which the Conqueror constructed for the maintenance of order, for the preservation of peace, and for filling his coffers with English money, fell into the hands of Rufus his son, and of Randolph Lambard the Justiciary,—men who were ignorant of the constitution as they found it, and trifled with its power. The result of their temerity was their ultimate ruin. There is little in the reign of Rufus that demands much attention; and although Henry I. made some reforms in redressing grievances, and Stephen made promises to improve on Henry's charter, there was no great reform until the reign of Henry II. Let us glance, however, at the reigns of Henry I. and of Stephen.

When Beauclerc ascended the throne he granted a charter according to ancient custom, in which he promised to redress the grievances that sprang up in the reign of Rufus, and at the same time to govern England in accordance with the laws of

King Edward the Confessor, with such improvements as the Conqueror had introduced. What, then, were these improvements?

The Conqueror's Claims.—In the first place, William quietly and by degrees transferred the estates of Saxon earls to Norman counts, and also filled the highest offices in Church and State with men of Norman descent. At the same time he caused himself to be recognised not only as king by legitimate right, but as hereditary lord of the land and feudal lord of the people. He then caused a general survey to be made, and recorded in Doomsday-Book, in order that he might the more systematically enforce his claim as universal landlord of England.

By these and other means he checked the growth of feudalism as a political system, because he knew that such a system would end in the disintegration of his kingdom; but he encouraged feudalism as the best system of land tenure that could establish his own claim as chief landlord. His government was therefore harsh, oppressive, and extortionate, and yet he ruled the country according to the letter of old English laws, and by means of institutions which had existed before his time, and for which he affected great reverence. He destroyed nothing that existed before his reign; he merely continued and developed the political life of the Anglo-Saxons.

Rufus.—In the reign of Rufus, the harsh features of feudalism declared themselves with all their characteristic severity. The ruling passion of all the Norman kings, and indeed of the majority of English kings since the Conquest, was avarice, a passion which when united with power is more relentlessly blind to human suffering than all others; but the corruptions and extortions practised by Rufus, and the consequent misery of his reign, surpass everything we read of in our history. The lamentations of the Saxon chroniclers of the period are the saddest on record. The whole nation groaned under the tyrant's yoke, and cried aloud for the redress of wrongs, and for the restoration of the ancient laws of Edward the Confessor; but no reforms in this direction were made till the following reign.

Henry's Charter.—When Henry I. came to the throne he yielded to the popular demand for a charter of liberties, in which he promised to redress all the civil and ecclesiastical grievances which sprang up in the two former reigns. He promised to the Church that he would receive no profits from vacant benefices, as had been the practice of his brother. He promised the barons who were his immediate vassals that he would remit several of those illegal exactions which were incident to feudal tenure. And he promised to the nation at large that he would rule over them according to the laws of King Edward; and as an earnest of this promise, he ordered the Anglo-Saxon popular courts to be held as they were before the Conquest, and all pleas concerning property to be heard in them, unless the litigants were tenants-in-chief of the Crown. In thus strengthening the lower courts he made a common cause with the people against the higher aristocracy; while, on the other hand, he reorganized the *Curia Regis*, and centralized the royal authority.

He checked the growth of feudalism in another direction also. The right claimed by the great barons to coin their own money was the cause of much depreciation of the precious metals, and consequently of unspeakable distress among the lower classes. Henry therefore promised to reform the law of coinage, and at the same time to abolish the abuses which grew up with the claim of *purveyance*. But these good promises were not faithfully kept, for the Continental policy of the king involved him in such enormous expenses that, in order to meet them, he was fain to be as extortionate as his predecessors. His *charter*, however, is a highly interesting document,—first, because it indirectly admits that illegal abuses had crept into the government of the nation; secondly, because it limits the prerogative of the Crown, and recognises the rights of the people; and finally, because it is the foundation of *Magna Charta*, and therefore of real constitutional government in England.

Stephen's Charter.—Since the reign of Henry I. it became the general practice of monarchs at their coronation to confirm

the charters of their predecessors on the throne, and in the reign of Stephen the charter of Henry was confirmed, with larger concessions to the Church and greater liberties to the people; but the great civil war of his reign, and his own weakness as an administrator, rendered his well-meaning promises practically useless. Nevertheless, the charters of Henry I. and Stephen form the foundation of all subsequent legislation for the people of England, and they are therefore of great importance to the student of history.

What these Charters prove.—They prove, first of all, that the king is really elected by the people, and that although he is nominally the head of the nation he is at the same time their servant, who is entrusted with their sovereign rights. These charters also prove that the foundation of our constitutional government must not be sought in Norman but in Saxon laws, for it was the restoration of these laws that the people always demanded, and their concession in the form of a charter was one of the conditions on which the king was permitted to reign. These two important facts prove finally that the English constitution, which upon the whole is the freest in the world, has its origin, not in the duchy of Normandy, but in the primitive Mark system of the Saxon race. The energetic character and military spirit of the Norman roused the Saxon, no doubt, from what Carlyle calls his 'pot-bellied equanimity,' and so inspired him with a love for enterprise; but the love of freedom was inherent in his nature before, and the most powerful of the Norman kings could not crush it out of him.

The broad generalizations of philosophy, however, are not the safest guides; and while some writers maintain that we owe our national existence to the spirited Normans, and nothing whatever to the 'pot-bellied Saxons,' we must no more accept it as an axiom than we do the other extreme, that the Norman polity was merely artificial, and affected not at all the Saxon system. It is safer to believe that the two systems were united in their strongest parts, and that the local machinery of Saxon judicature combined itself with the strong central authority of Norman

administration. The combination of these two elements, the legislative genius of the Saxon and the administrative genius of the Norman, has naturally tended to eliminate from the weaker parts of both systems everything that was either detrimental to freedom or fatal to national unity, and has therefore resulted in a form of government in which the liberty of the subject and the security of property are found compatible with the supreme authority of the law and the sovereignty of the king. The two systems met like two rivers, at first in tumult; but they soon coalesced in calm, and flowed on together towards one great end, the enfranchisement of the English people and the consolidation of the British kingdom.

There never was a time in our history in which the chief part of what existed was not old. There has always been an unwritten law before statute law, just as there has been language before grammar. The oldest of our statute laws, still extant in writing, is *Magna Charta* as confirmed by Act of Parliament in the reign of Henry III.; but we know that the three primary rights of man—namely, personal liberty, personal security, and private property—were in existence by common consent ages before *Magna Charta* was drawn up.

CHAPTER VII.

THE PLANTAGENETS.—HENRY II., RICHARD I., JOHN, 1154–1215.

Rise of European Monarchies.—We are now approaching a time when not only the languages, but the great monarchies of Europe were taking their modern shape and form. Feudalism, with all its excessive burdens and personal obligations, was checked by the growth of monarchy in Europe, by the influence of the Church, and more especially by the rise of towns and progress of commercial enterprise. The idea of national unity begins now to dawn upon people's minds, and they gradually awaken to a consciousness of the truth that the supreme authority represented by the monarch and claimed by him, was in reality their own authority, and that it is for the common interest of all that the supreme authority of the law should be respected. The real enemies of monarchy were not the people, but rather the feudal barons, who, but for the fidelity of the people to the Crown, would have rent the kingdom down into so many autonomous states. Bad as the Norman kings had been, their government was humane in comparison to the irresponsible despotism of the feudal chiefs, who levied black-mail off their vassals.

Saxon and Norman become one.—There are many reasons why it was that during the reign of the first three Plantagenets the English nation was becoming one. After all, the Norman and Saxon were blood relations, and in the course of three generations after the Conquest they forgot that they had ever been separated. The two races were not welded together mechanically by the necessity of living as close neighbours to each other; they became one in language as well as in blood, in

institutions and laws as well as in family ties. The strong administrative genius of the Norman permeated the local representative system of the Saxon, infusing it with fresh energy and giving to it a constitutional life. The history of a nation, as we have already observed, may be conveniently compared with the history of an individual life; in each case there are two elements we must take into account,—the internal force of the life itself, and the external character of the circumstances which surround it. We can understand the entire life of a man but very imperfectly, unless we are familiar with the social and political influences by which it was moulded, and in the midst of which it was nurtured; much less can we comprehend the constitutional life of a great nation without an intelligent appreciation, not only of the mental and moral idiosyncrasies of the races composing it, but also of the external circumstances which moulded and directed its policy. These two elements are the base and the acid of existence, which are difficult to distinguish in combination, but the product of which is different from either by itself. The Saxon polity, for instance, might be compared to the *base*, and the Norman polity to the *acid*, of the constitutional life of England. They had a natural affinity, and caused together a state of things superior to each separately. In the meantime, however, we only intend to connect the present with the past of our parliamentary history by an uninterrupted chain of events, every link of which depends upon its fellow, from the days of Ethelbert to the abdication of James II.

HENRY II., 1154–1189.

Henry II.—His Policy.—This monarch was at once one of the best soldiers and decidedly one of the greatest statesmen of his age. Endowed with indomitable energy and courage, as well as with a clear judicial intellect, he was one of the few sovereigns of England who left unmistakeable traces of their powerful individuality on our national history. When he ascended the throne he found everything in the utmost confusion, and the resources of the country exhausted by the late civil wars. He therefore adopted

the policy of reorganizing the whole machinery of government, and in such a manner as to check at once the feudal power of the barons and the political influence of the Church. The Church, indeed, had at no time obtained the political ascendency in England that she did on the Continent, and this we owe in a great measure to the attitude assumed by Henry towards her. He was the first who had a Justiciary who was not an ecclesiastic; and in all his dealings with Rome, the conduct of Henry II. resembles very much the conduct of Henry VIII. The country, however, was not yet ripe for the sweeping reforms of the latter monarch.

Scheme of Reform.—Before Henry Plantagenet came to the throne, and immediately after the peace of Wallingford, he had drawn up a scheme of reform which is preserved for us in the works of contemporary writers. In this scheme he declares it to be his chief aim to consolidate his dominions by resuming all the prerogatives which the barons had recently usurped, and by this means to develop a monarchy at once *antifeudal* and *national*. He ordained, therefore, that all estates, either granted to the barons by the good-natured Stephen, or seized by them during his distracted reign, should be restored to their legitimate owners, and that the unlicensed or adulterine castles should be thrown down. A general restoration of property was also promised to the smaller tenants, and a revival of agriculture under the king's auspices. He guaranteed peace to the clergy and a certain remission of taxation; and in order to further his policy, he revived the jurisdiction of the sheriffs, so as to counteract the abuses of the *manorial courts* of the barons. After the peace of Wallingford, Henry urged upon Stephen the adoption of measures for carrying out this scheme; but that weak monarch, though not a bad man, died before he could make up his mind to do anything, and bequeathed to Henry the work of seventeen years of misrule.

I. **Henry's Charter.**—In his coronation oath, which is amplified and recorded in his charter, Henry not only re-states his purpose to carry out his original scheme of reform, he also con-

firms the charter of his grandfather Henry I., promising to grant all the liberties which that monarch promised to grant, and to abolish all the abuses he promised to abolish. His command to abolish the adulterine castles, and to restore the estates seized by the barons during the reign of Stephen, brought him into collision with the great earls; but, with characteristic energy and decision of character, he quickly reduced the strongholds of the rebellious nobles one after another, until he brought them all in subjection.

II. **His Counsellors.**—In his choice of counsellors he was extremely fortunate, as we should expect from a man of his character; but in the case of one favourite, Thomas à Becket, he was disappointed. Thomas was merely a humble ecclesiastic whom Henry had raised to the chancellorship of the realm, much as Henry VIII. raised Wolsey; and had he simply retained him in that political office his reign might have been more unsullied, although the Church might have lost a saint. But in an evil hour he promoted him to the See of Canterbury, an elevation which intoxicated the man with that spiritual pride which refuses to submit to any secular power on earth. Thomas the Archbishop was no longer the servant of the Crown, but the viceroy of Rome and the spiritual sovereign of England. He was more, as all spiritual potentates must be; he assumed the functions of a secular prince. The separation of the secular from the ecclesiastical courts in the reign of the Conqueror enabled Becket to defy civil authority, and to shield with impunity the clerical brethren who happened to fall into criminal acts. Being thus exempted from the civil jurisdiction of the magistrate, and amenable only to the ecclesiastical courts, the clergy had very frequently escaped the legal consequences of crimes which were a disgrace as much to the State as to the Church; and Henry, who was by no means a model of virtue himself, felt indignant that priests were almost free to commit atrocities for which laymen would suffer mutilation or death. It is but fair to observe, however, that Becket's first quarrel with the king was due to the manner in which the latter illegally taxed the country, and for this reason the primate has been called by his admirers the Hampden of his age.

Councils of Westminster and of Clarendon.—It was under these circumstances that Henry called together a council at Westminster, at which he urged upon the bishops to renounce a privilege which was only a disgrace to their order; but Becket would not yield to his demand. The king therefore determined to reform the criminal law altogether, by destroying the duality of criminal jurisdiction which existed in his kingdom. For this purpose he called together another great council at Clarendon, which was composed of all the barons and bishops of England, that they might deliberate on the whole subject of criminal prosecutions, and give to their deliberations the weight and authority of a national act. The assembly itself was the greatest since the time of the Conqueror, and the result of its proceedings was arranged and classified under sixteen propositions, known as the Constitutions of Clarendon. All these propositions concern matters that are, either directly or indirectly, wholly ecclesiastical, but which at the same time have a very important political bearing.

III. **Constitutions of Clarendon.**—They ordain that all clericals accused of crime must appear before the king's justices, and that if found guilty, the Church cannot protect them: that vacant benefices must be in the king's hands to receive the profits thereof: that when a vacancy was provided for, the person presented to it must be elected in the presence of the king, in order to pay homage and take the oath of allegiance: that no ecclesiastic must leave England for the Continent without the king's licence: and that all causes not purely ecclesiastical must be heard in the king's courts.

Henry's object in forbidding the clergy to leave the country without his licence was to prevent them from carrying complaints to Rome, which used to be a common practice; and when Becket attempted to fly to the Continent in a fit of contrition for having consented to the Constitutions of Clarendon, he was arrested in the king's name for having violated one of their articles.

In addition to the above propositions there are others which

relate to the criminal law; but these latter are more fully stated in the great Assize of Clarendon, to which we shall refer. 'It is enough here to remark,' observes Mr. Stubbs, 'that while some of the Constitutions only state in legal form the customs which had been adopted by the Conqueror and his sons, others of them seem to be developments or expansions of such customs in forms, and with applications, that belong to a much more advanced state of law. The baronial status of the bishop is unreservedly asserted, the existence of the *Curia Regis* as a tribunal of regular resort, the right of the bishops to sit with the other barons in the *Curia* until a question of blood arises, the use of juries of twelve men of the vicinity for criminal causes and for recognition of claims to law,—all these are stated in such a way as to show that the jurisprudence of which they form a part was known to the country at large.'

IV. **Assize of Clarendon, 1166.**—Assize means literally a sitting together, and originally the word was applied to the jury who sat together for the purpose of trying causes. The great Assize of Clarendon, however, was an assembly which met to *enact* laws, and to complete, as it were, a trilogy of administrative reform. By his *Charter* Henry crippled the power of the barons; by the *Constitutions of Clarendon* he checked the pretensions of the Church; and now, at the *Assize of Clarendon*, he reorganized and perfected the administration of justice by establishing a uniform system for all the provinces. This system is what we now understand as our Assizes.

1. **Circuits.**—The king clearly saw and felt the inconvenience of having only one central court like the *Curia Regis* for the whole kingdom, and the almost impossibility of having recourse to it for justice by those who lived at long distances from London. He therefore, at the Assize of Clarendon in 1166, and subsequently at Northampton in 1176, established itinerant justices, who should adjudicate on civil and criminal cases within each county, and thus bring law and justice within the reach of every man in England. This wise measure, while giving uniformity to the dispensation of law, established and

consolidated the authority of the sovereign throughout his kingdom, for it was in his name that law and justice were everywhere administered. This was also another check on the power of the barons, whose authority and franchises were not unduly respected by the justices of the circuit courts.

2. **Trial by Jury.**—It was at the Assize of Clarendon that trial by jury was established in something like its modern form. At the same time, *recognition* by jury was made to supersede the old trial by *ordeal* and wager of battle. We must not forget, however, that the jury system under one form or another is as old as Anglo-Saxon jurisprudence; but to Henry belongs the credit of having more thoroughly organized and developed the old system. The *compurgators* of the Saxons and the *recognitors* of the Normans were jurymen indeed, but not in our modern sense of the term, they being mere *witnesses* as to the character of the accused. The same applies in like manner to the twelve sworn men of Henry II.; they were rather guided in judgment by *their own* knowledge of the case than by any evidence which might be laid before them in court. Now a modern juryman is not supposed to have any *personal* knowledge whatever; on the contrary, any personal knowledge or interest would be deemed a disqualification. He is not a witness who appears as to the character of the accused, which was the function of the compurgator, but merely of fact or of evidence set before him. In this sense trial by jury is not older than the reign of Charles II. The jury system, indeed, was at no time created; like all other well-ordered things, it simply developed into what it is. The germs of it are as old as our history, but its modern form is a thing of yesterday.

V. **Assize of Arms, 1181.**—Those who are never satisfied without dates and precedents may refer to an event which took place in 1181, as the birth of a new institution—that of our national *militia.* In point of fact, however, the Assize of Arms only revived in a new form a very ancient Saxon custom. Instead of employing mercenary troops at home, as his Norman

predecessors had done, Henry proposed that *every freeman* in the kingdom should provide himself with arms suitable to his station in society. 'The owner of a knight's fee must possess a coat of mail, a helmet, a shield, and lance; the freeman possessing sixteen marks of rent or chattels must possess a similar armour to the knight; the owner of ten marks must have a hauberk, a headpiece of iron, and a lance.' Thus provided with armour suitable to their respective social ranks, every English freeman was a soldier, and bound by the oath of allegiance to defend his king and country against all foreign invaders or home enemies; but no man was obliged to fight in Continental wars.

In his foreign wars Henry always employed mercenary troops, and when it was necessary to provide himself with sufficient funds for defraying his military expenses, he imposed heavy taxes on all his subjects. The two most important taxes of his reign were *scutage* and *tallage.*

Scutage.—Every tenant of a knight's fee[1] was bound to attend the king in his wars for forty days in the year; but Henry commuted this military service for a money payment, which he fixed at two marks on every knight's fee. As the bishops had baronial rights, it followed that they also were bound to pay this assessment, known as *scutage.* The bishops protested; but many of the barons, who preferred rather to remain at home than engage in foreign warfare, began to look upon the tax with great favour, and to regard it rather as a privilege than a grievance. At this period money payments were substituted for personal service throughout Europe generally.

Tallage.—In 1173 Henry appointed Exchequer officers to levy a new tax called *tallage*, in order to defray his Irish expedition. This tax was first imposed by Charles VII. on the establishment of standing armies in France. In England it was always unpopular; nevertheless, the exactions of the first Plantagenet were altogether more just and equitable than those of his

[1] A knight's fee was generally valued at £20 per annum.

immediate predecessors or successors on the throne. His quarrel with the barons in the beginning of his reign, his wars on the Continent, and his great plan of uniting Great Britain and Ireland into one kingdom, involved him in heavy expenses, and compelled him to levy his taxes with the greater severity; but the reforms he effected, and the national unity he secured for England, entitle him to be called one of the greatest monarchs that ever ruled in this country.

Summary.—Henry was severe and merciless in the punishment of evil-doers; but as a legislator and administrator, he was the foremost of his time. His main object was the preservation of the public peace; and those measures he adopted for the maintenance of order, for the punishment of the guilty, and for the security of the rights and liberties of his subjects, were at once imperial, patriotic, and wise. While he codified the laws of Edward the Confessor and of Henry I., he at the same time improved upon their system by introducing new measures and new experiments founded on Roman jurisprudence. He divided England into circuits, instituted a national militia, founded a navy, organized a jury system, created a new nobility, developed the idea of a national and anti-feudal monarchy, and asserted the legal supremacy of the State over the Church. He destroyed in turn the feudal authority of the baron and the ecclesiastical pretensions of the priest. It will now be the turn of the people to limit the authority of the Crown; and Henry, by instituting the system of recognition by jury, developed a principle which soon ripened into a representative parliamentary system of government.

RICHARD I., 1189–1199.

Of the reign of this monarch very little need be said, for he can scarcely be called an English ruler. The whole civilised world was the stage on which Richard played his part; but as for this island, he only regarded it as an emporium of treasure and military stores. The romantic spirit of the age, the moral

fever of the Crusades, possessed him, and little he cared for the English constitution so long as there were infidels in Syria, and Jerusalem remained in their possession. His reign, therefore, if reign it be called, is constitutionally unimportant.

His First Measure.—On his accession to the throne his first measure was to dismiss all his father's ministers of state, and to remove his sheriffs from the county courts. This was a bad beginning; nevertheless, when he left England for the East he was prudent enough to entrust the government of this country to wise and faithful ministers, who made it their object to carry out the policy of Henry II. The most interesting constitutional event of his reign was the successful resistance of the people to the demands of Richard for an ever-increasing supply of money to enable him to take Jerusalem from the Turks. English money has frequently been thrown away on projects as foolish and romantic as this, and on objects that proved less useful in their ultimate results; but the people at this time were so overburdened with new taxes and the revival of old ones, that at last they determined to put a limit to the arbitrary power and exactions of the Crown.

Excessive Taxation.—So great was the national discontent under the weight of such taxes as scutage, tallage, hidage, and *caracuage*,—the latter of which was the unpopular Danegeld under a new name,—that if the barons had been as powerful in the reign of Richard as they had been in the reign of his father, the romantic monarch must inevitably have lost a kingdom he was altogether unfit to govern. But the weakness of the nobles, and the wise administration of Archbishop Hubert the Justiciary, did more to preserve the public peace, and at the same time to advance the progress of the nation in the art of government, than a hundred Richards could have done. Yet the king's life was not altogether useless, although the main object of his ambition was romantic and, as the event proved, unattainable.

Crusades.—The Crusades, for one thing, opened up a communication between Eastern and Western civilisations—between Eastern and Western commerce, literature, and science; and in

this view of the matter they were productive of inestimable benefit to the whole of Europe. The Crusades were the cause of the revival of learning in the Middle Ages, and no one can understand the spirit of the literature of that period without reference to the history of Eastern nations and Oriental races.

JOHN, 1199–1216.

Character. — This well-known monarch, like his brother Richard, ascended the throne with many promises of good government, but it is important to observe that each of them neglected to record his coronation oath in the customary form of a charter of liberties. Both men were extremely vain of the authority and dignity of the Crown, but blind to the rights of the people, and utterly incapable as administrators. Like James the First, of pious memory, John was simply a weak tyrant and a coward; but unlike the former, John was a blasphemer. As a tyrant, he was naturally timid and suspicious; and as a scoffer of religion, he was slavishly superstitious. His weakness caused the loss of Normandy, and with this loss, which was in reality a gain, the history of the English nation as a great people properly begins.

Quarrel with the Church.—John first quarrelled with the Church. When Hubert died in 1205, Pope Innocent desired to appoint Langton as his successor. To this the king objected, and in 1208 the Pope laid the kingdom under an interdict. The king turned this interdict to his own advantage by seizing upon all the estates of the Church, and thus supplying himself at once with ample supplies for the Welsh and Irish expeditions. Three years later, the Pope threatened to depose him, to absolve his subjects from the oath of allegiance, and to declare Philip of France, who was already lord of Normandy, king of England. We know how Henry Plantagenet would have met this threat; but it so worked on the weak mind of John, that in 1213 he unconditionally submitted to Rome, and accepted Langton as his archbishop. During the first phase of the quarrel the nation appears to have sympathised with the king; but his

dark and suspicious temperament, and his extortionate levies, alienated from him both the barons and the Church. He then courted the people, but they also followed the example of the nobles.

His Justiciar.—The king's Justiciary was Geoffrey, Earl of Essex, a man who loyally and for a long time endeavoured to shield his royal master by taking all the odium of misgovernment upon himself.

St. Albans, 1213.—At last, however, both Geoffrey and Langton summoned a representative assembly of the nation to meet at St. Albans, in order to deliberate upon matters of public interest, but chiefly regarding the recent plundering of the Church by the king, and at the same time to devise means by which a restitution of church property could be made. In this assembly the illegal exactions of the king, and the liberties of the subject as confirmed by the charter of Henry I., were brought forward and freely discussed. A general scheme of reform was then drawn up on the foundation of Henry's charter, and this was submitted to John for his approval. He at once refused his assent, and the barons retorted by refusing to pay *scutage*. This serious determination on the part of the barons brought the matter to a crisis.

St. Edmunds, 1214.—In the following year the barons met at St. Edmunds, and finding the whole nation on their side they determined to obtain a charter of liberties, if necessary, by force. The king at first temporized, and, with characteristic but impolitic cunning, endeavoured to set the Church against the barons by promising larger concessions and immunities to the clergy. This policy completely failed; and at Runnymede John was compelled, at the point of the sword, to sign the Great Charter.[1]

Magna Charta.—Magna Charta represents the whole nation, the commons as well as the nobles. In it the privileges of the Church are secured; the rights of the barons are guaranteed, and the feudal abuses of reliefs, aids, wardships,

[1] For the contents of this and other charters, see Stubbs' *Select Charters*.

and marriage are remedied; the liberties of the commons and even of the villeins are protected; and finally, it is provided that no tax can be imposed upon the people by the king except with the full consent of the National Council. The right of the nation to tax itself is a new constitutional privilege, and is therefore one of the most interesting articles in Magna Charta. This right is claimed in the following reign, but it is not fully established till the reign of Edward I.

Another characteristic feature of this great document is that it professes to introduce nothing new into the administration of law and justice. The groundwork of it is the charter of Henry I., which happened to fall into the hands of Langton before he summoned the Assembly of St. Albans, but its provisions are more ample, just, and equitable. One clause of Magna Charta breathes the spirit of the whole; it says: 'Every subject for injury done to him *in bonis, in terris, vel persona*, by any other person, be he ecclesiastical or temporal, without any exception, may take his remedy by the course of the law, and have justice and right for the injury done to him, freely without sale, fully without any denial, and speedily without delay.'

New Nobility.—It was part of the policy of Henry I. and Henry II. to create a new nobility that had no connection with Normandy, and no interest, therefore, in its fate. When John lost this duchy in the early part of his reign, no one appeared to be sorry, since its connection with England had only been fruitful of feudal wars and taxation. The English baronage had become thoroughly national in their sympathies, and they refused to join the king in his vain and fruitless attempts to recover the lost province. When he therefore imposed heavier fines on those who refused him military service, they made common cause with the English people against his despotic government, and succeeded at last in replacing the absolute power of the Crown by a representative form of government. The prerogatives of the king were limited, as Macaulay says, by three constitutional principles, which are as old as Anglo-Saxon history. He could neither legislate nor impose a tax without the consent

of Parliament; and he must conduct the executive administration according to the laws of the land.

Representation.—The constitution of Parliament is distinctly stated in the fourteenth article of the Great Charter, by which the principle of *representation* is very much extended, although it does not yet include all the commons. Nevertheless, the interests of the commons were sufficiently represented in the county courts, and also in the circuits, when the charter was always publicly read by the king's order. It is in these lower courts, and in the new system of assizes and jury trial, that we discover traces of the gradual development of the principle of representation. From the reign of John down to the Wars of the Roses, we find the people and the barons go hand in hand in the direction of constitutional freedom, and it was in a great measure owing to the ruin of so many noble houses during that period of 'king-making' that the Tudor sovereigns were enabled to wield their despotic sway.

CHAPTER VIII.

DEVELOPMENT OF A REPRESENTATIVE PARLIAMENT.—HENRY III. AND EDWARD I., 1216–1307.

Weak Kings.—The vices and weaknesses which render a monarch odious to his contemporaries are sometimes the means by which national freedom is established. To the avarice, cowardice, and faithlessness of John we owe this Great Charter; to his incapacity we owe the loss of Normandy, which saved England from becoming a French province; and to the pusillanimity of his son Henry III. we owe the origin of the House of Commons. No doubt we should have had all these blessings in the course of time, without such secondary causes; but it often happens in the course of history that a weak monarch precipitates reforms which a strong-minded sovereign might indefinitely postpone. It is well for us, perhaps, that the great majority of our royal heads were frivolous and commonplace.

The absolute power claimed by the Norman and Plantagenet kings united the English nation more firmly together, until national unity gave birth to national freedom. Had all our early kings been as stern, powerful, and resolute as the Conqueror and the first Plantagenet, constitutional liberty might have perished in the grasp of despotism; but fortunately each of these monarchs had a successor too contemptible to have his claims respected, and too weak to have them enforced.

Royal Promises.—Both John and his son Henry took the customary oath of good government on their accession, but it is clear from their subsequent conduct that they did not consider themselves bound by it. In those palmy days of the Church

a simple 'dispensation' from the Pope was deemed sufficiently efficacious to absolve a man from the most solemn obligation, and the consequence of this was that kings very frequently stood before the people in the character of perjured men. John, for example, had no sooner signed Magna Charta, than he applied to the Pope for absolution; and his Holiness, who was virtually the king's suzerain at the time, declared the charter void! He even suspended Langton, excommunicated all the bishops concerned in formulating the document, and laid the city of London under an interdict because the mayor was one of the executors of this national instrument! This policy on the part of Rome encouraged the foolish king to renew the civil war with the aid of mercenary troops, which alienated both the Church and the baronage from him for ever. It was indeed resolved by the nobles to dethrone him, and to bring in a new dynasty in the person of Louis, eldest son of the French monarch; but John died in 1216, and his son Henry, who was a boy nine years of age, was immediately crowned.

Henry III.—This boy king began his career with very gloomy prospects before him. Louis of France claimed the crown, and was already in England at the head of an army; the semi-barbarous Scotch were ravaging the northern borders; but the prudence and political ability of the regent, William Marshall, Earl of Pembroke, reconciled the nobles and saved the Plantagenet dynasty.

Charter confirmed.—The Great Charter was now confirmed in the young king's name at Bristol, and its liberties extended even to the Irish people; but the twelfth and fourteenth clauses, which deny the right of the king to levy taxes without the consent of Parliament, were omitted, and other clauses were inserted, which granted to the barons greater power over their vassals. When Henry became of age, in the year 1225, the Charter was again revised and confirmed by him, but on the condition that the country would grant him a subsidy consisting of the fifteenth part of every man's personal property! It became henceforth a favourite device, until the reign of Henry VI., for monarchs to

cheat the nation by repeated 'confirmations' of this magic Charter.

First Parliament.—Perhaps Henry was more detested by the nation even than his father had been. His whole life, as Hallam says, was a series of perjuries. In the year 1257, when he had exhausted the patience of his subjects by his reckless expenditure of treasure in the foolish attempt to make his son king of Sicily,—a movement in which the Pope encouraged him,—the barons assembled in Parliament, at Westminster, for the purpose of inquiring into the king's conduct. It was resolved at this meeting that the state of the kingdom called for reform, and that therefore a committee of twenty-four persons be appointed,—twelve by the barons and twelve by the king,—for effecting such changes in the government of the country as might appear to them to be necessary. Each twelve again were to choose two of their opponents, and to the four persons thus selected was to be entrusted the charge of choosing fifteen persons, who should form a Council of State or Parliament. This Parliament of fifteen members was invested with full power to carry out reforms, 'without consideration of gift or promise, profit or loss, love, or hatred, or fear.' The first meeting of this council, generally known as the *Mad Parliament*, took place at Oxford. It began its proceedings by removing from office the king's Justiciary, his Chancellor, sheriffs, and governors of castles, supplying their offices with leading men of the reforming party. At the same time the Mad Parliament enunciated certain propositions known as the Provisions of Oxford, which may be briefly stated. They ordain:

Provisions of Oxford.—1. That four knights are to be chosen by the freeholders of each county, who shall lay before Parliament all the abuses they are cognizant of under the king's administration.

2. That new sheriffs are to be annually appointed to each county by the vote of the freeholders.

3. That the Justiciary, Chancellor, Treasurer, and sheriffs shall give in their reports and accounts annually.

4. That Parliament shall meet three times a year, in February, June, and October.

Oligarchy.—By the above provisions all the powers of government were for a time placed in the hands of an oligarchy.[1] The king was compelled to submit; but the Pope, who had previously granted him tithes of all the benefices in England, encouraged him to resist, and in 1261 civil war broke out. The issues were soon decided, for in the victory of Lewes the king and his son were taken prisoners, and the government of the country placed in the hands of Simon de Montford.

I. **Representative Parliament.**—About this time the term *Parliament*, which was first applied to the assemblies of the states-general under Louis VII. of France, became the distinctive name applied to the National Council. It is not quite clear that the Lords and Commons sat in two separate chambers until the reign of Edward III.; but at all events, we know that the first Parliament at Westminster, which admitted not only knights and burgesses, but even representatives from cities and boroughs within its pale, was that which was summoned by Simon de Montford in December 1264. In the name of his captive king, Simon issued writs to the sheriffs, summoning them to return two knights from each shire, two citizens from each city, and two burgesses from each borough. This measure completed the formation of a national assembly, and on the same basis as that on which it exists to this day; but the deputies of boroughs were not *finally* engrafted on it till the following reign.

II. **The Judicature.**—Coincident with this constitutional development of Parliament, we find equally important changes and improvements taking place in the higher courts of justice. Shortly after the confirmation of Magna Charta, the *Curia Regis* was split up into three distinct tribunals,[2] and in the reign of

[1] The government of England has been on four occasions handed over to an oligarchy: (1) Under John—the twenty-five barons of *Magna Charta;* (2) Under Henry III.—the Oxford Committee of twenty-four; (3) Under Edward II.—the Lords Ordainers; (4) Under Richard II.—the Lords Appellant.

[2] The King's Court, the Court of Common Pleas, and the Court of Exchequer.

Henry III. each of them was provided with its own staff of lawyers; not barons, as was the old custom, but able men who made the study of law a profession. In the reign of Edward I., who has been called the English Justinian, the last link which bound the three courts together was broken by the abolition of the *Justiciarishiip.*

Origin of Star Chamber.—The king's personal jurisdiction was now confined to his own special court, sometimes called the 'Court of the Wise,' after the Saxon *Witenagemot.* In later times it was known as the Court of the Star Chamber,[1] and also as the Privy Council. The illegal proceedings of this court of magnates were at all times subjects of complaint, for it was ever found a willing instrument in the hands of the sovereign when he found it convenient to evade the law or over-rule the constitution. In the reign of Henry II. it was, as we have seen, a court of final appeal, and, in conjunction with the Lords' House of Parliament, it was invested with the double character of a judicial and legislative council. Hence the double capacity of the Peerage to this day, as members of the judicial as well as of the legislative council of the nation; for the House of Lords still remains the court of final appeal in matters of unsettled litigation. The Court of the Star Chamber or Privy Council continued to exist, under one form or another, combining administrative and judicial functions, until the year 1641, when it was abolished by the Long Parliament.

The Constitution established.—We can now see, in a general way, how the foundations of all our great institutions were laid in the thirteenth century. The ideal of all the great legislators of the Middle Ages was a limited monarchy, and a national parliament representing every estate of the realm. Continental nations aimed at the same ideal, and possessed patriots and

[1] It was known as the Court of the 'Starred Chamber' in the reign of Edward III. Its jurisdiction gradually declined till the beginning of the Tudor period, when Henry VII. procured the passing of a statute by which the criminal jurisdiction exercised by Edward's court was revived. It was nothing less than a political inquisition, as the Court of High Commission was a religious one

legislators as great as our own to do the work; but England as an island was more favourably situated, and her legislators could therefore attend more exclusively to home politics and to the development of her social life. She had no frontiers to defend against her foes, and except for the ambition of some of her kings and the folly of others, she could always enjoy peace and prosperity without fear of invasion. Had England been connected by land with the Continent, she could never have become a great nation, and her institutions would never have grown to be models for all the civilised world; but nature has united both by sea and land in making her the greatest nation, including every conceivable element of greatness that the world has ever seen.

III. **Growth of Towns.**—From the time that Magna Charta was signed by John, at Runnymede, to the death of Chaucer in 1400, the Constitutional History of England is the record of a perpetual struggle between the king and the nation. This whole period was one of great fermentation, and of great revivals in every department of human knowledge, in science, literature, art, and religion.

Towns.—Towns begin to rise up everywhere, and become at once centres of commerce and of learning. Municipal privileges are granted to them by royal charter, a political idea which was most likely borrowed from the republican institutions of ancient Rome. The privileges granted to the towns resulted in the separation of their interests and those of the shires. The desire of municipal or self-government increased with the development of commercial life; and corporations and guilds rise, and the power to elect their own magistrates is sold them by the Crown. We may take London as an example.

London.—London from a very early period was the model to all other towns of municipal organization; and when charters of privileges were petitioned for by other rising centres of commerce, the customs and practices of London were referred to as precedents. Now the constitution of the city of London was founded on the *ward* system, each ward corresponding with the

hundred of the shire, having its own ward *mot*, and its own special jurisdiction under an elected alderman. The chief magistrate was at first the *port reeve*, who was always appointed by the Crown; but in 1188, Henry II. appointed the first Lord Mayor, and after the Great Charter the citizens were permitted to choose their own mayor, as well as their own sheriffs. As soon as the special officers of the king were thus excluded from the internal administration of the city, London could treat directly with the Crown through its own elected magistracy. It thus became a distinct autonomous unity, quite independent of *county* organization. Placed on a level with the shire, it had a sheriff and justiciary of its own, elected by its own members, and open to no other jurisdiction.

Other Towns.—Several other towns were striving to follow the example of London, and thus we find the mercantile spirit gradually gaining ascendency over the aristocratic element. The inhabitants of towns, it should be remembered, were at first merely the vassals and villeins of the lord of the manor; but in proportion as the towns or boroughs developed into municipal corporations, important changes took place in the condition of the burgesses. First of all, the tributes and taxes levied on individual property were commuted for a fixed and permanent rent on the whole borough, and the burgesses were thus delivered from feudal taxes, such as tolls on markets and rivers, and dues levied on exported goods. They were in like manner exempted from the jurisdiction of the county court, since by their internal organization they had courts of their own to regulate their own affairs. Nevertheless, the boroughs which became incorporate municipalities enjoyed the privilege of being represented, both at the county courts and before the itinerant justices, by twelve lawful men elected by themselves.

Political Importance of Towns.—What bearing, it may be asked, has the growth of towns on the domain of politics?

Origin of Parliament.—The circuit courts had already formed a link between the Curia Regis and the county court, between the old *popular* system and the system of *personal*

administration by the king. The county court therefore became more and more representative since the institution of assizes, for in addition to the ancient national element it contained, such as the earls, the bishops, the freeholders, and four representative men from each township, it now added to these the itinerant justices and twelve men from each chartered borough. It became, in fact, a national council, with representatives from the towns and boroughs. It was out of this assimilation of the ancient popular elements with the new municipal ones that our parliamentary system sprung, for our representative Parliament is simply the concentration of all the constituents of the *shire mots*, or county courts, in a *central* assembly. We thus see clearly how it is that our modern House of Commons had its remote origin in the shire mot of the Anglo-Saxon.

EDWARD I., 1272–1307.

His Arbitrary Rule.—During the first twenty-three years of Edward's reign there is hardly any trace of a representative government. He ruled the country like an autocrat, and his Parliament was composed only of earls and bishops. The great work of Simon de Montford appears for a time to have perished with himself in the battle of Evesham. During the first twenty-three years of Edward's reign there is no apparent distinction between a representative Parliament and those large Councils of State in which some of his most important statutes were passed. He was in Palestine when he was proclaimed king, and the Parliament which met on that occasion to swear allegiance to him was certainly representative, but on his return from the Holy Land he preferred to rule despotically by means of great councils of nobles.

His Extortions.—Edward, who was always engaged in war, was generally in want of money, and his favourite mode of raising it was by taxing all export goods and by *tallage*. On more than one occasion, indeed, he went so far as to seize all the hides and wool belonging to merchants at different ports, and to sell them for his own use. He even seized upon the

plate and chattels of churches and monasteries under pretence of aiding him in a crusade, and although he never undertook it he declined to make restitution. Arbitrary and illegal measures such as these could not be long endured by the most loyal subjects; and so the oppressed commons, and the equally oppressed barons and bishops, found champions of their cause in the persons of Bohun, Earl of Hereford, and of Bigod, Earl of Norfolk. These patriotic noblemen, the constable and marshal of the kingdom respectively, compelled the king to confirm the charters of liberties. From the *Confirmatio Chartarum* in 1297 Edward deserves the title of the English Justinian, on account of the legislative activity and constitutional progress of the remaining part of his reign.

Parliament of 1295.—In the year 1295 a great event took place in the parliamentary history of this country. Writs were issued to the mayors of cities and magnates of boroughs for the purpose of returning members to a parliament that would represent the three estates of the realm, the nobility, the clergy, and the commons.[1] This truly national assembly was due rather to the pecuniary necessities of the king than to his love of constitutional government. He wanted money, and a parliament that represented every class in society was just the one that could more efficiently tax the whole country. Towns were rapidly increasing in wealth, and therefore in usefulness to the Crown. The social position of the merchant was becoming more respectable as his wealth increased, and Edward conferred the honour of seats in parliament on wealthy burgesses, who rewarded his majesty by liberally taxing themselves. The experiment of summoning the commons to Westminster was a complete financial success; for in the great Parliament of 1295 the barons voted one-eleventh, the clergy one-tenth, and the com-

[1] As the clergy had a parliament of their own, they were unwilling to obey the summons of the king, and in the fourteenth century they ceased to attend altogether. They taxed themselves in convocation, but in 1664 ecclesiastical taxation was discontinued, and since that time they have been taxed like the laity. They are now only theoretically an *estate* of the realm, although they are represented in the Lords by the bishops.

mons one-seventh of their respective properties. The king found that he had struck a golden mine; he therefore increased the number of boroughs, which would, of course, increase the number of representatives, and at the same time replenish the royal exchequer. To vote supplies was really the main object of the meeting of parliament, which was now summoned yearly with great regularity; but still the natural vanity of the wealthy merchants was flattered by the privilege of being permitted to breathe the same atmosphere as the nobles, and to impose taxes upon themselves under the same roof.

Confirmation of Charters.—The Parliament of 1295 was composed of two knights from each shire, two citizens from each city, and two burgesses from each borough, in addition to the bishops and barons of the kingdom; and although each of the three estates voted more money than they ever did before, yet the king was not satisfied. He demanded of the clergy one-half their whole revenue; they protested, and his majesty seized all their goods and chattels. He quarrelled with the barons for refusing foreign service, with the freeholders for refusing *aids*, and with the cities for protesting against his exorbitant demands under the name of *tallage*. A general discontent pervaded all classes of society; and taking advantage of the king's absence at Ghent in 1297, Bohun and Bigod repaired to the exchequer, and, in the presence of the treasurer and judges of that court, protested against his extortions. This proceeding led to the confirmation of the charters, and the establishment of the power of parliament on a permanent basis. The king very wisely accepted the limitations of his own authority, and yielded the system of arbitrary taxation for ever.

The *Confirmatio Chartarum* was drawn up by Bohun and Bigod, the two leaders of the political party opposed to the king. In the form of a charter it was passed in October 1297, in a representative parliament, and sent to Edward at Ghent, and there it was confirmed by him. This document settled that neither he nor his heirs could levy any taxes without the common consent of all the nation; and at the same time it was enacted—

1. That copies of the *Confirmatio* should be sent to all the sheriffs and other magistrates throughout the kingdom, in order to be published to the people.
2. That copies should be kept in churches and cathedrals, and publicly read twice a year, with a sentence of excommunication on all who should infringe any of the articles.
3. That any judgment contrary to the charter should be invalid. It was also added,
4. That the king grants to high and low in the land, that for no business henceforth he shall take aids, tasks, tallages, but by common consent of the realm.

Summary.—The legislation of Edward is so full and all-embracing, that the distributive justice of England for the next 400 years may be said to have been settled and established by him. He established a parliamentary government on a permanent footing; defined the limitations of the three courts of justice; improved upon the laws of King Alfred by the orderly method of watch and ward for the preservation of the public peace, as established by the Statute of Winchester;[1] and by the Statute of Provisors and others, he rolled back the tide of papal aggression. In Saxon times the Church and State were virtually one; but after the Norman conquest the Church entered upon a closer communion with Rome. In a time when every social relation presented a feudal complexion, Rome was affected with the same temper, and the Pope claimed to be the *feudal chief* of all Christendom. His claim in England was never much respected except by the weakest of her kings, and by the greatest of the Plantagenets it was altogether ignored. In the reign of Edward I. the outward framework of the English Constitution was completed, and a National Parliament obtained absolute control over the affairs of the nation. The laws of the next three or four hundred years are little more than a necessary development of the statutes of King Edward. 'The English Constitution is henceforth the domain of the lawyer.'

[1] The Statute of Winchester is merely an amplification of the Frankpledge.

CHAPTER IX.

CONSTITUTIONAL PROGRESS, 1307–1400.—EDWARD II., EDWARD III., RICHARD II.

Edward II.—There is not much in this reign that specially demands the attention of the simple historian. Our parliamentary constitution was established in the reign of his father, and from its establishment down to the Revolution of 1688, there is almost an unbroken series of struggles between the prerogatives of the Crown and those of the people. When a weak king courts the responsibility of governing a nation instead of simply reigning over it, he is quite certain to meet with opposition, and in the end to suffer defeat, if not disaster. Edward II. was unquestionably a weak sovereign, both in the character of a statesman and in that of a soldier. **His favourites,** however, were the main cause of his ruin; and although it is no great sign of weakness in a man to have very intimate friends, yet it is unfortunately true that a great statesman, or even any great man, cannot be *familiar* with mankind except at his peril. Gaveston and the Spensers, who were loved by the king, were despised by the barons; and as there can be nothing more insulting to the pride of the nobles than the choice of mean and vulgar companions by their sovereign, on the other hand there is nothing more fruitful of sedition and secret plots against the throne. It was owing to Edward's choice of favourites that the nobility of England revolted against him, and finally procured his expulsion from the throne.

Lords Ordainers, 1312.—As in the reigns of John, Henry III., and afterwards of Richard II., so now in that of Edward,

the government of the nation is usurped by an oligarchy. It may be called a revolutionary act, but an act called for under exceptional circumstances. This misgovernment of the king, his stubborn weakness in refusing to regard wise counsel, his choice of vain and unworthy flatterers as his most intimate friends, and his extravagant waste of the national revenue, were matters that demanded national attention and constitutional reform. The Lords Ordainers were professed reformers of a bad government, and professed friends of constitutional freedom. The measures of reform they considered to be necessary for the welfare of the nation may therefore be briefly summarized under the following heads :—

Articles of Reform.—1. The king must neither leave the kingdom of England nor make war without the consent of the barons; and in the event of his absence, a guardian of the realm must be chosen by the barons in Parliament.

2. The Chancellor, Treasurer, Chief Justices, and great Officers of State must be elected by the barons in Parliament.

3. Parliament must assemble once, and if necessary twice, in every year.

These articles are clearly meant to limit still further the royal prerogatives; and at the same time to increase the power of Parliament by putting a check on the king's movements, and by denying him the right either to proclaim war or to levy subsidies. The parliaments of his reign were representative. In the Commons the knights represented the landed interest, and the burgesses watched the interests of the towns.[1]

Edward III.—This monarch, like Edward I., was a great warrior, and by the brilliancy of his military campaigns he succeeded in rallying the nobility round his throne. The Com-

[1] By Statute 15 Edward II., 1322, the right of the Commons to concur in legislation was affirmed. 'The matters to be established,' it says, 'for the estate of our lord the King and of his heirs, and for the estate of the realm and of the people, shall be treated, accorded, and established in Parliament, by our lord the King, and by the assent of the prelates, earls, and barons, and *by the whole commonality* of the realm.'

mons, who have generally been averse to war, were now increasing in wealth and importance, silently consolidating their constitutional rights, and openly demanding the abolition of arbitrary power. Since the confirmation of the charters by Edward I. in 1297, every species of taxation was understood to be illegal without the consent of Parliament; but the Plantagenets generally evaded the law which they could not break through, by begging and borrowing 'benevolences' and 'loans.'

House of Commons.—Before the end of Edward's reign we find that the constitution and privileges of the House of Commons were very much the same as they are at this day. The right of the Commons to inquire into the abuses of the existing administration, and the right to *impeach* a minister of the Crown for misconduct, were fully established. The first instance of the exercise by the Commons of this right occurred in 1376, when Lords Latimer and Nevil, both officers of the Crown, were *impeached* on three charges:—(1) That they had procured and advised the removal of the staple from Calais, where it had been fixed by Parliament; (2) that they had lent money to the king at exorbitant usury; (3) that they had purchased at a low price old debts due from the Crown, and afterwards paid themselves *in full* out of the Treasury.

During this reign, therefore, the Commons established three great constitutional principles:—1. That all taxes are illegal without the consent of Parliament. 2. That the concurrence of both Houses of Parliament is necessary to the validity of legislation. 3. That it is the right of the Commons to inquire into the abuses of administration.[1]

English Tongue.—The reign of Edward III. is very interesting in another respect; it was then that the English language once more re-appeared as our national speech. It was decreed by statute in 1362 that English should be used in all the law courts. The Normans had always been in a very small minority, and their speech was necessarily confined to the higher

[1] The first Speaker of the House of Commons is mentioned in the rolls of Edward's last Parliament, in 1377. His name is Thomas de Hungerford.

circles, and learned only by a few others as a fashionable tongue. The more important compositions were written either in French or in Latin; but about 1300, the consolidation of the kingdom as one nationality inspired Englishmen with a patriotic pride to return to the language of their ancestors. The English of Edward III. was very different from that of Alfred; but the loss of inflexion was a real gain, and the infusion of French gave it more copiousness of expression.[1]

Richard II.—The struggle between constitutional freedom and absolute monarchy continues. For some time it would seem as if Richard had firmly established an absolute monarchy in England; but the insane despotism of the last year of his reign gave occasion for the final triumph of parliamentary government. It is remarkable how frequently it happens that a strong monarch is succeeded by a weak and worthless one in the annals of history. The circumstance has been favourable to the growth of free institutions, for we find that many of our greatest reforms were accomplished under the rule of feeble and violent princes.

Those popular rights, which powerful monarchs can either withhold or yield with dignity, are snatched from the unworthy by force, and established as precedents for future generations. It was thus that our parliamentary system grew from precedent to precedent until it developed itself into that great monument of human wisdom which we find it. The reign of Richard, strange, confused, and mysterious as it appears, is yet one of the most interesting periods in our constitutional history.

His Character.—It was unfortunate for the king that he was not of age when he began to reign. Surrounded with flattering sycophants during his minority, his royal but giddy head was filled with vanity and an overweening sense of his own import-

[1] In 1331, it was enacted that 'a Parliament shall be holden every year once, and more often if need be.' Again, in 1362, the same year in which English became the language of the law courts, it was enacted that 'for redress of mischiefs and grievances which daily happen, Parliament shall be holden every year, *as at another time was ordained by statute.*'

ance; and when he attained his majority in 1389, he was still a child without any experience as a ruler of men, and without any higher thought than the royal will. As a boy, he was a reckless spendthrift, squandering the resources of the nation on a life of dissipation and folly. Several Parliaments met during his minority for no better purpose than to vote supplies for this extravagant youth, yet the young man was always in debt. The distant but angry murmur of the nation had frequently reached his ear, but was as frequently drowned in the flattering lullaby of courtiers and courtesans. He abandoned himself entirely to the allurements of pleasure, and scorned the national will; the nation ultimately scorned him, and challenged his right to reign. In his moral character he greatly resembles some of the Stuart dynasty, and more especially the young Pretender.

The Crown Elective.—Richard is the last in a direct line of a remarkable dynasty, and his reign is historically interesting, inasmuch as it supplies us with a precedent for the deposition of a sovereign, when he has arbitrarily usurped authority which the law does not confer upon him. As early as 1386, he was warned of his impending fate, and was plainly told that the time might come when it would be 'lawful for the people, by their full and free assent and consent, to depose him from his throne, and in his stead to establish some other of the royal race on the same.' The elective character of the kingly office which obtained in Saxon polity is again recognised as a part of the constitution; and in later times, when James II. was deposed, the case of Richard was appealed to as a precedent. Since the Act of Settlement, the crown is to all intents and purposes hereditary, 'entailed on the Electress Sophia *and her heirs*;' but the national will, and not the Statute-book, is the court of final appeal in all such cases.

Cause of Quarrel.—From the reign of Edward III. till now Parliament has been consulted by the Crown on questions of war and taxation, and the matter in dispute during the whole of Richard's reign was whether the king should be permitted to govern alone or with the advice of the Commons. There is no lack of parliamentary gatherings between the years 1377 and

1389, at some of which all the rights conceded by Edward were confirmed; but the deliberations of these assemblies always turned on questions of revenue and on the means to be adopted for relieving the necessities of the profligate prince. The Parliament of 1380, which was the fifth of his reign, voted three subsidies; but the Commons did more, they voted a *poll* tax of fifteen groats on every individual of the kingdom above fifteen years of age.

Insurrection of Serfs.—This tax was one of the main causes of the insurrection of the serfs. So general and violent was the rising of the serfs, that, in order to quell the movement, Richard promised to enfranchise the whole body of agricultural labourers; but the aristocracy condemned this policy as a revolutionary one, and the king was compelled to revoke his edict. Nevertheless, it is from this determination, on the part of Richard II., to enfranchise the serfs that we must date the abolition of *villeinage* in England.

Lollards.—Although the poll tax may be said to have been the immediate cause of the insurrection of the serfs, yet it was not the only one. The tide of papal aggression, which had reached its height in the reign of John, was checked in the reigns of Edward I. and Edward III. by the Statute of *Provisors*,[1] and rolled back for ever by the Statute of *Præmunire* in Richard's reign; but the abuses and corruptions which had meanwhile crept into the Church caused such a general discontent, that nearly all the great writers of the period, such as Wycliffe and Chaucer, were either loudly protesting against them or making them the subjects of scathing satire. Wycliffe translated the Bible into English, and at the same time preached a crusade against the Church. The people read the Bible in their own tongue, and accepted the doctrines of our first reformer. His followers, as generally happens, went farther than the master, and

[1] By the Statute of *Provisors*, the papal claim to dispose of benefices in England is denied; by the Statute of *Præmunire*, Parliament vindicates its right to prohibit the admission and execution of popish bulls and briefs, or what Chaucer calls 'pardons hot from Rome.'

with the new religious creed they preached political doctrines which amounted to socialism. The insurrection of 1381, therefore, was really due to the preaching of the Lollards, and the Parliament, aware of this fact, passed a bill against unlicensed preachers. This was a blow against Wycliffe and his followers, and the country was frightened back into the Church once more.

Second Instance of Impeachment.—The first serious conflict between the king and his Parliament took place in 1386, when the Commons impeached De la Pole, Earl of Suffolk, and one of the Crown justices. It was demanded that the earl should resign his office, to which the king yielded, and proceeded to elect new ministers. Richard, however, did not forget what he believed to be an insult to his dignity; and in 1389, when he became of age, he declared that he 'would be no longer under tutelage.' From this year to his expulsion from the throne, his whole conduct consisted in a perpetual struggle against the restraints of Parliament. He took the law entirely into his own hands, and governed the country by means of a corrupt bench and a 'packed' House of Commons. He was thus enabled to seize the most obnoxious members of the opposition, and to send them to trial before his own judges. It was this violence on his part that led to the proceedings of the Lords Appellant.

1397–1399.—The last two years of his reign are characterised by strange events. The Parliament became servile to him through absolute fear of his vengeance. In the infatuation of his confidence he proceeded to revoke all the acts of previous Parliaments which put a limit to his authority, and declared the framers of them to be guilty of high treason. Of the five Lords Appellant, he executed two and banished three; and yet, after all this high-handed proceeding, the Parliament of the same year granted a subsidy *for life* to be levied on wool and hides. This was exactly what the king wanted, since a large life annuity enabled him to rule independently of Parliament altogether. He therefore at once dismissed it, retaining only a permanent committee of eighteen members, twelve Lords and six Commons,

with which to execute his own purposes and to administer his own laws. The rest of the story is a matter of common history: Parliament triumphed, and the king was deposed.

Summary.—The victory of Parliament with all its ancient prerogatives, and the deposition of Richard, are the most interesting facts in this reign. It was in this reign, also, that the modern practice of discussing bills in both houses before they are finally submitted to the sovereign was first established. It was a wise precaution, adopted by the Commons in order to prevent the alteration of any bill in the upper house, and without the knowledge and consent of the lower, before it passed into the Statute-book. The Commons, moreover, obtained greater influence over the management of contested elections by securing the right to inquire into the manner in which elections were carried out. This parliamentary privilege is a check on bribery and all corrupt practices. They also acquired greater control as auditors of public accounts than they ever had before. The House of Commons, in short, became the responsible guardian of the public purse, and the appropriator of subsidies.

CHAPTER X.

LANCASTER AND YORK, 1399–1485.

English Constitution.—From the beginning of the Lancastrian period down to the reign of Elizabeth, the science of politics appears to have lost its attraction for the master spirits of this country. The English Constitution had already been settled and established, and all that could now be done was simply to maintain its integrity. The outward framework was almost perfect, but its internal organization was still capable of improvement, and will continue to be so as long as England continues to be a great and progressive nation. When any work of man, or even man himself, ceases to be capable of improvement, it ceases virtually to exist, or at least it begins to decay.

Wars of the Roses.—After the deposition of Richard II. the people of England might flatter themselves that they were at last free from the despotism of a tyrant; but in the course of Providence it often happens that a seemingly beneficial event carries in its train a series of troubles and disasters. With the expulsion of Richard the country got rid of a tyrant; but the succession to the throne was directed into a new channel, and the change ultimately brought on the horrors of a great civil war. The Wars of the Roses prove how dangerous it is to tamper with the succession so long as monarchy is the recognised government of a country. Parliament gained a great victory in the deposition of Richard, but since the spoil of the victors was no less than a crown, it was natural that there should be many claimants found in the camp. So long as the House of Lancaster reigned,

the affairs of the realm went on with tolerable smoothness; but the decay of freedom and the anarchy which prevailed from 1461 to 1485, yea, and even to 1640, had their source in the events of 1399.

Powers and Privileges of Parliament.—Generally speaking, it may be said that the fifteenth and sixteenth centuries were characterised by the consolidation of a constitutional system already organized and established. The powers of Parliament were quietly acknowledged, its forms of procedure were settled, and its privileges were exercised without much opposition. It voted all the taxes, appropriated subsidies, investigated all public accounts, and interfered in the election of members so far as to prevent bribery. It claimed the right to impeach officers of the Crown, and at the opening of each session it demanded freedom of speech through the mouth of the Speaker. The inviolability of its members, or the 'privileges of the House,' were also confirmed. The ancient Saxon laws afforded protection and security to the members of the Witan, 'unless they were notorious robbers and brigands;' and according to this precedent, each member of Parliament can claim exemption from arrest or imprisonment. When Thomas Thorpe, Speaker of the House of Commons, was arrested in 1453 at the instance of the Duke of York, and imprisoned for debt, the matter was referred to the judges, and the privileges of the House urged in his favour. It was then that the renowned Sir John Fortescue delivered the following judgment:—

'That it was not their part to judge of the Parliament's actions, who were judges and makers of the laws themselves; only they said there were divers *supersedeas* of privilege of Parliament brought into courts; but a general *supersedeas* to suppress all proceedings there was not. For if there should, it would seem as if the high court of Parliament, that ministers all justice and equity, should hinder the process of the common law, and so put the party complainant without remedy, inasmuch as actions at common law are not determinable in Parliament; but if any member of Parliament be arrested for such cases as are not for

treason, felony, or surety of the peace, or for a judgment had before Parliament, it was usual for such to be quitted of such arrest, and set at liberty to attend to his services in Parliament.'

Notwithstanding this famous judgment, Thorpe remained in prison, but the whole affair arose from the party dispute between York and Lancaster. Freedom of debate and immunity from arrest were, and still are, the two great privileges of members; and towards the end of the reign of Henry VI. we find that all real power and authority were in the hands of Parliament. During the Wars of the Roses, however, this authority as well as the prerogatives of the Crown were trampled under foot by a divided aristocracy.

Henry IV.—Henry IV. was raised to the throne by means of a revolution, and was therefore less independent of Parliament, by whose voice he was made king, than any of his predecessors. One of his first acts was an order to the bishops to suppress heresy; and by a provision of the statute against heretics, the bishops were not only permitted to arrest and imprison all suspected persons, but even to hand them over to civil officers to be 'burnt on high places before the people,' unless they recanted, or abjured their religious creed. The burning of heretics aroused such a fierce resentment on the part of the reformers that the throne was frequently threatened with revolt; but the king wisely shielded himself behind the authority of Parliament, on whose responsibility he always acted.

Parliaments.—The Parliament of the sixth year of his reign, known as the 'Unlearned,' because lawyers were excluded from it, rescinded and annulled all grants of land made by the king, and prohibited him from alienating the ancient royal inheritance without the consent of the Commons. This clearly proves the increasing power and importance of the lower house, and yet it is only re-asserting a very ancient right which the Saxon Witan had exercised over grants of land out of the folkland before it became in feudal times the land of the king.

Petition of Thirty-one Articles.—The Petition of Thirty-one Articles, which Hallam regards as a noble fabric of consti-

tutional liberty, 'hardly inferior to the Petition of Right,' was presented by the Commons in the eighth of Henry IV., all the articles of which the king accepted without reserve. Its most interesting provisions are: That the king is to name sixteen counsellors by whose advice he must be solely guided, and that none of them can be dismissed without conviction of misdemeanour: that the Chancellor or Privy Seal can pass no grants contrary to law: that any person about the court who stirs up the king against his subjects must be dismissed from office: that the king's ordinary revenue is to be appropriated to his household, and to the payment of his debts. The statute regulating purveyance is also affirmed, the election of knights is defined, various abuses in the courts of justice are forbidden, and the officers of state are sworn to observe the common law.

House of Commons—Rights and Privileges.—The Parliaments of the Lancastrian period maintained all the old constitutional rights and developed others, the most important of the latter being—(1) That all money bills must first originate in the House of Commons: (2) The right of Parliament that the king should take no cognizance of the subject of their deliberation until they had come to a decision concerning it, and it was brought in a regular form before his majesty to be accepted or rejected without alteration: (3) Greater freedom of speech: (4) Immunity of members from arrest: (5) The right to interfere in elections.

Since the great parliamentary victory of 1399, we find that constitutional rights are supported and maintained by the Commons, who resist every encroachment on the part of the king and the barons. They more and more acquire a larger share in the government of the country, for they know that all public affairs fall under their cognizance, and therefore they develop a greater consciousness of their own power and importance. They do not now attack the king personally when they feel bound to oppose him, but rather his ministers, whom they hold responsible for his actions. They begin even thus early to establish the principle of ministerial responsibility, a principle which naturally followed the

right of impeachment. Before the end of Richard's reign, not only did the grants of money originate in the proceedings of the House of Commons, but even all the statutes were drawn up from their petitions. It was the old practice that the statutes should be framed by the king's officers from the petitions and answers after the session of Parliament had closed; but as this led to the commission of frauds by the Crown officials, who frequently entered Acts on the rolls of Parliament quite different from those for which the Commons petitioned, they made many attempts to remedy the evil, and in 1414 presented a petition to Henry v. on the subject.[1] It was not, however, until the reign of Henry VI. that the modern practice of sending up *bills* to the House of Lords in the form of complete statutes, and there to be accepted, amended, or rejected, was introduced. At a later period, but the precise date is not certain, the Lords began to originate bills of their own, so that any bill can now originate in either house, with this reservation, that the Commons only can deal with money bills, and the Lords only with peerage ones.

Judicial Power of Parliament.—Before the Lords and Commons were clearly and definitely separated as two branches of the Legislature, the judicial power of Parliament necessarily lodged in the whole assembled body, but in 1399 the Commons suggested that henceforth the judicial function should reside in the House of Lords only. In cases of impeachment, therefore, the Commons are merely accusers and advocates, while the Lords are the judges; but in the twenty-eighth year of Henry VI., when De la Pole, Duke of Suffolk, was impeached for high treason, the Commons by a bill of attainder secured a voice in the judgment as well as in the accusation of any individual whom they chose to prosecute for high crimes and misdemeanours. A bill of attainder is indeed a terrible instrument, and the very highest form of parliamentary judicature. It passes through both houses like any other bill, receives the royal assent, and the accused is

[1] This petition is interesting also as being the first document on the rolls of Parliament written in *English*.

therefore *punished by statute.* The proceedings against Suffolk, which chiefly related to his conduct in France while negotiating the marriage of the king with Margaret of Anjou, failed through some irregularities; and as the king took advantage of this to screen his favourite, the Lords protested, and declared it would form no precedent for the future.

1. **Elections.**—During the reigns of the three Henrys, the election and return of members began to be an object of legislative attention. Edward I. ordained that all elections must be free; but the sheriffs, who were nominated by the king, were ready instruments in his hand for 'packing' the house. A statute was passed in the reign of Richard II. to punish sheriffs who failed to make honest returns to the parliamentary writs, and 'on the grievous complaint of the Commons against undue elections for shires,' a similar statute was passed in the reign of Henry IV. Nevertheless, abuses continued to exist, for the king's ministers could always influence elections through the agencies of sheriffs, mayors of towns, and other Crown officials. Finally, it was enacted in the 23d Henry IV. 'that every sheriff should deliver a proper precept to the mayor or bailiff of each city or borough in the shire, to elect duly qualified citizens or burgesses for Parliament,' and at the same time to make true returns of those who were chosen by the electors. By a statute of Henry V., in 1413, both electors and elected must be resident.

2. **Electors.**—Who were the electors in those days? In the fourteenth century there were, generally speaking, two classes of electors, and each independent of the other, the county electors and the borough or town electors. Before the rise of towns the political nation consisted of the knights and freeholders of the shires, and they alone enjoyed the right of assisting at the election of members at the county courts; but as soon as the towns increased in importance the inhabitants became citizens, and a new element entered into the political life of the country. The citizens returned members to the House of Commons to represent their interests, which remained perfectly distinct from the interests of the counties; so that the two classes of members

deliberated independently of each other. And as in the counties all freemen had the same right to take part in elections, so in the towns every member of the corporation, that is, every householder who paid his taxes and was capable of taking his share in the management of local government, enjoyed all political rights. The electors of the Lancastrian period, therefore, were the freeholders of the shires and the burgesses of the chief towns. Lower than this the franchise did not extend, for the strata beneath consisted merely of agricultural labourers and villeins.

Disfranchisement.—But in 1429 (8th Henry VI.) a memorable change took place, a change which made elections more open than ever to the influence of the sheriffs. The change was no less than a disfranchisement of the greater part of the electors. A statute was passed, the 8th of Henry VI., which enacted that, 'on account of the grievous uproar and disorder at elections,' 'for the future knights of the shire shall be chosen by the people dwelling and resident in the counties, whereof every one of them shall have free land or tenement to the value of 40s.[1] by the year at least, above all charges;' and two years later, another statute enacted that the freehold of the voter must be situated in the county for which he votes. Again, by the 23d Henry VI., which, as we have seen, provides against the malpractices of sheriffs, it is enacted that no one could be elected who was not of gentle birth, contrary to the constitutional principle that all free men below the peerage are politically on a level. This double qualification of property and gentle birth excluded from the franchise all copyholders and leaseholders for life.[2] This monopoly of landowners was maintained until 1838, when personal property was admitted as a qualification; but in 1858 the rule of property qualification was finally abandoned.

Reactionary Tendency.—The statute of Henry VI., which restricted the qualifications of county electors to such freeholders

[1] Forty shillings then would be equal to £40 in our time.

[2] These latter were restored to their ancient rights by the Reform Act, 1832.

as had free lands or tenements to the value of 40s. a year, requiring both the tenure and the interest to be freehold, clearly proves the reactionary tendency of the times, and explains to a certain extent the almost total want of parliamentary government in England during the York and Tudor periods. The Parliament, indeed, became altogether the creature of the Crown; for the towns followed the example of the counties, and limited the franchise to select members of the corporations, self-elected and self-appointed. In the reign of Henry VI. we may say that the power of Parliament had reached its zenith; but the country soon plunged into civil war, and emerged out of it without a Parliament, except in name. Political progress is no longer traceable until the reign of Charles I., when the Commons once again placed themselves at the head of resistance against despotism. Nevertheless, there were other elements silently at work, and moulding the character of the reformed, renewed, and reinvigorated England of the future. The printing-press, the revival of classical learning, the Reformation, and the geographical discoveries of the Tudor period were destined to do more for the intellectual and moral elevation of the people than all the statutes that were ever framed.

CHAPTER XI.

THE TUDOR PERIOD, 1485–1603.

The Tudors, their Absolute Rule.—The Wars of the Roses destroyed the equilibrium between King, Lords, and Commons. The imbecility of Henry VI. and the uncertainty of the succession was one reason among others why the nation submitted to the absolute rule of Edward IV. and his successors. When the subtle Henry VII. came to the throne, he found the country exhausted by civil war, and only the wreck of that ancient nobility which made his predecessors tremble. The old aristocratic leaders who gave the Commons their freedom were dead, and the new aristocracy were too servile to the Crown to act as a break on its despotism. The nobles whom the Tudors favoured, such men as Wolsey, Cromwell, Cecil, Walsingham, and others, were more extravagant in their notions of the royal prerogatives than even the sovereigns themselves, so that the government of England resembled for a time an oriental despotism. What were the causes, then, that led to the absolute sway of the Tudor monarchs? This is a question that has been frequently asked, and therefore we venture to give the following brief reply :—

Its Causes.—1. The virtual disfranchisement of the Commons in the reign of Henry VI.

2. The extirpation of the old nobility, and the creation of a new order who were all servile to the Crown.

3. The creation, also, of a number of 'rotten' boroughs for the express purpose of returning to Parliament the king's favourites, and men who had no interest in the boroughs they represented.

4. The political decadence of the Church, and the ecclesias-

tical supremacy assumed by Henry VIII., added greatly to the authority of the Crown by investing it with a semi-religious character. In addition to these causes there were many constituencies which were unwilling to return members, and sometimes refrained from doing so, because they had to pay their salaries until the reign of Henry VIII. Under all these circumstances, the representation of the country in Parliament was altogether in name, and the Tudors had nothing to fear from the aristocracy, the Church, or the Commons. Parliament, however, did exist with all its ancient rights and privileges intact, and was professedly respected by the Tudor sovereigns; but if we compare the limitations of the royal authority with the prerogatives which still belonged constitutionally to the Crown, we can see how easy it would be for a despotic character like Henry VIII. to feign respect for the rights of Parliament and at the same time to render them void. At the beginning of Henry VII.'s reign the constitutional limits of the royal prerogative were as follows :—

Limits to the Royal Prerogative.—1. No new tax could be imposed without the consent of Parliament.

2. The consent of Parliament was necessary to the validity of every new law, whether of a permanent or temporary character.

3. No one could be sent to prison but on a warrant specifying his offence; and if imprisoned, he must speedily be brought to trial by means of regular sessions.

4. Guilt or innocence must be determined by jury.

5. Officers of the Crown could be prosecuted as ordinary criminals, and the Crown could not protect them.

6. The king's ministers were liable to be impeached by the Commons.

All these were old and fundamental principles, yet they were seldom followed out to their consequences; and if we now turn to glance at the prerogatives of the Crown, potent as their limits were, we can understand how the king, when he chose to do so, could evade all constitutional restraint.

Prerogatives of the Crown.—1. The king could call together and dismiss Parliament at his pleasure.

2. He could add to the members of the House of Lords by creating new peers.

3. He could grant a charter to any small town, and create it a borough, with the right to return members to Parliament.

4. His assent to bills was necessary for legislation; and the right to withhold his assent was frequently exercised.

5. He appointed and removed all judges, sheriffs, justices of the peace, and other legal officers.

6. **Star Chamber.**—Although he could make no new laws, he could issue *ordinances* which had all the authority of statutes. These ordinances were made by himself in his *Concilium Ordinarium* or privy council, called also the Star Chamber, consisting of the Chancellor, the Treasurer, the Lord Steward, Lord Marshal, and other high officers of state. The second and third of these privileges were grossly abused by the Tudor sovereigns to their own aggrandizement; and by means of the court of the Star Chamber, which claimed judicial as well as administrative authority, they could fine, imprison, mutilate, and extort money under the name of benevolences from individual subjects. The Star Chamber was instituted by Henry VII. as a kind of State criminal department, to keep in check and punish his powerful opponents of the House of York; but it soon became the odious instrument of a despotic and arbitrary power. Lord Bacon says that Henry VII. was 'the best lawgiver to this nation since Edward I.;' but surely this eulogium is ill deserved, for we know of only two statutes of his reign that have the least public interest; and these, although perhaps necessary for the security of his throne, were not calculated to command the gratitude of his subjects or the admiration of the historian. One of these was the statute already mentioned, by which he created a new court specially constituted, and in which the criminal jurisdiction of the Star Chamber was revived; and the other was intended to cut away the distinction between a government *de jure* and a government *de facto*.

A King 'de facto.'—As Henry VII. came of a line which had no legitimate claim to the throne, he knew that his right

could be challenged by any claimant of the House of York. He therefore in the beginning of his reign passed an Act in which it was declared that 'no person attending upon the king and sovereign, lord of this land *for the time being*, and doing him true and faithful service, shall be convicted of high treason by Act of Parliament or other process of law, nor suffer any forfeiture or punishment; but that every Act made contrary to this statute shall be void and of no effect.' It thus became a constitutional principle that a 'king for the time being,' or a king *de facto*, has all the rights of a king *de jure*. The maxim, therefore, by providing for the security of a subject under such a sovereign, justifies him in resisting those who may pretend to have a better claim. After the Restoration, the regicides naturally enough appealed to this statute as a justification of their conduct in obeying the government of Cromwell; but their judges argued that the statute of Henry VII. can only protect the subject when the usurper is a king. If the great Commoner, therefore, had caused himself to be crowned king and hailed as Oliver I., allegiance to him would have been no treason! Such is the law when pettifoggers are the judges. It was convenient for them to forget that Oliver Cromwell was indeed 'the sovereign lord of this land.' It was also convenient for the same class of lawyers to remember the statute when William of Orange accepted the crown of England.

Henry VII. was an avaricious and arbitrary prince. Under the restricted franchise introduced in the reign of Henry VI. his Parliament consisted of his own nominees, so that he could dispense with statutes altogether, and invade popular rights at his pleasure, in imitation of the House of York. 'He kept a strait hand on his nobility,' says Bacon; 'and chose rather to advance clergymen and lawyers, which were more obsequious to him, but had less interest in the people.' His avarice was unbounded, and when he summoned Parliament at all it was only in order to obtain general subsidies. Two insurrections were provoked during his reign by these subsidies, and as he had fortunately no standing army to crush the people altogether, he began to extort money from the rich under the specious name of

gifts and benevolences. He also revoked all Crown grants made since Henry VI., passed Bills of Attainder against the most wealthy Yorkists, and employed Empson and Dudley as his hateful instruments in collecting obsolete feudal taxes; so that when he died he left behind him the richest treasury of any king in Europe.

HENRY VIII.

Character of the Age.—Although the Tudor period is barren in constitutional progress, yet in other respects it is the greatest in our history. The world has never seen, except, perhaps, in the ages of Pericles and Augustus, such a brilliant outburst of genius as characterised the latter part of it. The age of Elizabeth is not only great in one direction of human greatness, it is majestic all round—in science, in poetry, and in theology. It is a highly intellectual age, surrounded and glorified by a luminous atmosphere of poetry and romance. The minds of men, which had been for ages imprisoned in the dungeons of superstition, scholastic philosophy, and false science, have burst their bonds and come forth to the light. The position of our planet in space is revealed to the astronomer, new continents are discovered by the navigator, and the thoughts of the ages are made the common heritage of all by the printing-press. The genius of man has triumphed over the tyrannies of this world, and he at last stands erect and free, recking but little of ancient 'prerogatives,' and fearless alike of king, priest, and the natural elements, seeking his fortune on whatever part of the planet the sun shines.

Tudor Parliaments.—The Tudor Parliaments were indeed servile, and judges and juries were submissive, to the will of the sovereign; but the ranks of society whence the new parliament and the new reformers were about to spring were only in process of formation, and had not yet acquired that independent spirit, self-reliance, and importance which made even Elizabeth quail. The creed of the Tudor Parliament, however, was the creed of the court, and any man who was bold enough to challenge any pro-

clamation of the sovereign was liable to fines and imprisonment. The old nobility were crushed, and the new aristocracy created by Henry VIII. became a galaxy of courtiers which surrounded the throne, and whose brilliancy depended on the absolutism of the Crown.

Absolute Monarchies. — Everywhere in Europe, indeed, kingly power was becoming absolute, and it was the ambition of the Tudor and Stuart sovereigns to rival the magnificence of their Continental brothers, as it was one of their common complaints that the restraints of Parliament and the parsimony of their subjects reduced them to the position of royal beggars. Within the precincts of his own court, Henry VIII. might exercise his tyranny to his heart's content, and even kill all his wives without exciting much public attention; but whenever he attempted to impose a general tax on property, he was met with murmurs and open insurrection, which might well remind him of the fate of Edward II. and Richard II.

Arbitrary Taxation resisted. — Although every other constitutional principle was violated by the Tudors, yet one was firmly defended against all attacks, namely, that there could be no general taxation without consent of Parliament. Taxation was the only species of tyranny worthy of complaint in England; but we must remember that when taxation is arbitrary it implies almost all other tyrannies, for there can be no political freedom when the people are not free to tax themselves.

Two Epochs of his Reign.—There are two distinct epochs which mark the reign of Henry the Eighth. The first of these coincides with the ascendency of Wolsey; and the second covers the latter years of the monarch's life, during which he was enabled to play the despot more completely by an Act which gave the king's proclamation the force of statute law. At no period of his reign, however, did he affect to rule without the consent of Parliament; but he cunningly united absolute power with constitutional forms.

His Policy.—His policy was to domineer, not without Parliament, but by means of a servile assembly, almost every member

of which held office under the Crown. In a letter to the Pope in 1529, he writes like one who had the greatest reverence for the British constitution. 'The discussions in the English Parliament,' he says, 'are free and unrestricted; the Crown has no power to limit their debates or to control the votes of their members. They determine everything for themselves, as the interests of the commonwealth require.' And yet when he found that those who disobeyed his proclamations could not be legally punished, he appealed to his Parliament to give to all his proclamations the force of statutes. This was done, and the constitution was infringed, and indeed abrogated, by an Act of Parliament. It is clear, then, that Henry's Parliament was a mere farce, and that whenever he was deterred from any act of tyranny it was owing to his want of a standing army and his fear of general insurrections.

Wolsey—His Authority.—Henry made his subjects accustomed to personal government by concentrating all secular and ecclesiastical power in the person of one man, thereby gathering all civil and religious authority into his own grasp. Wolsey had the whole direction of home and foreign affairs: as chancellor, he stood at the head of public justice; and as legate, he was supreme in the Church. He had therefore the entire responsibility and odium of a despotic government, while the king enjoyed all its advantages to himself. Wolsey saw that the great danger which threatened the absolute freedom of the Crown lay in the traditions of the English House of Commons, and therefore he governed the country for eight years without any Parliament at all. So strong was his antipathy to parliamentary government, that when it was necessary to increase the ordinary resources of the Crown he resorted to a measure of arbitrary taxation, the success of which would render it needless to convoke Parliament any more. These measures were forced loans and benevolences.

Taxation, 1523.—The first Parliament of Henry VIII. granted him tonnage and poundage for life, but on the condition 'that these grants be not taken in example to the kings of England

in time to come.' In 1522 commissioners were despatched to every part of the country in order to assess property, and to demand one-tenth of each man's substance; but so poor was the return, that Wolsey was next year obliged to summon Parliament, and to lay before it a demand of 20 per cent. property tax, payable in money, plate, or jewels. The cardinal himself went to the House of Commons in great state, and by order of the speaker, Sir Thomas More, was admitted 'with all his pomp, his maces, pillars, his pole-axes, his cross, his hat, and the great seal too.' He was received in absolute silence; but after he left the house, very angry debates followed, which continued for fifteen days. At last a subsidy was granted, which amounted to half that originally demanded. Nearly seven years elapsed without another Parliament.

1525. — In 1525 fresh commissioners were appointed, to demand one-sixth of every man's property. The mayor and chief citizens of London were the first to remonstrate, but they were warned by Wolsey to 'beware lest it might fortune to cost some their heads;' and indeed some were sent to prison for merely protesting. Every one cursed the cardinal for this extortionate demand, while the real culprit was the crafty monarch. The tax was opposed everywhere, and in some places, as in Suffolk, by an armed insurrection. The king was obliged to recede, and the royal commission was withdrawn. Hallam says that 'if our forefathers had submitted to this attempt to levy a general tax without a parliamentary authority, there would probably have been an end to Parliaments for all ordinary purposes, although, like the States-General of France, they might still be convoked to give weight and security to great innovations.' The king, however, had no alternative but to give way; for he had no standing army to enforce his demands, and the population with whom he had to deal were all trained to the use of arms.

1545.—In 1545 Henry had once more recourse to those general exactions miscalled benevolences, and the commissioners were directed to *incite* all men to a *loving* contribution according

to the rating of their substances as they were assessed at the last subsidy. This amounted to twenty-pence in the pound on the yearly value of land, and ten-pence in the pound on all moveable property. The nobility alleged the statute of Richard III., by which these benevolences were abolished; but the obvious answer of the king was that Richard was a usurper.

Wales.—Although the creed of the Tudor Parliament was simply the creed of the court, yet Henry recognised that parliamentary representation was necessary to good government. By the Acts 34 and 35 Henry VIII., parliamentary representation was granted to the principality of Wales and the county palatine of Chester. Wales was then divided into twelve counties, each of which was to send a knight to Parliament, and each borough, being a shire town, to send one burgess. By the same statute the county of Chester was to return two knights, and the city two burgesses.

Ireland.—Henry VIII. was made Lord-Lieutenant of Ireland when he was only four years of age, and known as Henry Duke of York. Young Henry's deputy was Sir Edward Poynings, who gave his name to the celebrated provisions known as Poynings' Law.

Poynings' Law, 1495.—Ireland, for some reason of her own, adopted the Yorkist cause; and in order to reduce the country to subjection, and to strengthen royal authority by restraining the great chiefs, it was provided—(1) that all statutes lately made in England, and belonging to the public weal of the same, should have the force of law in Ireland; and (2) that no Parliament should in future be held in Ireland, until the king and his lieutenant should be informed of the necessity for the same, and of the Acts proposed to be passed in it, and the royal licence and approbation had been previously obtained. In 1542 Henry VIII. raised Ireland to the dignity of a kingdom, when he assumed the title of King of Ireland. The national chiefs submitted, and Irish peers were consequently created.

Henry's Latter Years.—The latter years of Henry's reign were more tyrannical than those in which he listened to the

counsels of Wolsey. Parliament became absolutely servile, and his policy became more ferocious.

Treason.—The offence of high treason was defined by Statute 25 Edward III., but Henry wantonly extended it far beyond its ancient limits. It became treason to doubt the validity of the king's marriages, or to call him heretic or schismatic, or for any one to marry without the royal licence. It was treason, indeed, to wish to deprive the king of any of his titles, such as that of Supreme Head of the Church; and, in short, it was treason to offend his majesty in any way, either by word or deed.

Absolutism.—The great principles of absolutism at the time were that the king can do no wrong, however much he may wish to do it; that not only the property, but the persons of his subjects are his own, and that a man has a right only to that which the king's goodness does not think fit to take from him. Wolsey transformed this wild maxim into principles of state, until all law and authority were concentrated in the Crown. After the death of Wolsey, the caprice and ferocity of the king exceeded all bounds; the mere forms of law became the engines for the perpetration of judicial murder, and the accused were deprived of all the advantages they might possess in a court of justice by the habitual employment of Bills of Attainder.

Attainder.—Nay more, in order to obviate any chance of refutation, or even disclosure, Cromwell, by the king's express command, inquired of the judges whether, if Parliament condemned a man to die for treason without hearing him in his defence, the attainder could ever be disputed. They replied that it would form a dangerous precedent, but that Parliament, being supreme, an attainder in Parliament could never be questioned in a court of law. The king was satisfied, and Cromwell himself was the first to perish by an Act of Attainder!

Edward VI.—One of the first acts of this young monarch was to propitiate the nation by abrogating some of the unconstitutional and sanguinary laws of Henry VIII. The same Act by which Edward abolished the harassing laws of treason and treason felonies, repealed also the statute by which his father

gave a royal proclamation the force of law. The statute of Edward III. became once again the standard of high treason; nevertheless these reforms in the law made very little practical change in policy.

Bill, 1552.—Indeed, after the fall of Somerset, many of the treason laws were re-enacted, with the creation of some new ones; but the Commons were now growing stronger and bolder, and after amending the bill they embodied in it 'one of the most important constitutional provisions which the annals of the Tudor family afford.' This was to the effect that no person be indicted or attainted for any manner of treason, except on the testimony of two lawful witnesses, who should be brought face to face with the accused.

Mary.—Mary was the first queen regnant of England, and it was therefore natural that some doubts should be started as to her constitutional powers. Many of the Reformers preached openly against the iniquity of government of women, declaring it as their conviction that it was prohibited by the word of God, and unrecognised by the law of the land, which conferred no authority on queens. In the first year of her reign, however, an Act was passed by which 'the royal power and dignities vested in a queen are the same as when vested in a king,' and that all statutes in which a king was named equally applied to a queen. During her reign the Commons began to reject bills recommended by the Crown; but this was met by the queen creating boroughs, which were of no importance in themselves, but which returned her own creatures to the house. It is almost needless to say that Mary repealed the Act of Supremacy, and restored the Catholic religion.

ELIZABETH.

Reformation, 1559. — The first act of Elizabeth was to restore the liturgy and the constitution of the National Church in the same state as Edward VI. left them; to repeal the statutes of heresy, dissolve the refounded monasteries, and restore the royal supremacy. In her first Parliament she said

that 'nothing, no worldly thing under the sun, was so dear to her as the love and good-will of her subjects.' Her policy was simple enough; it was merely to preserve her throne, to keep England out of war, and to restore civil and religious liberty to all her subjects. Proud, imperious, and passionate, yet she was much beloved as the genial, jovial, and intensely patriotic Englishwoman and queen that she was. The fortunes of her country had sunk to their lowest ebb at her accession; yet by her firmness, tact, and fearless bravery she raised them to the highest pitch of glory, and bequeathed her own name to an age which will for ever be identical with all that is great and chivalrous in the English character. In every branch of material prosperity the country advanced during her reign.

1559.—We have said that the first act of her reign was to undo the work of her sister Mary. By the Act of Supremacy she restored the Protestant religion, and by the Act of Uniformity she ordained that the Book of Common Prayer, as established by Edward VI. in 1552, should be revised and confirmed, and that no other should be used in churches. The 42 articles of Edward VI. were also revised and reduced to 39; and in 1571 they were made binding on the clergy by Act of Parliament. The Court of High Commission was permanently established in 1583, in order to secure a uniformity of worship, and to punish by fine or censure all those who absented themselves from the parish church. Although Elizabeth had not a spark of religious sentiment in her character, yet she was very careful in the observance of religious duties.

The Pope.—In 1570 Pope Pius V. issued a bull against the queen. He had already instigated an insurrection against her, headed by the Duke of Norfolk and the Earls of Northumberland and Westmoreland, with the object of restoring the old religion of Rome. The Pope's bull, which was much more injurious to the Catholics than to the Protestants, rested on a principle never acknowledged in England, namely, the right of the Pope to depose kings. One Felton fixed it to the bishop of London's palace, and suffered death for the offence.

Statutes of 1571.—In reply to this bull the Parliament of 1571 passed two statutes. The first made it high treason to say the queen was a heretic, schismatic, tyrant, infidel, or usurper of the crown, and declared it to be an offence punishable by forfeiture and imprisonment, and on repetition by *præmunire*, for any one during the queen's life to say that any particular person was or ought to be heir or successor to the queen. The second Act refers more especially to the bull of Pius v., and recites that by colour thereof 'wicked persons, in parts where the people for want of instruction are weak and simple and ignorant, have so far wrought that sundry and simple and ignorant persons have been reconciled to the usurped authority of Rome.' It was therefore enacted—(1) that any person publishing any bull from Rome, or reconciling any person to the Romish Church, should incur the penalty of high treason; (2) that aiders and comforters after the fact were to incur *præmunire;* (3) *præmunire* was also imposed on persons bringing into the realm 'things' called *Agnus Dei*, or pictures, crosses, beads, or such superstitious things, hallowed or consecrated, as it is termed, by the bishops of Rome. It is clear that the above Acts form a leading epoch in the history of English Catholicism.

Civil Government.—The civil government of Elizabeth was despotic; but the Catholic plots against her life, and the threatened Spanish invasion, united the people in her favour, and kept the Commons from beginning the strife between Crown and Parliament. After the defeat of the Spanish Armada, however, and all danger of foreign invasion had ceased, a new struggle began at home. Political trials were unjustly conducted; courts-martial frequently superseded the courts of law; the jurisdiction of the Star Chamber could not be vindicated; and in cases of treason the courts of justice became the 'caverns of murderers.'

Guarantees of Liberty. — Civil liberty has two direct guarantees: the open administration of justice according to known laws truly interpreted, with a fair construction of evidence; and the right of Parliament, without let or hindrance, to inquire

into and to redress public grievances. The first of these is by far the more important to the subject, and yet under both Plantagenet and Tudor sovereigns our constitution always failed here. Illegal commitments, illegal proclamations, and martial law were the rule and not the exception. Elizabeth also endeavoured to restrain or limit freedom of speech in Parliament. 'Privilege of speech,' she says, 'is granted, but ye must know what privilege ye have: not to speak every one what he listeth, or what cometh into his brain to utter; your privilege is *Aye* or *No*.'

Monopolies. — 'The English sovereigns had always been entrusted with the supreme direction of commercial police. It was their prerogative to regulate coin, weights, measures, and appoint markets, fairs, and ports. The queen encroached on the province of the Legislature, granted patents of monopolies by scores' to her courtiers, who sold them to merchants and companies, so that the articles in which they dealt—and they were nearly all the necessaries of life—could only be bought at exorbitant prices. This she called her 'highest prerogative,' 'the choicest flower in her garden,' and the 'principal and head pearl in her crown.' The Commons, however, always regarded these monopolies as a terrible grievance, and in 1597 presented an address to the queen on the subject. She replied in fair words, but did not yield. The opposition gradually grew more furious, and in the Parliament of 1601 monopolies were abolished, with the wise consent of the sovereign.

CHAPTER XII.

THE STUART PERIOD, 1603–1688.

General Remarks.—'The slavish Parliament of Henry VIII.,' says Macaulay, 'grew into the murmuring Parliament of Elizabeth, the mutinous Parliament of James I., and the rebellious Parliament of Charles I. The steps were many, but the energy one; it was the growth of the middle class and its animation under Protestantism.' The infatuated Stuarts, however, remained blind to the signs of the times, and proof against the almost contagious character of the genius of the period. They went on babbling about the 'divine right,' as if the world had stood still since that absurd doctrine was first enunciated. They tried to make the world believe that the king can do no wrong, when the world knew very well that the king was seldom doing right. James I., with all his boasted 'kingcraft,' found that there were other rights than his own, when in the first Parliament of his reign in England the rights and privileges of the Commons were drawn up in a petition which became the groundwork of the Petition of Right; and James II. discovered his error, too late, when the Bill of Rights and the Act of Settlement excluded him for ever from the British throne.

Transition Stage.—The reign of James I. is a transition period between Tudor and Stuart history—between the law and the constitution. The scholastic subtlety of the Middle Ages perverted the minds of lawyers, and encumbered the English constitution with so many legal sophistries, that people of common sense had always to fall back on the simplicity of the ancient charters in order to understand what the English constitution really meant. Lawyers abounded, both in the Tudor

and Stuart periods, who were ready to prove anything after the manner of Duns Scotus and William of Occam; but in the reign of James another method was rapidly springing up, which was destined to clear away for ever the syllogistic rubbish of centuries of false reasoning. The parasitical growth of legal quibbles has more than once endangered the vitality of the English constitution; for, up to the seventeenth century, there was no difference made between the constitution and the law. Since that time, however, it has been gradually throwing off this encumbrance, until at last it stood boldly out as the maker and repealer of all law for the people. The prerogatives of the Crown, the privileges of Parliament, and the liberties of the subject, are matters which require the aid of law courts sometimes to define, as new circumstances may arise; but there they all are, too great for a final definition, and sufficient to cover all possible emergencies.

Political Movements.—'From the time that William of Normandy renewed the laws of Edward the Confessor, to the time that William of Orange gave his assent to the Bill of Rights, the re-enactment and more honest administration of law were what Parliament demanded,' and not the making of new ones. From time to time certain statutes were added to the charters already in existence, but they were added not so much with the object of securing more liberty and justice, as with the view of safe-guarding the liberties which the people inherited from time immemorial. It was not because the nation demanded larger franchises, but because kings refused to respect those they inherited from their ancestors, that the great movements in our political history took place, sometimes ending in revolution and the dethronement of the sovereign, but happily more often in the drawing up of a national compact between the sovereign and his subjects.

JAMES I.

Cause of Conflict.—The Reformation was now an accomplished fact, and the national spirit, which had been for a long

time directed against Rome and Popery, was now turned to home politics. The Pope was crushed for ever; and now the royal prerogative was to undergo the same logical examination which scattered the pretensions of Pius v. to the winds.

The struggle between James and his Parliament began with his reign; and although he managed to weather the storm during his lifetime, he bequeathed to his son a heritage of trouble and disaster. The reactionary movement towards absolutism began in the reign of Henry VI., and reached its climax under Henry VIII.; but with the increase of wealth and the growth of the middle class under Elizabeth, the spirit of freedom revived, and the tide of despotism began to recede before its breath.

First Parliament, 1604.—In the beginning of 1604 James summoned his first Parliament, and at once infringed the privileges and independence of the Commons by specifying the kind of men whom he wished to be elected. He directed also that all returns should be sent to his court of chancery, and that such as should be *there* found contrary to *his* proclamation should be rejected as 'unlawful and insufficient.' Such a high-handed proceeding as this, and from such a strange being as James, made a struggle between him and the House of Commons inevitable. In answer to the address from the throne, the speaker, Sir Edward Philips, plainly reminded the king of the limited nature of his regal powers. 'New laws,' he said, 'could not be instituted, nor imperfect laws reformed, nor inconvenient laws abrogated, by any other power than that of the High Court of Parliament, that is, by the agreement of the Commons, the accord of the Lords, and the assent of the king; that to the king belonged the right either negatively to frustrate or affirmatively to ratify; but that he could not institute; every bill must pass the two houses before it could be submitted to his pleasure.'

Rights of the Commons.—After this plain speaking, the house proceeded to vindicate their exclusive right to determine contested elections against the recent attempt of the king to

transfer the decision of such cases to his own court of chancery. They also asserted their privilege of freedom from arrest, and gave to it, for the first time, a legislative recognition. When a member of the house was formerly imprisoned for debt, the gaoler could not surrender him except at the risk of being prosecuted; but it was now enacted—(1) that the officer of a prison should be discharged of all liability for delivering out of custody a person having privilege of Parliament; and (2) that the creditor, at the expiration of the time of privilege, might sue out a new writ of execution. The same statute also recognises as existing law—(1) the privilege of freedom from arrest; (2) the right of either house of Parliament to set a privileged person at liberty; and (3) the right to punish those who make or procure arrests.

The 'Apology.'—This first Parliament was clearly in no mood to flatter the vanity of James, or to deal reverently with his 'divine right.' On the contrary, after granting him tonnage and poundage for life in the usual form, they concluded the session by placing on record a protestation of their rights and liberties, drawn up by a committee of the house, and entitled, 'A Form of Apology and Satisfaction, to be delivered to His Majesty.' In this remarkable document, which sounds like a prelude to the Petition of Right, they 'protest in the name of the whole Commons of England with uniform consent, for themselves and posterity:'—(1) That our privileges and liberties are of right and due inheritance, no less than our very lands and goods. (2) That they cannot be withheld from us, denied or impaired, but with apparent[1] wrong to the whole state of the realm. (3) That our making of request in the entrance of Parliament to enjoy our privileges is an act of manners only, and doth not weaken our right, no more than our sueing to the king for our lands by petition, which form though new and more decent than the old *præcipe*, yet the subject's right is no less now than of old. (4) That our house is a court of record, and so

[1] *Apparent* here means *manifest.*

ever esteemed. (This was meant as a reply to the king, who desired all parliamentary returns to be sent to the court of chancery.) (5) That there is not the highest standing court in this land that ought to enter into competency, either for dignity or authority, with this high court of Parliament, which gives laws to other courts, but from other courts receives neither laws nor orders. (6) That the House of Commons is the sole proper judge of the return of all such writs, and of the election of all such members as belong unto it, without the which the freedom of elections were not entire; and that though your majesty's court of chancery send out these writs, and receive the returns and preserve them, yet the same is done only for the use of Parliament, over which neither the chancery or any other court ever had or ought to have any manner of jurisdiction.

This was a sharp lecture to the benighted but self-complacent Scotchman on his duties as a king; and during the following sessions of this Parliament, the growl muttered in the 'Apology' became louder and louder, until the king, in alarm, dissolved the house. In this Parliament it was established as a rule that the same bill cannot be proposed twice in the same session.

Illegal Customs Dues.—James, whose sole idea of Parliament was that of a financial committee who met together with the sole object of supplying him with large subsidies, was so offended at the turn of affairs, that he refused to meet the Commons for the next two years. He was, however, in want of money, and he resorted to a constitutional innovation. He imposed customs duties on almost all kinds of merchandise, exported or imported; and as English commerce was growing at a wonderful rate all over the world, this impost, sometimes as large as 5s. per cwt., would render the king independent of Parliament had he been anything but a mere prodigal. His court was the most corrupt, the most prodigal, and the most immoral in Europe, at least it was more coarsely so, and the intemperate monarch was fast getting into debt. He had, therefore, no alternative but to summon Parliament; but he was careful to command that they should not enter upon the subject

of the new duties, which were already accounted legal on the authority of his judges.

Second Parliament.—The Parliament of 1610 was summoned, and the first act of the Commons was to impugn the decision of the judges with respect to the customs duties. The king forbade discussion on the subject; but the Commons, the majority of whom were able lawyers, were unanimous against the Crown, and replied to the royal mandate by 'claiming as an ancient, general, and an undoubted right of Parliament to debate freely all matters which do properly concern the subject; which freedom of debate being once foreclosed, the essence of the liberty of Parliament is withal dissolved.' They therefore ordered all imposts without the consent of Parliament to be at once abolished; but the bill they passed, rendering all such imposts illegal, was thrown out by the Lords. At the same time they protested against the king's proclamations and the inquisitorial character of the court of High Commission. In this they were backed by the judges, who gave it as their opinion that 'the king could not by proclamation make an offence punishable in the Star Chamber[1] if it were not already by law under the jurisdiction of that court.' The second Parliament was dissolved, and for the next three years the king ruled as an autocrat. His extravagance and prodigality were so excessive that at the beginning of 1614 his debts amounted to £680,000. He resorted to all manner of illegal means to supply his ever-increasing wants: loans on Privy Seals were demanded; heavy fines were inflicted in the Star Chamber; peerages were sold at £10,000 apiece; a new order of hereditary knights called baronets was created, each paying £1000 for his patent; Crown lands were sold, and a general degradation of everything noble and royal in England took place, yet the liabilities of the king and of his profligate favourites were increasing. He therefore, on the advice of Nevill and Bacon, summoned another Parliament, which met in 1614.

[1] The difference between the Star Chamber and any other court was this: the latter were governed by the common or statute law; the former admitted for law the proclamation of the king.

'Addled Parliament.'—The spirit of resistance was now thoroughly roused throughout the country, and all the leading members of the late opposition were returned. Three hundred wholly new members were also returned, and many of these, such as Wentworth, Pym, and Eliot, became great leaders in the later struggle with the Crown. The new house at once refused to grant supplies until all grievances were redressed, the first and chief of these being illegal imposts. They passed a unanimous vote against the king's right to impose taxes without their consent, and demanded a conference with the Lords on the subject. Neile, the bishop of Lichfield, and a sycophant, indulged in very abusive language towards the Commons; but he was speedily brought to his senses and made to apologise, 'with many tears.' The king, more alarmed than ever at the threatening attitude of the Commons, dissolved the Parliament before they had passed one single bill; and from this circumstance it received the sobriquet of 'Addled.'[1]

Arbitrary Rule.—Six years of arbitrary government without Parliament followed. A hereditary sovereign and a representative assembly cannot, indeed, co-exist when no authority is recognised either in the Legislature itself or in the nation it represents. James was now more deeply committed than ever to the conflict with the Commons. In the meantime, he had recourse to the old illegal exactions,—forced loans, monopolies, heavy fines, feudal dues, benevolences, and the sale of peerages. Indeed, all the old grievances, instead of being redressed, were more audaciously developed. The king had nothing to fear now but the judicial power, and he therefore attempted to corrupt the bench by interfering with the opinions of the judges; and Chief-Justice Coke was degraded because he refused to be guided in his decisions by the profligate and half-witted monarch.

Third Parliament, 1621—Impeachment.—In the Parliament of 1621 the Commons protested against the imprisonment of members, and, on the motion of Coke, they appointed a committee of inquiry into the existing grievances. They revived

[1] Four members of this Parliament were committed to the Tower.

the parliamentary right of impeachment, which had lain dormant since the impeachment of the Duke of Suffolk in 1449. During the Tudor period, when the Commons were servile to the Crown, offenders were punished by Bills of Attainder, and penalties inflicted in the Star Chamber; now, however, they were strong enough to impeach ministers of the Crown at the bar of the House of Lords. One of these was Bacon, who was found guilty and sentenced to the Tower; and in 1624 Lionel Cranfield, Earl of Middlesex, the Lord Treasurer, was also impeached, and found guilty. On the eve of the Christmas recess 1621, the house drew up another protestation, in which they boldly set forth their rights, privileges, and liberties, declaring them to be inherited from time immemorial and not derived from the king. The infatuated king, however, sent for the journals of the house, tore up the obnoxious protest with his own hand, and committed Coke to the Tower.

Fourth Parliament, 1624.—In 1624 the king met his last Parliament, which was more peaceable and better disposed towards him than any of the earlier ones. This partly arose from the abandonment of the Spanish marriage, which greatly pleased the Puritan party, now in the majority, and partly from the fact that the king showed less opposition to their proceedings.

Monopolies.—Some good statutes were passed, but the chief of these was an Act abolishing monopolies, which was indeed the only legislative measure of importance they obtained during a struggle of twenty years' duration.

Summary.—They revived, however, their ancient right of impeachment, and placed on record a protestation of their claim to freely debate all matters of public interest. They remonstrated against illegal imports on merchandise, and against the usurped prerogative of the Crown by which proclamations were made to have the force of law. And finally, 'they secured beyond controversy their exclusive privilege of determining contested elections of their members.'

CHARLES I.

Absolutism.—Nurtured in the doctrines of divine right and absolute sovereignty, which were espoused alike by the court, the Church, and the judicial bench, Charles attempted to introduce into this country the principles and practice of absolute monarchy. At the instigation of Buckingham, a vain and frivolous favourite, whose incapacity was only equalled by his presumptuous arrogance, the king began his reign by insulting the Commons and infringing their privileges; and later on, at the instigation of Wentworth, Earl of Strafford, an able and ambitious favourite, Charles dispensed with Parliament altogether. In the first year of his reign he petulantly dissolved two Parliaments, because the Commons adhered to the ancient constitutional principle of making he grant of subsidies depend upon the redress of grievances. He not only insulted the Commons and attacked their privileges, but was so ill-advised as to provoke a quarrel with the House of Lords, by committing the Earl of Arundel to the Tower for permitting his son to marry without the royal licence.

Privilege.—This arbitrary proceeding was resented by the peers, who declared it as a constitutional rule that 'no lord of Parliament, the Parliament sitting, or within the usual times of privilege of Parliament, is to be imprisoned or restrained without sentence or order of the house, unless it be for treason or felony, or for refusing to give surety for the peace.'

Ship-money.—After the dissolution of his second Parliament the king resorted to all the old arbitrary means of extorting money; but in addition to these, the seaport towns were ordered to furnish vessels armed and equipped. This was the first step which led to the general taxation known as ship-money. The first writ was issued from the Council in October 1634, to the magistrates of London and other seaport towns, ordering them to provide a certain number of war vessels, of specified tonnage and equipage, and empowering them to assess *all the inhabitants* for a contribution towards this armament. These writs were

soon extended from the seaports to the whole kingdom, by order of Finch, chief justice of the Common Pleas. These new writs were for ship-money, and distinguished from the former writs, which demanded the equipment of vessels only. The sheriffs were directed to assess every landholder and other inhabitants of their districts according to their means, and to enforce payment by distress or imprisonment. This new tax startled everybody; but those who had courage to protest against it or refused payment were cast into prison.

Hampden.—Hampden, a gentleman of Buckinghamshire and a cousin of Oliver Cromwell, refused payment, and determined to obtain a judicial decision on the point of law. His case was heard before all the judges in the Exchequer Chamber, and judgment was given in favour of the Crown by a majority of only two. The effect of this trial was to strengthen public indignation against the king, and to make Hampden a popular hero.

Abuses.—All the old grievances were continued: monopolies were sold, although they were abandoned by Elizabeth and abolished by James; the forest laws were revived; tonnage and poundage, which were granted to Charles only for one year by his first Parliament, were exacted; forced loans were raised under the title of benevolences, and those who refused or were unable to pay were impressed into the navy; ship-money was levied, soldiers billeted on private houses, and the inhabitants punished by court-martial; illegal proclamations were made by the king; and all this machinery of tyranny was maintained by a vigilant exercise of the jurisdiction of the Star Chamber. Nevertheless, the monarch discovered, as the Norman sovereigns did before him, that no system of tyranny could extort more money from the nation than could be obtained constitutionally and with its own consent in Parliament. Some of those who were imprisoned sued out their writs of *habeas corpus*, a guarantee of liberty as old as Magna Charta; but the judges decided that although they were only detained under a warrant from the Privy Council, and by *special command of the king*, yet their detention was legal.

Third Parliament, 1628.—The Parliament which met in 1629 was a memorable one. It contained the 'prime intellectual manhood of England,' who came forward to rescue the constitution. The House of Commons contained such men as Coke, Pym, Eliot, Hampden, and Wentworth, afterwards Earl Strafford. The king met them in a haughty manner and with a threatening speech; but nothing daunted, they quickly resolved themselves into a committee of grievances, intent on vindicating their 'ancient vital liberties,' as Wentworth said, 'by reinforcing our ancient laws made by our ancestors; by setting forth such a character of them as no licentious spirit should dare to enter upon them.'

Grievances.—The liberty of the subject in person and property was the great theme of their hot discussions, and this they considered under four different heads:—(1) Illegal exactions under the name of loans; (2) Arbitrary imprisonment and the recent decisions with regard to the nullity of *habeas corpus;* (3) The billeting of soldiers; (4) Punishment by martial law.

Magna Charta quoted.—The argument of the Crown lawyers in favour of the royal prerogative was founded on a text in the 39th clause of Magna Charta, wherein it is stated that 'No freeman shall be taken, or imprisoned, or outlawed, or exiled, or anyways destroyed; nor will we go upon him, nor will we send upon him, unless by the lawful judgment of his peers, or *by the law of the land.*'[1] How was 'the law of the land' to be interpreted? The Attorney-General said that how far *lex terræ* extends is and ever was the question, and at the same time maintained that the law allowed a certain latitude to the king or Privy Council in extraordinary cases. The Commons denied any such latitude; for if the king, they said, could imprison he could also put to death, which would make every law utterly useless. *Per legem terræ* could only mean 'by process of the law,' over which the king had no sovereign power.

[1] The 40th clause runs thus: 'To none will we sell, to none will we deny or delay, right or justice.' These two clauses contain *habeas corpus* and trial by jury. They are the 'most effectual security against oppression which the wisdom of man has been hitherto able to devise.'

Petition of Right.—Charles tried to pacify the Commons by vague promises of reform, but this would not satisfy the leaders of the house, and Coke exclaimed, 'Let us put up a Petition of Right; not that I distrust the king, but that we cannot take his trust save in a parliamentary way.' The famous Petition of Right was accordingly drawn up in the form of a *declaratory statute* and sent to the Upper House; but the Lords proposed to add a clause to it, 'with due regard to leave entire the *sovereign power*' of the king.[1] The Commons replied that they had no 'sovereign power' to give, and Coke added that 'Magna Charta is such a fellow that he will have no "sovereign."' At last the Lords gave way, and accepted the bill as a whole. The king, however, continued to evade the question, but as the Commons were proceeding to impeach his favourite Buckingham, he yielded, and gave his assent in the usual form, 'Soit droit fait come est desiré.'

The Petition of Right, as we have said, is based upon the abuses of the royal prerogative mentioned above. By ratifying this celebrated law and second charter of English liberty, Charles bound himself never again to raise money without the consent of the House of Commons, never to imprison any person except in due course of law, and never to billet soldiers or subject his people to the jurisdiction of courts-martial. During the recess, however, he continued his old practices of extortion and imprisonment, and dissolved his Parliament as soon as it met in March 1629.

1629–1640.—From 1629 to 1640 he dispensed with Parliament altogether, and ruled the country by his own 'proclamations.' The most eminent members of the opposition were imprisoned, except such as were brought over to the king's side by the gift of office. The most distinguished of these was Wentworth, who was first created baron, then viscount, then Earl of Strafford, and Lord Deputy of Ireland. Charles was

[1] Edward I. made a precisely similar reservation with regard to his sovereign power, *salvo jure coronæ nostræ*, when he confirmed Magna Charta; but his Parliament resisted the introduction of the clause, and Edward gave way.

therefore surrounded by able and unscrupulous counsellors, the chiefs of whom were Strafford and Laud. The civil despotism of the king was maintained by the former through the medium of the Star Chamber, and his ecclesiastical tyranny was fostered by the latter and the Court of High Commission.

Wentworth's Scheme of 'Thorough.' — Wentworth, afterwards Earl of Strafford, was at one time one of the most distinguished members of the opposition. He therefore understood the tactics of the Commons thoroughly, and after his apostacy 'he formed a vast, deeply meditated scheme,' which nearly confounded the ablest statesmen of the house. To this scheme Wentworth gave the name of *Thorough.* The main object of his plan was to make Charles an absolute monarch, and as independent of Parliament as any of the Continental sovereigns. The only instrument by which this could be effected was a standing army, and the restoration, perhaps, of the Roman faith. Wentworth knew, from his own experience in Ireland as viceroy, that military despotism was the only means by which the courts of justice could be deprived of all authority, and the estates and personal liberty of the people could be put at the disposal of the Crown; but the civil and religious tyranny which crushed the Celtic and Latin races of Europe was always intolerable to the Teutonic people, and especially so to Saxon England. The scheme of Thorough succeeded in Ireland; in England it cost the king his head.

Long Parliament, 1640.—In 1640 Parliament was again summoned. The court candidates had been everywhere rejected, and the opposition was in a large majority. As soon as the Commons met together, Pym delivered a speech, in which he described and lamented the arbitrary proceedings of the Government, and the miserable state of the country. The victims of the Star Chamber were released, and Strafford, Laud, Finch, and six judges who had given their decision in favour of ship-money, were impeached before the bar of the House of Lords. The illegal acts of the late tyranny were annulled one by one, and the constitution was again re-established. In order to put a check

on the arbitrary power of the Crown to dissolve Parliament at a moment's notice, and to summon it or not as it pleased the king to do so, a Triennial Bill was passed which *enforced* the meeting of the house every three years, and *bound* the returning officers to proceed to elections if the royal writ failed to summon them.

In the reign of Edward II., and also of Edward III., it was provided by statute that Parliament should meet every year; but no provision was made in case the king should fail to issue the necessary writs. In the Triennial Bill, however, it is enacted that 'the Lord Chancellor, or Keeper of the Great Seal, shall be sworn to issue the writs for a new Parliament in due time, under pain of disability to hold office, and further punishment; in case of his default, the peers are enabled and directed to meet at Westminster, and any twelve or more of them to issue the writs; failing the peers, the sheriffs, mayors, and bailiffs should cause elections to be made; and lastly, in their default, the electors themselves are to meet and choose their representatives, in the same manner as if writs had been issued regularly from the Crown.'

Grievances redressed.—All illegal taxation, including ship-money, was now abolished, impressment was also declared illegal, and the two notorious courts of civil and religious despotism, the Star Chamber and the High Commission, were dissolved. The constitution was restored as established by the House of Plantagenet, purged from the illegal abuses of centuries, and reformed in the shape in which it exists to this day. In 1641, however, Charles once more displayed the faithlessness of his character, and his utter disregard of statute law, by proceeding to the house with an armed force, and demanding the arrest of five members of the opposition. This decided his fate; the whole house was unanimous against him, and a revolutionary war broke out in the country. The great constitutional contest between the king and his Parliament ended with the arrest of the five members, and the revolutionary period began. This period, 1642–1660, although interesting in itself, does not concern us in a short study of the English constitution. It is

enough to say that the results of the Revolution were to destroy absolute monarchy for ever, and to establish the authority of the House of Commons as the ruler of the people. It likewise effected the ascendency of the Protestant religion, and developed the national antipathy to a standing army.

THE RESTORATION, 1660–1689.

Charles II.—The Commons had deprived Charles I. not only of the prerogatives he had usurped, in violation of ancient law, but also of the right to appoint his ministers, or create peers without their consent, or to hold the supreme military authority. These latter privileges belonged to the Crown from time immemorial, and belong to it still; but since the Revolution the sovereign can exercise them only with the consent of responsible ministers who possess the confidence of the House of Commons.

Charles II. made no attempt at first to revive the instruments of misgovernment abolished by the Long Parliament; nevertheless the spirit of the old system continued to live. Many good laws were passed in the reign of this monarch; and first among them may be mentioned that which swept away all military tenures with all their feudal burdens, such as *aids*, *wardships*, *reliefs*, *marriage*, etc., and converted all land tenures into common freeholds. The theory of our land laws, however, remains to this day almost as feudal as ever, and reveals itself in the fact that 'all lands and tenements in England in the hands of subjects are holden mediately or immediately of the Crown.' It is also apparent in the law of primogeniture, as applied to the inheritance of real estate, as well as in the custom of family settlements, by which the old law of entail is practically continued. It was, indeed, owing to the incidents of feudal tenure, and the burdensome character of the exactions of knights' service, that the Norman barons so frequently revolted against their sovereigns, and wrested from them our great charters of liberty.[1] By the same statute, 12 Carl. II., the right of purvey-

[1] This is equally true of Magna Charta.

ance was abolished. It was a prerogative of the Crown since the Norman Conquest, but it was declared illegal by the 28th, 30th, and 31st clauses of Magna Charta.

Tumultuous Petitioning.—The 13th Carl. II. is an Act to discourage and forbid the tumultuous petitioning of the king or Parliament for the alteration of matters already established by law in Church and State. According to this Act, the contents of a petition must first be approved in the country by three justices, or by the grand jury of the county whence it comes, and in London by the Lord Mayor, aldermen, and common council, before it is presented to either house of Parliament or to the king; and it must not be signed by more than twenty persons, nor presented by more than ten persons, under penalty in either case of £100 fine and three months' imprisonment. This law was meant to secure the Legislature against being overawed or coerced by riotous and seditious mobs under the guise of petitioners.

Appropriating Supplies.—In the session of 1665 the Commons established the principle of appropriating supplies for specific purposes. When the bill granting a subsidy of £1,250,000 for the Dutch war was drawn up, a clause was introduced into it which provided that all moneys raised by virtue of that Act should be solely applicable to the service of the war, and should not be issued out of the Exchequer except by warrant mentioning that they were payable for such service.[1] The appropriation of supplies was indeed no novelty; it began as early as the reign of Edward III., but the right was not fully exercised by the Commons until the reign of Charles II., when the Appropriation Act rendered it an undisputed principle and a constitutional practice that 'all supplies granted by Parliament are only to be expended for particular objects specified by itself.' This has been the invariable usage since the Revolution, when the House of Commons obtained complete control over the executive power of the Crown.

[1] The commencement of the National Debt dates from the reign of Charles II.

Habeas Corpus.—The most celebrated Act of this reign is the *Habeas Corpus* of 1679. It really introduced no new principle into English jurisprudence, and therefore conferred no new right on the subject. The right of personal liberty is as old as our history, and rests on the common law, which is declared and more clearly defined by Magna Charta; but *Habeas Corpus* made the remedies against arbitrary imprisonment 'short, certain, and obtainable at all times and in all places.' It had, however, three defects,—(1) it fixed no limit on the amount of bail which might be demanded from a prisoner; (2) it only applied to *criminal* charges, all others being left to the *Habeas Corpus* of common law as it previously existed; and (3) it did not guard against falsehood in the return. The first of these defects was remedied by the Bill of Rights, in which it is stated that 'excessive bail ought not to be required;' and the other two by the 56th George III., which extends the power of issuing a writ of *Habeas Corpus* to other charges, and in all cases to be returnable *immediately*.

Ecclesiastical Despotism.—The ecclesiastical despotism of Charles II.'s reign was perhaps more oppressive than its civil tyranny. The Corporation Act of 1661 required that all corporate magistrates and office-bearers should take the sacrament according to the ritual of the Church of England, renounce the Solemn League and Covenant, and on no account whatever take up arms against the king. This was a religious combined with a political test, which struck at the root of Presbyterianism, whose strength lay in the small corporations of towns, and it established an inequality of civil rights between all dissenters and churchmen.

Uniformity.—In 1662 another blow was dealt at the Puritans by the renewal of the Act of Uniformity. For the first time since the Reformation, all orders save those conferred by the bishops were pronounced illegal; the Book of Common Prayer as revised in Convocation must be read in all places of worship; and the assent and consent of every person holding an ecclesiastical preferment to the contents of the Book of Common

Prayer was required by a solemn declaration. The Act also contained several persecuting clauses directed against dissenters, with the result that the best, the wisest, and most learned divines of the Church of England were driven from their parishes as nonconformists, and were obliged to unite themselves with the great body of dissenters, which persecution had organized into a powerful opposition to all forms of Episcopacy. The Toleration Act of William III. at last set the consciences of men free, by giving a legal recognition to freedom of worship.

Test Act.—Origin of Whig and Tory.—The Parliamentary Test Act of 1678, which is different from the religious Test Act of 1673 directed against popish recusants, provided that no person or member of the House of Commons should sit or vote without having taken the oath of allegiance and supremacy, with the unfeigned repudiation of the doctrine of transubstantiation, the adoration of the Virgin, and the sacrifice of the mass. At the same time an exception was made in favour of the Duke of York, who was a professed Romanist; but in the following year the Commons were bold enough to introduce a bill which would exclude him from the throne on account of his religious faith.[1] The king, however, frustrated this design by suddenly dissolving Parliament; but the intense public agitation caused by the Exclusion Bill continued unabated, and petitions poured in from all quarters in favour of the speedy reassembling of the Commons. These petitions were met by others from the adherents of the court, who expressed 'abhorrence' at the attempt to coerce the king to summon Parliament. From this time forth there have been two parties in the State, the 'Petitioners' and 'Abhorrers,' or, as they were shortly afterwards called, Whig and Tory. Both parties agreed in maintaining the ancient system of government by King, Lords, and Commons, but they differed widely on questions affecting the respective authority of these three pillars of the Constitution. The Tories believed in the exaltation of

[1] The Exclusion Bill was carried in the Commons, but rejected by the Lords. A bill for the exclusion of the next heir from the throne was clearly 'a legal warning of the Revolution.'

the Crown, by enlarging the royal prerogative; the Whigs, on the other hand, looked towards the people, whose welfare they regarded as the end and object of all government. 'To a Tory,' says Hallam, 'the Constitution, inasmuch as it was the Constitution, was an ultimate point, beyond which he never looked, and from which he thought it altogether impossible to swerve; whereas a Whig deemed all forms of government subordinate to the public good, and therefore liable to change when they should cease to promote that object.' We have, however, long survived the day when any party in the State could maintain that the English Constitution is perfect, and absolutely incapable of improvement. In outward form and in theory it is as perfect as anything created by the wisdom of man; but in the practical working of its internal organization it must always be capable of some improvement. When progress ceases, the Constitution will become too old; and then the country will gradually decay from inanition, as Turkey is now doing, or die in convulsive throes, as other great empires of the past have done.

Treaty of Dover, 1670. — The profligate character of Charles II. is too well known to require any comment, and his faithlessness to his country was equal to that of his father. We need only mention the secret Treaty of Dover, by which he and his brother James, together with Louis XIV. of France, had entered into a conspiracy against the Protestant faith and the civilised liberties of England, in order to be convinced of the insincerity of the Stuart character. This treaty roused public indignation and hatred against the king; for Englishmen knew too well from experience that the progress of Roman Catholicism was always identified with the progress of despotism. To place the national faith beneath the foot of the Pope, and the national liberties beneath the foot of the king, was the sum and substance of Stuart policy; but happily England was not France or Spain or Italy.

JAMES II.

Tyranny.—James II. was merely the hireling of Louis XIV. His brother succeeded during the last years of his reign in

establishing a despotism as great as that of Henry VIII. His Parliament was absolutely servile to him, and the means he adopted to render it so were as crafty as they were unconstitutional. He made an attack on the charters of corporate boroughs, beginning with London, by declaring that they were forfeited on account of alleged misdemeanours. The charters were then renewed, and the corporations remodelled on a plan that would render them subservient to the royal will. The new charters were framed in such a way as to give the Crown the right to appoint the first members. This cunning scheme placed in the hands of the king the power to nominate a large proportion of the members of the House of Commons, as well as a local power of domineering over the Whigs. The House of Commons thus became an oligarchy, and as servile to Charles and his brother as it was to the Tudors. But the tyranny was not fated to last long.

James' Parliament.—The first Parliament of James II. granted him two millions yearly for life, a larger sum than any English king ever had, and an income that made him absolutely independent of Parliament for the rest of his reign. His first care was to organize a standing army of twenty thousand men; and with this and a corrupt bench of judges to pronounce his commands, he could defy the country and supersede the law by the royal prerogative. He revived the Court of High Commission, and leagued with Louis XIV. for the re-establishment of Romanism. England submitted for three years to this violent, ostentatious, and imprudent monarch; but in 1688, when a verdict of 'Not guilty' was returned in the case of the seven bishops, James found himself isolated from the sympathy of the nation and almost alone. Men of all parties and of all creeds united to crush his tyranny, and to restore the national faith and public liberty bequeathed to them by their ancestors. The leading statesmen of the time fixed their choice on the king's daughter Mary, who was married to William, Prince of Orange. Accordingly, an invitation signed by many of the nobles was despatched to them, and on the 5th November 1688 Mary and

her consort, the Stadtholder of the Dutch Commonwealth, landed at Torbay in Devonshire.

Convention Parliament.—A Convention Parliament met on the 22d January 1689, and on the 28th of the same month the Commons resolved :—

Resolutions.—(1) 'That King James II. having endeavoured to subvert the constitution of the kingdom by breaking the original contract between king and people, and having, by the advice of Jesuits and other wicked persons, violated the fundamental laws and withdrawn himself from the kingdom, has abdicated the government, and that the throne is thereby vacant.'

(2) 'That it hath been found by experience inconsistent with the safety and welfare of this Protestant kingdom to be governed by a popish prince.'

The Exclusion Bill was the first blast of the trumpet that heralded the Bill of Rights; and the above resolutions leave us on the threshold of the great Revolution.

CHAPTER XIII.

WILLIAM III. AND MARY TO VICTORIA, 1688-1881.

The Great Charters.—The principles contained in Magna Charta are more fully developed in the Petition of Right and the Bill of Rights. The Earl of Chatham used to call these three statutes 'the Bible of the English Constitution;' and indeed they deserve the name, for it is to them that an appeal is made on every great public crisis. In each of these charters of liberty the English people, at a solemn crisis in their history, declared their rights and acknowledged their responsibilities. They are therefore not ordinary laws, but rather constitutional compacts between the sovereign and his subjects. To the student of history it is very important to understand the circumstances under which each of these three primary laws came into existence, as well as the purpose for which each of them was framed. The three monarchs from whom they were wrested, John, Charles I., and James II., had this in common, that they were cruel tyrants, utterly indifferent to any form of religious belief, except such as encouraged arbitrary domination on the part of the king, and abject submission on the part of the people; and that each of them directed the whole force of a gloomy, cunning, and unrelenting spirit towards the suppression of whatever is best calculated to add to the moral dignity of man. The personal character of each of these sovereigns, therefore, incited all classes with one accord to rise in rebellion against an intolerable despotism; but there were other causes and other circumstances which distinguished the reign of John, and moved the barons to demand a charter of liberties quite different from those which

compelled Charles and his son to submit to the national will.[1] It was the same spirit, however, that inspired the barons of the thirteenth and the nobles of the seventeenth centuries,—their love of freedom, and their desire to secure a lasting benefit to the people at large.

William landed at Torbay on November 5, 1688, and a Convention Parliament met in January 1689, in which certain resolutions were passed, to the effect that James had 'abdicated,' and that the British throne was thereby vacant. A Declaration of Rights was then drawn up, and on the 13th February 1689 the Crown was offered to William and Mary on the conditions set forth in the 'Declaration.' This tender was made by the Marquis of Halifax in the 'name of all the estates of the realm.'

In the Declaration of Rights, which was afterwards embodied and confirmed in the Bill of Rights, it was determined that William and Mary, Prince and Princess of Orange, 'be declared king and queen of England, France, and Ireland, and the dominions thereto belonging, to hold the crown and dignity of the said kingdoms and dominions to them, the said prince and princess during their lives and the life of the survivor of them; and after their decease the said crown to be to the heirs of the body of the said princess; for default of such issue, to the

[1] We may state briefly some of the causes which led to the enfranchisement of the nation under John, Charles, and James respectively:—

1. *Magna Charta*—its causes: (1) loss of Normandy and the consolidation of *English* nationality; barons refuse foreign service; (2) heavy burdens of feudal tenure; (3) faithless character of the king; (4) his abject surrender to the Pope.

2. *Petition of Right*—its causes: (1) faithless character of the king; (2) arbitrary taxation; (3) billeting of soldiers, and proclamation of martial law; (4) the king's leaning towards Romanism.

3. *Bill of Rights*—its causes: (1) the bad character of the king; (2) his Romanism and ecclesiastical tyranny; (3) his military despotism.

Why did not a revolution take place under the Tudors? (1) Romanism had not ceased to lose hold on popular imagination; (2) commerce had not yet so fully developed itself, nor had learning and enlightenment become so universal; (3) above all, the Commons had not yet felt their own strength, nor had they, indeed, formed any well-defined idea of a constitutional government.

Princess Anne of Denmark and the heirs of her body; and for default of such issue, to the heirs of the body of the said Prince of Orange.'

Act of Settlement, 1700.—It was soon evident, however, that neither William, Mary, nor Anne was likely to leave 'heirs of the body;' and therefore, on the death of the young Duke of Gloucester in 1700, who was son of the Princess of Denmark, the probability that the entail established in the Bill of Rights would come to an end at the death of William and the Princess Anne, rendered it necessary that Parliament should again exercise its power of settling the succession. Accordingly, Parliament having passed over the heirs of James II., and also the Duchess of Savoy, daughter of Henrietta Duchess of Orleans, as well as the elder children of Elizabeth, wife of the Elector Palatine, it was resolved to select the Electress Sophia of Hanover, the nearest heir who professed the Protestant Faith, as the root of a new royal line. By the Act of Settlement all prior claims of inheritance, save the existing entail in favour of the issue of the Princess Anne and of King William, being set aside and annulled, the crown was settled on the 'Princess Sophia, Electress and Duchess Dowager of Hanover, daughter of the most excellent Princess Elizabeth, late Queen of Bohemia, daughter of our late sovereign lord King James the First, of happy memory, and the heirs of her body being Protestants.'[1]

The King Elective.—The right of Parliament to alter the succession is as old as the Witenagemot, and had been several times asserted since the Norman Conquest. The right, indeed, was twice asserted in the reign of Charles II. by the Com-

[1] The Act of Settlement contains eight constitutional articles, which were to take effect on the accession of the House of Hanover. Some of these were repealed by Anne, and never came into operation; but the seventh and eighth are the seal and complement of the Bill of Rights. The former enacts that judges can only be removed upon the address of both houses of Parliament; and the latter declares that no pardon under the Great Seal of England is pleadable to an impeachment by the Commons. This is the last statute which restrains the power of the Crown.

mons, who twice passed a bill for the exclusion of the Duke of York, afterwards James II., from the throne. The Revolution, therefore, by establishing this highest of all national rights, the right of the people to change the succession and to set on the throne whom they would, restored to the old English monarchy the character which it had lost during the Tudor and Stuart periods of our history. By the selection of William and Mary all claim to a divine right, or even a hereditary right, was for ever abolished; and since the day on which William landed in England till now, 'no sovereign has been able to advance any claim to the crown save a claim which rested on a particular clause in a particular Act of Parliament. William, Mary, and Anne were sovereigns simply by virtue of the Bill of Rights. George I. and his successors have been sovereigns solely by virtue of the Act of Settlement.' The older character of the kingship was thus restored, and with it the constitutional power of Parliament returned.

Bill of Rights.—In the second session of the Convention Parliament, which re-assembled in October 1689, the Declaration of Rights was embodied in the Bill of Rights, and finally confirmed as a regular Act of the Legislature. The preamble to this famous bill specifies clearly and forcibly the violation of the known laws and free institutions of the realm which the late king had committed; and it then proceeds to establish sure guarantees against similar wrongs, by declaring the rights and liberties of the subject, and settling the succession of the crown. The bill contains thirteen sections, which may be briefly summarized:—

1. (1) The illegal and arbitrary acts committed by James II. are set forth in twelve different clauses. Then the throne is declared vacant, and (2) the rights and liberties of the subject are asserted in thirteen clauses.
2. The bestowal of the crown on William and Mary on certain conditions and under certain limitations.
3. A new oath of allegiance and supremacy in accordance with the Protestant faith.

4. Acceptance of the crown by William and Mary.
5. Agreement between their majesties and the convention, that the latter, being in reality the two houses of Parliament, should continue to sit.
6. Formal ratification and confirmation of the Declaration of Rights.
7. Formal recognition of their majesties as lawful king and queen.
8. Settlement of the crown, and limitations of the succession.
9. Exclusion of papists, and persons marrying papists.
10. The coronation oath, which is a declaration to be made by every king or queen hereafter succeeding to the crown.
11. The enacting clauses.
12. The dispensing power of the Crown abolished.[1]
13. Certain circumstances and conditions under which the dispensing power may be resumed. (The circumstances, however, did not arise in the reign of William, to which alone this section was applicable.)

Rights and Liberties.—We shall now give in full the clauses under Section I., in which the rights and the liberties of the subject are set forth :—

SECT. I.—1. That the pretended power of superseding laws, or the execution of laws, by regal authority without consent of Parliament is illegal.

2. That the pretended power of dispensing with laws, or the execution of laws, as it hath been assumed and exercised of late is illegal.

3. That the commission for the erection of the late court of commissioners for ecclesiastical causes, and all other commissions and courts of the like nature, are illegal and pernicious.

4. That levying money for or to the use of the Crown by pretence of prerogative without grant of Parliament, for longer

[1] The Stuarts frequently dispensed with the law of the land, and substituted their own Declarations.

time or in other manner than the same is or shall be granted, is illegal.

5. That it is the right of the subject to petition the king, and all commitments and prosecutions for such petitioning are illegal.[1]
6. That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of Parliament, is against law.
7. That the subjects who are Protestants may have arms for their defence, suitable to their condition and as allowed by law.
8. The election of members of Parliament ought to be free.
9. That the freedom of speech and debates or proceedings in Parliament ought not to be impeached, or questioned in any court or place out of Parliament.
10. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.
11. That jurors ought to be duly impanelled and returned, and jurors which pass upon men in trials for high treason ought to be freeholders.
12. That all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void.
13. And that for redress of all grievances, and for the amending, strengthening, and preserving of the laws, Parliament ought to be held frequently.

Royal Revenue.—The granting of a large revenue for life to the last two Stuart sovereigns enabled them to dispense with the authority of Parliament altogether, and to establish a military despotism. This was perhaps one of the secrets of their anti-national policy. One of the first Acts of the new legislation under William was to restrict the grant to a term of four years. The king felt this restriction somewhat bitterly, and exclaimed,

[1] This clause, however, does not affect the Act of Charles II. against *tumultuous* petitioning.

'The gentlemen of England trusted King James, who was an enemy to their religion and their laws, and they will not trust me, by whom their religion and their laws have been preserved.' The effect of this royal growl was that Parliament made the vote of supplies an *annual* one, and this resolution has been adhered to ever since. This of course makes the annual meeting of Parliament a necessity.

Mutiny Act.—We observe that the 6th clause of those above enumerated is directed against standing armies. Since the Bill of Rights became law, an *annual* Act of Parliament is passed authorizing the keeping on foot a defined number of troops, and giving the Crown the power of exercising martial law over them. This annual Act is known as the Mutiny Act; it endures only for a single year, so that there must be a session of Parliament *every* year, and a new Mutiny Act passed, or the army would be disbanded. This is another guarantee for the yearly meeting of Parliament, and the system has continued since the reign of William III. Hallam says, 'The Lords of the Treasury, by a clause annually repeated in the Appropriation Act of every session, are forbidden under severe penalties to order by their warrant any moneys in the Exchequer so appropriated to be issued for any other purpose, and the officers of the Exchequer to obey any such warrant. This has given the House of Commons so effectual a control over the executive power, or more truly speaking, has rendered it so much a participator in that power, that no administration can possibly subsist without its concurrence. Nor can the session of Parliament be intermitted for an entire year without leaving the naval and military power of the kingdom unprovided for.'

First English Ministry.—Before the Revolution there were ministers of the Crown in abundance, but there was no responsible ministry in the modern sense.

Privy Council.—The kings of England from a very early period had been assisted by a council of nobles, to which was assigned various important functions and duties. The *Concilium*

Ordinarium of the Norman kings was a select committee of the *Magnum Concilium* of the realm. During the intervals between the meetings of the larger assembly, the smaller court met regularly for the despatch of executive business, and was the only substitute in those days for what we now call the 'ministry' or the 'government.' In proportion as the House of Commons developed itself, the *Concilium Ordinarium* became more and more an *official* body of ministers of the Crown, and in the reign of Henry VI. the more conspicuous members of this court were formed into a select committee under the immediate control of the king. This was the well-known Privy Council, which under the Tudor and Stuart sovereigns was entrusted with the whole executive power of the Crown, which was rigorously exercised through the medium of the Star Chamber. When the Star Chamber was abolished in the reign of Charles II., the *judicial* functions of the Privy Council fell into abeyance. Charles, however, found it necessary, as indeed all monarchs do, to have a small body of advisers to whom State secrets might be safely entrusted, and to this select body of ministers, which was really a committee of Privy Councillors, was given the designation of 'Cabinet Council.' The secret advisers of the Crown were generally regarded with suspicion, as being a mere club of intriguers, and were therefore known as the 'Cabal.'

'Cabal,' 1671.—By a very curious coincidence the 'Cabal'—a term used as far back as James the First's reign—contained in 1671 five unprincipled ministers (Clifford, Arlington, Buckingham, Ashley, and Lauderdale), the initial letters of whose names formed a word which had already fallen into disrepute, but which under their ministry became altogether odious.

Cabinet.—After the Revolution the Cabinet system was looked upon by some politicians as unconstitutional and dangerous, from the evil associations of the past; nevertheless it became more and more certain that no government could be carried on efficiently without it. The Cabinet, indeed, became more important than ever, and now it is as much a part of our polity as the House of Commons itself. Let us state briefly

the process by which the Cabinet drew to itself the chief executive power.

The judicial power claimed by the Tudor and Stuart Privy Council was a subject of frequent parliamentary remonstrance, for the court of the Star Chamber was an organized portion of it, and as hateful to all lovers of justice as the Inquisition itself. But as soon as the *judicial* functions of the Council were annulled by the abolition of the Star Chamber, there could be no reasonable objection to the existence of a Cabinet in its legitimate capacity. On the contrary, such a system was absolutely necessary for the purposes of secrecy and despatch of business. The machinery of government, however, was very imperfect in the beginning of William's reign, for all the ministers who had charge of public affairs, and therefore all the members of this Cabinet, were his own servants. The House of Commons had no control over them, for it neither could appoint nor dismiss them. It could proceed against any or all of them by impeachment; but this would be a very clumsy and at the same time a violent mode of changing the Government. This gulf between the king and the lower house caused a great deal of bitterness and bad temper on both sides, so that on every occasion of public calamity, whether in war or in commerce, the king and his ministers were blamed by the Commons. William was no tyrant; he was a constitutional monarch and a most able statesman, but he was nearly driven to despair by the unorganized state of the Commons and the almost hopeless breach that existed between them and himself.

Sunderland's Counsel.—The difficulty was at last solved by the Earl of Sunderland, who proposed to the sovereign that he should recognise the new power acquired by the Commons in the State, by choosing his ministers *exclusively* from among the members of the 'party' which was strongest in the lower house.

Government by Party.—Previous to this time no 'ministry' in the modern sense had existed. Every great officer of state was only responsible to the Crown for his own special duties, and

consequently any of them could be dismissed without communication with the rest. It was now proposed 'to replace these independent ministers by an organized and homogeneous *ministry* chosen from the stronger party, representing the same sentiments, and bound together for common action by a sense of responsibility and loyalty to the party to which it belonged.' William agreed to this plan, and by so doing he at once and for ever threw the whole responsibility of government upon the House of Commons and the nation itself. The house henceforth became an organized body, and the ministers who represented majorities became its acknowledged leaders.

Junto, 1695.—Parliament was dissolved in 1695, and in the new House of Commons the Whigs were greatly in the majority. This enabled the king to dismiss his Tory ministers, and to replace them by the ablest Whig statesmen of the day.[1] Russell, the victor of La Hogue, became Lord of the Admiralty; Somers, who defended the seven bishops when he was a young barrister, was named Lord Keeper; Montague, who was a great financier, and established the Bank of England on a plan formed by Paterson, was made Chancellor of the Exchequer; and Shrewsbury was created Secretary of State. So great was the similarity of thought and sentiment between the members of this first 'ministry' that it went by the name of the *Junto.*

Modern Government.—From 1695 the House of Commons started on a new career. Its debates took a new and higher tone, inspired at once by a sense of its own dignity and by a severe consciousness of its great responsibilities. The Triennial Bill became law, the liberty of the press was guaranteed, and the establishment of the Bank of England revealed a new source of strength in the national credit. Thus we see how the sovereignty over England was not transferred by the Revolution from one king to another, but from the king to the House of Commons. The limits of the royal authority remained theoretically the same as they are defined by written law; but

[1] William endeavoured at first to conciliate both parties by choosing his ministers out of the ranks of each. This plan could not possibly succeed.

practically, the new order of things rendered it impossible for the sovereign to refuse his assent to any measure which had passed through both houses of Parliament. It is the prerogative of the Crown to choose its own ministers still, but no minister of whom the House of Commons does not approve can retain office for many weeks. And the great secret of all this power lies not in any statutory declaration, but in the fact that the whole machinery of government can be changed at once by the simple process of the house refusing to pass a measure on which a minister has made up his mind to stake his official existence. Ministers now stand or fall together; and so united are their counsels and supreme their authority, that we apply the term 'Government' to the party which is in power.[1] These great changes have not been brought about by any legislative enactments, but by the silent growth of an unwritten code, precisely in the same manner as our common law has grown up. The modern 'ministry' is an executive committee of the two houses of Parliament, chosen by the majority in the Commons; and the smoothness with which this system works is mainly owing to the fact that England is divided into two great parties, the Whigs and the Tories.

Use of the King's Name.—Sometimes, indeed, the Cabinet endeavoured to retain office in the face of majorities; but in the reign of George I., when the sovereign ceased to take any personal share in the deliberations of Parliament, government by party and ministerial responsibility were finally established. George III., owing to his small intellect and imperfect education, strove very hard to recover lost ground and to be 'king' in spite of Parliament; but only with the results of losing the American colonies and of bringing England to the brink of ruin. In 1783 he and 'his friends' endeavoured to defeat, and succeeded in defeating, Fox's India Bill by intimidating the House of Lords. George commissioned Earl Temple to tell the house, 'that whoever voted for the India Bill would not only not be his friend, but would be regarded as his personal enemy.'

[1] 'Government' has been generally used since the Reform Bill of 1831-32.

Indignant at this unconstitutional use of the king's name, the Commons passed a resolution, 17th December 1783, 'That to report any opinion or pretended opinion of his majesty upon any bill, or any proceeding depending on either house of Parliament, with a view to influence the votes of the members, is a high crime and misdemeanour, derogatory to the honour of the Crown, a breach of the fundamental privileges of Parliament, and subversive of the constitution.'

Vote of Want of Confidence.—The unwritten laws of our constitution, which have grown up from precedent to precedent, are a greater check on the prerogative than all the legal limitations set down in the Statute-Book. When the ministry of Lord Melbourne endeavoured to retain office, although his followers were in a minority, Sir Robert Peel moved, in June 1841, that the then existing ministers of the Crown 'did not possess the confidence of the House of Commons, and that their continuance in office was therefore at variance with the spirit of the constitution.' This motion was carried by a majority of one; and the precedent then established is a perfectly constitutional mode of procedure for removing unpopular or dangerous ministers from office. It has therefore been observed, that the theory of the position of the body known as the Cabinet, and of its chief the Prime Minister—every detail, in short, of the practical working of government among us, is a matter belonging wholly to the unwritten constitution, and not at all to the written law. Theoretically, and according to statute law, the Crown has almost as much power now as it had towards the close of the Plantagenet period; but practically, and according to the unwritten code of constitutional procedure in Parliament, the sovereign has no independent power whatever, except such influence as depends on high character. It is now indeed true that 'the king can do no wrong,' for the whole responsibility of action rests with the ministers of the Crown. Our modern constitution has so far outgrown the theory of those who framed it at the Revolution, that it would be scarcely recognisable,

except in its fundamental principles, by the authors of the Bill of Rights.

CONCLUSION.

The Commons.—The year 1295 is the date of the constitution of a perfectly national Parliament. Under Edward III. and his successors, new boroughs were created from time to time; and under Henry VIII. we find no less than 111 cities and boroughs represented in Parliament by 224 citizens and burgesses. All these constituencies retained their privileges until the Reform Bill of 1832 swept many of them away. Between the reign of Henry VIII. and Charles II., 180 members were added to the House by royal charter alone, and under the last two Stuart kings the total number of members averaged about 500. The Act of Union with Scotland in Queen Anne's reign, and of Ireland in the reign of George III., increased the number by 145 additional members; and since that period the extension of the suffrage and the formation of new constituencies have made further additions to our parliamentary representatives.

Representation.—The right of the Commons to take a part in the legislation of the realm is declared and confirmed in a statute of Edward II., which, indeed, recognises the then constitution of Parliament as an ancient custom. During the 13th and 14th centuries the representative system worked well enough; for the knights of the shire and the burgesses who sat in Parliament were really representatives of the counties and boroughs which elected them. But from 1400 to 1832 the House of Commons lost in representative character what it gained in numerical strength. The Tudor sovereigns established a court party in the house by the profuse creation of boroughs, most of which were mere villages in the hands of the Crown. These seats fell by degrees into the hands of neighbouring landholders, who either sold them to the highest bidder, or reserved them for special favourites. Some of these boroughs again fell into the hands of political 'jobbers,' like the Duke of Newcastle, who at

one time returned a third of the House of Commons. How did this state of things originate? We shall see.

Restriction of the Franchise since Reign of Henry VI.—In the reign of Henry VI., Parliament dwindled away into a mere representation of the baronage and the great landowners, and the House of Commons, in the proper sense of the term, ceased to exist. In the first place, the aristocracy restricted the county franchise to such members only as were of 'gentle blood,' which implied of course the virtual disfranchisement of the Commons. In the second place, the borough franchise was reduced to a mere farce by the privileges of corporations. In olden times every freeman in a borough who 'paid scot and bare lot' was a burgess, and had therefore all the municipal and civil rights of a free citizen. But this largeness of borough life was curtailed by charters of municipal incorporations, which set aside all popular rights.[1] The trade companies in towns tended to become more and more narrow, until they formed themselves into exclusive oligarchies, and the charters of incorporation secured from the Crown turned them into close bodies, into which none was admitted who was not a burgess by birth, or who did not purchase his rights by a long apprenticeship. It thus happened that the internal government of the towns passed into the hands of the mayors and the common councils, either self-elected or elected by the wealthier burgesses; and it was these 'councils' alone that had a chartered right to choose members of Parliament. The narrowing of municipal privileges, therefore, to a small part of the inhabitants, and the restriction of electoral rights to the members of the town councils, rendered borough representation a mere name. Indeed, it is not too much to say that the government of England from the beginning of the fifteenth to the end of the eighteenth century was a mixture of tyranny and aristarchy, varying from one to the other, according as the sovereign or the nobility had the greater genius for despotic rule.

Recent Reforms.—Changes in the distribution of seats,

[1] The first charter of this nature was granted by Henry VI.

which were called for by the natural shiftings of population and wealth since the days of Edward I., had been recognised by Cromwell, who disenfranchised many of the 'rotten' boroughs, increased the number of county members, and gave the franchise to Manchester, Leeds, and Halifax; but these reforms were cancelled at the Restoration. From that time to the reign of George III. not a single effort had been made to reform the abuses of our parliamentary system. Great towns, such as Manchester, Birmingham, and others, had risen up and still remained unrepresented, while small villages miscalled 'boroughs' returned two members. Some of these villages had already disappeared from the face of the earth, and only gave hints of their previous existence by a ruined wall or a grassy mound in noblemen's parks, and yet these deceased 'constituencies' were represented in the House of Commons.

Political Corruption.—The transfer of power from the king to the lower house was complete, and England was ruled by a body of men who were absolutely free from all responsibility. Members bought their seats with money, and when they got into the house they sold their votes to the First Lord of the Treasury. Walpole was so cynical as to say that 'every man has his price;' and he, as well as Danby and Pelham, followed out this corrupt principle to its extreme application. No wonder that the great Earl of Chatham exclaimed, some years later, that the House of Commons had ceased to represent the people of this country, and denounced the 'borough' system as the rotten part of the constitution.

Reform advocated by the Pitts.—The great earl himself advocated reform as early as 1766, and the younger Pitt returned to the subject in 1782–83; but the Commons, such as they were, were naturally indifferent, if not averse, to a new order of things that would cost the majority of them their seats; and as the king also was opposed to it, the motion was negatived by a majority of 74. Then the French Revolution threw all other questions into the shade, and the excesses of the 'regicides' silenced for a time our greatest advocates of reform, and gave to the Tory party

an excuse for demanding a policy of repression, which very nearly caused the revolution which it was intended to prevent. It is difficult for us to see how the sweeping away of rotten boroughs would bring in a 'reign of terror' in this country. If history teaches us anything more clearly than another, it is that revolutions are almost always caused by rulers who do not trust the people.

Reform Act, 1832.—Before the death of George III., Lord John Russell took up the matter of reform, and even succeeded in passing a measure through the Commons that would disenfranchise four boroughs where votes were openly sold; but the Lords rejected the bill. After the death of George IV., the Whig ministry under Lord Grey resolved on passing a Reform Bill. It was introduced by Lord Russell, and passed by a majority of only one. The Parliament was therefore dissolved, and an appeal made to the country. The new house contained a large Whig majority, and the bill was carried at once; but the Lords as usual rejected it. This caused such public indignation that meetings were held almost everywhere throughout the country, and frequent riots expressed the popular fury. This somewhat alarmed the upper house; and when the bill for the third time was presented to them, with the private intimation that the house would be swamped by the creation of new peerages[1] unless they consented to reform, the Lords passed the bill as it stood.

The Reform Act of 1832 greatly increased the power of the middle classes, but still left the working classes unrepresented.

1. In the first place, it disenfranchised fifty-six boroughs, which had returned 111 members; and in thirty other places it reduced the franchise to the return of one instead of two members. In England 141 seats were transferred from deserted and non-existing villages to great town constituencies, thus changing the balance of political power for the better.

2. In the second place, the Reform Bill gave power to the middle class, such as merchants and shopkeepers. The £10

[1] This is a constitutional measure which the Prime Minister can adopt when the Lords prove intractable.

householders in boroughs were altogether a new class of voters, and of course belonged to the middle class.

3. Finally, the county franchise was extended by adding to the old 40s. freeholders (23d Henry VI.) all leaseholders paying £50 rent.

The Chartists.—The Chartists, however, were not at all satisfied with these reforms. They demanded—(1) universal suffrage as a right recognised and confirmed in our most ancient charters of liberty; (2) the division of England into equal electoral districts; (3) vote by ballot; (4) annual instead of septennial Parliaments; (5) permission for every man to be elected whether he had property in land or not; (6) members of Parliament to be paid by salaries. Of these six articles the 3d and 5th have already become law.

Reform Act, 1867.—When Palmerston died in 1865, Russell, who became his successor, again advocated a reform that would give the franchise to the working classes. The Commons, however, would not listen to it, and Russell resigned office. Lord Derby succeeded him, but Disraeli was the actual leader of the Conservative party. The cry for reform arose louder than ever from the working classes, and a large meeting was proposed in Hyde Park. The Government, without any right, as they afterwards discovered, endeavoured to shut them out by closing the gates; but the mob tore down the railings, and the meeting was held. Disraeli then determined to yield to the popular cry by making a 'leap in the dark,' as he called it, and the Reform Bill of 1867 was introduced. When this bill became law the borough franchise was extended to all householders and lodgers paying £10 rent; and the county franchise was reduced to householders paying £12 rent. Thirty-three seats were withdrawn from English boroughs, twenty-five of which were transferred to English counties, and the remaining eight distributed in Scotland and Ireland. The working men by this Act obtained power in the State, and the first use they made of it was to remove the statesman who had enfranchised them. The Liberal party, with Mr. Gladstone as its leader, was returned to office in 1868, and the

old policy of inaction was changed to one of reforming activity. The English Church in Ireland was disestablished as the final act and seal of Catholic emancipation; and an Irish Land Bill was passed in 1870, which was meant to establish in that unfortunate country something like a tenant-right. Another Land Bill was introduced this year (1881) by the same statesman, and has just passed through the House of Lords, after a great deal of adverse criticism. It may not pacify Ireland, a country in which improvidence and discontent appear to be chronic, but it will certainly change the character of land tenure, and modify the relation between lord and vassal, which is the last remnant of feudalism.

Catholic Emancipation, 1829.—In 1829 the Wellington ministry repealed the Test and Corporation Act of Charles II. so far as it related to dissenters, but the civil disabilities of Catholics were not removed by this repeal. This 'injustice to Ireland' was resented by a burst of popular indignation which threatened civil war; and although Wellington and Peel had all their lives been dead against Catholic emancipation, yet Parliament was constrained to pass a bill which gave to the Catholics equal rights with their Protestant fellow-subjects. It may be said, therefore that the Catholic Emancipation Act of 1829 and the Reform Act of 1832 mark the commencement of a new chapter in the social history of England. A policy of repression had been observed during the whole of the French Revolution, and for some years after it; but with religious toleration and the restoration of ancient political rights, Great Britain has entered on a new career, in which prosperity and freedom flourish side by side. The tendency of modern legislation is to restore the simplicity of Saxon polity, and with it the rights and liberties of the whole community. When we take a retrospective view of the history of England from the Norman Conquest, we cannot fail to be impressed with the fact that nearly every Act of permanent value contained in our Statute-Book had its origin in the common law of the Saxon race; and that every unjust Act which has been since repealed

had its origin in Imperial Rome, that fertile mother of so many religious and civil tyrannies. The English people could never brook the gyves of their step-dame either on body or soul, and therefore they are the pioneers and missionaries of freedom and civilisation all over the globe, while the Latin races are still held in the thraldom of a system which can only flourish when religion takes the form of abject superstition and diplomacy the form of Machiavellian treachery. The mere form of our constitution is a matter of little consequence, so long as the true functions of government are observed. We know from historical experience that a commonwealth or a republic can be as despotic and absolute as the worst monarchy; yea, that the House of Commons itself can become a corrupt body of irresponsible tyrants, as it did in the eighteenth century, or an exclusive oligarchy, as it has frequently been; but with our present enjoyment of political rights, we can hardly conceive of any form of government more likely to better the condition of the subject than our English monarchy such as it now stands. The master mind of antiquity has supplied us with a motto, and with that our short sketch of the Constitutional History of England comes to an end: 'The only firm State is that where every one enjoys the equality which befits his merit, and fully possesses what is his own.'[1]

[1] Aristotle, *Politics*, v. 7.

QUESTIONS SET AT LONDON UNIVERSITY MATRICULATION LL.B. EXAMINATIONS, FROM THE FOUNDATION OF THE UNIVERSITY.

1. What laws and customs were introduced by the Saxons?

2. Describe the chief political institutions of the Anglo-Saxons.

3. What was the constitution of the Witenagemot, and what were its powers? Also of the Great Council of the Normans?

4. Give a short description of the mode of administering justice in the country before the Conquest.

5. What form of government did William I. introduce into this country?

6. What was William I.'s line of policy with respect to the Church, and what were the political results of that policy? (*Vide* Becket.)

7. How did William provide in England for the maintenance of the power of the Crown? Point out the arbitrary character of the government of the Norman kings.

8. What was the peculiarity of the feudal system as established in England by William? How long did it continue essentially unaltered?

9. What steps were taken by Henry II. to secure and enlarge the royal power, and improve the administration of justice?

10. What were the judicial reforms introduced by Henry II.?

11. Enumerate the laws enacted under the general title of the Constitutions of Clarendon. State the nature of the controversy out of which they arose.

12. Distinguish between the Constitutions and the Assize of Clarendon.

13. State the most important provisions of Magna Charta. How often, and under what modifications, was it ratified? Does Magna Charta contain the principle of Habeas Corpus?

14. Give the substance of the Provisions of Oxford.

15. State the origin of popular representation in England, and trace the gradual progress of the authority of Parliament through the reigns of Edward III. and his successors, down to Henry VI.

16. What were the constitutional advances made in the reign of Edward I.?

17. How far were the relations between the English Crown and Parliament affected by the French wars?

18. What advances were made in the development of parliamentary government under the Lancastrian kings?

19. What effect had (1) the Wars of the Plantagenets with France, and (2) the Wars of the Roses, upon the royal prerogative?

20. What were the limitations to the royal authority at the accession of Henry VII.? How do you account for the high prerogative of his immediate successors?

21. Describe the relation between the Crown and the nobility in the reign of Henry VII.

22. What is supposed to have been the origin of the Star Chamber, and how was it remodelled in the reign of Henry VII.? By whom was the Court of High Commission created?

23. What were the most important laws enacted during the reigns of Henry VII. and Henry VIII.?

24. How was the royal supremacy developed under the Tudors?

25. What was the Statute of Six Articles?

26. What was the Act of Uniformity?

27. When, and for what reasons, were the Court of the Star Chamber and the Court of High Commission abolished?

28. State the leading provisions of the principal statutes enacted in the reign of Elizabeth.

29. Point out the most remarkable epochs in the struggle between the pontifical and regal power in England.

30. 'Under the Plantagenets Parliament had been an instrument of resistance, the guardian of private rights; under the Tudors it became an instrument of government and general policy.' State those historical facts which appear to you most strikingly to illustrate these statements.

31. Through what causes was the influence of Parliament developed in the reign of James I. and that of his successors?

32. Tell the history and purport of the Petition of Right.

33. Describe any event of the years 1621 and 1629 that have a place in our Constitutional history.

34. By what unconstitutional means did Charles I. endeavour to raise money, and on what legal grounds did he justify those measures?

35. Describe the first measures of the Long Parliament.

36. What advantage did the English Parliament, as distinguished from similar bodies on the Continent, possess in their long-protracted contest with the Crown?

37. What was the duration of the Long Parliament, and under what circumstances did it come to an end?

38. What were the most important Acts of Parliament passed during the reign of Charles II.

39. What was the object of the Test Act, and of the Habeas Corpus Act?

40. By whom was the Exclusion Bill promoted? What was its object and result?

41. What were the causes of contention between James II. and the bishops?

42. On what grounds was James II. accused of violating the Constitution?

43. Does any other event in the history of England admit of being compared with the Revolution of 1688?

44. The reign of the Stuarts has been called the 'Age of good laws, but of bad administration.' Illustrate this statement.

45. What were the immediate causes of the Revolution of 1688?

46. What principles of importance were established by the settlement of William III. on the throne?

47. What were the chief provisions of the Bill of Rights?

48. What was the Act of Settlement?

49. When were Triennial Parliaments instituted by law? By what guarantees was the annual assembly of that body secured?

50. What were the most important legislative measures passed in the reign of William III.?

51. What rights were secured by Magna Charta? What special right was secured by the Confirmatio Chartarum of Edward I.?

52. What were the following measures:—The Act of Uniformity; the Statute of Præmunire; the Exclusion Bill; the Six Articles; the Test and Corporation Acts?

53. Show how the fundamental principles of the British Constitution are either expressed or implied in Magna Charta, the Petition of Right, and the Bill of Rights.

54. Mention some of the earliest instances of a collision between the civil and ecclesiastical jurisdictions in England, and name any statutes which have limited ecclesiastical power.

55. What constitutional questions are connected with the names of Langton, Becket, 'The Five Members,' Lord Chancellor Shaftesbury, and the 'Seven Bishops'?

56. To what periods in our history would you point as those in which King, Lords, and Commons respectively have been predominant, or have exercised unusual power?

57. What are the functions of the House of Lords?

58. When were knights and burgesses first sent to Parliament? How is it they were not summoned earlier?

59. When does it become clear that the *originating* power as to taxation was placed in the hands of the Commons?

60. Note the successive landmarks in the progress of the increased influence of the House of Commons up to the present year.

61. Explain the difference between an Impeachment and a Bill of Attainder.

62. Locke speaks of the 'contract between the Crown and people.' Does our Constitution recognise this term? To what discussion has it given rise?

63. The most marked progress in constitutional liberty in England was made under kings of weak personal character. Illustrate this statement by facts.

64. Distinguish between the executive, the judicial, and the legislative powers in the State; and name any remarkable occasions on which the constitutional limits to any one of their functions have been overstepped.

65. Describe the origin of the courts of law.

66. What features and elements of the feudal system were to be found in England before the Conquest?

67. How did feudalism in England differ from that which prevailed on the Continent?

68. What effect had the progress of commerce on the social and political state of England?

69. By whom were charters of incorporation first granted to English towns?

70. Explain the following words and phrases:—Bretwalda, Danegeld, Witenagemot, Eorl, Thane, Ceorl, Tything, Reeve, Shire, Sheriff, Alderman, Frankpledge, Knight, Fief, Aid, Relief, Wardship, Benevolences, Burgess, Tallage, Poundage, Pride's Purge, Bocland, Monopolies, Cabal, Dispensing Power, Tenant in Capite, Ship-money, Præmunire, The Bloody Circuit, The Five Members, The Court and County Party.

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